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BOOK REVIEW

IMPERIALISM, SOVEREIGNITY, AND THE MAKING OF INTERNATIONAL LAW

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A. Introduction

Antony Anghie's seminal book, "Imperialism, Sovereignty, and the Making of International Law", provides a much-needed exploration of the Third World's sentiments towards international law throughout its history and development. Anghie eloquently elaborates on how international law's predatory past can be observed through the culture of colonialism, which deeply ingrained the notion that it was the natural order of things. This culture of colonialism persisted throughout the paradigm shifts of international law, from naturalism to positivism to pragmatism, spanning from the colonial era to the post-World War era. By centering the discourse on the Third World's sentiments towards international law, Anghie's work unravels the mechanisms through which the interests of powerful nations have prevailed over the rights and aspirations of Third World states and invites readers to critically reassess the existing legal order.

Structured into six chapters, Anghie takes his readers on a chronological journey through the epochal development of international law, highlighting key moments in world history. In this book review, we delve into the significance of Anghie's work within the context of international law and its historical development. The relevance of this book review lies in its ability to challenge the mainstream perspectives and assumptions within international law. It encourages a deeper examination of the historical and structural factors that have influenced the development and application of international law. By critically engaging with Anghie's work, we contribute to a broader discourse on the transformation and reform of international law, aiming for a more just and balanced legal framework that respects the sovereignty and rights of all nations.

Anghie's perspective, used throughout the book, is rooted in the Third World Approach to International Law (**TWAIL**). TWAIL, which emerged in the 1990s, is a critical perspective created in response to recognized biases and limitations of mainstream international law. By drawing insights from a range of disciplines such as law, history, political science, sociology, economics, and postcolonial studies, TWAIL aims to delve into the multifaceted aspects that have shaped international law. This interdisciplinary approach allows

for a comprehensive exploration of the historical, political, economic, and social contexts that underpin international law, shedding light on its inherent complexities and power dynamics.

B. Discussion

Anghie begins his first chapter with the works of Francisco de Vitoria, a sixteenth-century Spanish jurist, theologian, and philosopher, who is commonly associated with the interest of Hugo Grotius as the "founders of (European) international law". Anghie opines that Vitoria's making sense of the relationship between the Spaniards with the Indians had resulted in a concept of sovereignty, which effectively justified the sovereigns' conquest of "the others".[1] Vitoria endorses the Spanish rule over the Indians under the premise of cultural difference; that there exists a higher universal law that must be followed by all, and that the discrepancies of cultures practiced by the Indian people must be remedied by the self-proclaimed "better state", i.e., Spain.[2] Anghie notes how Vitoria prescribes that the dichotomy between the sovereign and non-sovereign lies in their ability to wage a "just war", which is a notion based on the European worldview at the time.[3] Vitoria further argues that international law was a product of this encounter between the Indians and the Spaniards, a tool to bridge the gap of hierarchy between the two states.[4]

The second chapter dwells further on the issue of sovereignty, particularly as there has been a shift in paradigm from natural law to legal positivism.[5] The main discussion of this chapter revolves around how through positivism, the non-European states are ostracized in the making of international law. Anghie explains how European jurists began to draw upon a distinction between the civilized and the uncivilized, creating their vocabulary to justify the idea of a civilizing mission, where all states must be subject to the standards of civilization set by a dominant European culture.[6] Anghie writes in a frustratingly accurate passage:

1 Antony Anghie. Imperialism, Sovereignty, and the Making of International Law. (New York: Cambridge University Press, 2004).
2 *Ibid.,* 22.
3 *Ibid.,* 26.
4 *Ibid.*, 30.
5 *Ibid.*, 42.
6 *Ibid.*, 38.

"The gap between the European and non-European worlds was to be bridged not by a universal natural law but by the explicit imposition of European international law over the uncivilized non-Europeans. It is simply and massively asserted that only the practice of European states was decisive and could create international law. Only European law counted as law. Non-European states were excluded from the realm of law, now identified as being the exclusive preserve of European states, as a result of which the former were deprived of membership and the ability to assert any rights cognizable as legal."[7]

In the following chapters three to five, Anghie argued how post-World War international law had developed paradoxically. On one hand, it was allegedly used to put an end to colonialism and allow most of the Third World to exercise self-determination.[8] However, on the other hand, it apparently also facilitates a new form of colonial relations through the existence of international commerce and the creation of institutions that only benefit the First World states.[9] After this point in history, legal scholars shifted their vocabulary from civilized-uncivilized to developed-developing.[10]

To explain this phenomenon, Anghie examines the League of Nations Mandate System during the interwar period. This system mandates the "First World states" to assist the "Third World states" by "guiding" the formerly annexed or colonized territories of the defeated states from World War I to purportedly bridge the gaps of development.[11] However, reflecting on the previous chapters, Anghie explains that this Mandate System eerily resembles the past "civilizing missions" and purportedly "prevent[s] the exploitation of the native peoples and to promote their well-being and development".[12] Opposing reality, the Mandate System embodies and enforces "the ideal policy of European civilization towards the cultures of Asia, Africa, and the Pacific".[13] This was, in essence, a maneuver to universalize European law, which was conducted through wrongful ways such as dismissing cultural

7 *Ibid.,* 54.
8 *Ibid.,* 119.
9 *Ibid.,* 269.
10 *Ibid.,* 191.
11 *Ibid.,* 121.
12 *Ibid.,* 121.
13 *Ibid.*, 137.

diversities and distinct rulings and laws offered by the Third World.

At the same time, the Mandate System lures the Third World to believe that the First World states were mandated to help them under some noble pursuit.[14] Meanwhile, Anghie points out that, in reality, the First World uses this system for economic resource exploitation.[15] For example, the Mandate System was used by France and the United Kingdom to arbitrarily redraw the boundaries of their mandate territories in Palestine, Mesopotamia, and Syria in order to enable a more efficient exploitation of their oil reserves.[16]

In addition, Anghie suggests that developing or Third World states are also expected to participate in International Financial Institutions (IFI), such as the Bretton Woods system consisting of the International Monetary Fund and the World Bank to develop themselves.[17] These institutions do, to some extent, assist the Third World states in transforming their economic, political, and financial systems.[18] However, unsurprisingly, it was the First World states that benefited the most from this phenomenon.[19]

The IFI enabled modern imperialism by sourcing raw materials from Third World states. Not only in the form of primary commodities, but most importantly, information, which was then processed by the IFI into knowledge, theories of development, and best practices for the benefit of First World states.[20] This was only possible as the Mandate System had given the IFI the legitimating foundation of a new colonial administration accorded through new systems of control and new sciences of management.[21] Relating to this, the Third World people are also denied effective decision-making power as they are always under the control of rich industrialized states who only pursue their interests.[22] This has left Third World states to be further pushed into the periphery of the system and made powerless. Rather than becoming developing states, the neo-liberal policies prescribed by these organizations

14 *Ibid.*, 142.
15 *Ibid.*, 142
16 *Ibid.*, 144.
17 *Ibid.,* 191, 257--258.
18 *Ibid.,* 258.
19 *Ibid.,* 263--269.
20 *Ibid.*, 265
21 *Ibid.*, 264
22 *Ibid.*, 266

have intensified the impoverishment of the Third World states[23] and even left some worse off, such as in the case of many African countries.[24]

At this stage, Anghie explains how international law "has legitimized, through doctrines of conquest and by upholding unequal treaties, the imbalances and inequalities in social and political power that are inevitably reflected in international contracts, which are then characterized as expressing the free will of the parties".[25] The novel international law of contracts further legalizes the grip of First World states towards Third World states, providing the much-needed foundation to legally enforce unequal agreements that had prevailed since the era of imperialism.

Eventually, in the new era of post-colonialism, governance, and human rights became key tools in promoting a universal rule of law and to steer Third World states towards a specific path of neo-colonialism.[26] This new model suggests that all states must aim to achieve good governance, a term which has no definitive meaning in international law but is generally understood as the creation of a government that is transparent, accountable, democratic, and which fosters the realization of human rights and the rule of law.[27] This idea of good governance became the foundation of transformations administered by First World states towards Third World states, resulting in a more nuanced form of neo-colonialism.

In the final chapter, Anghie describes how the United States has used the campaign of the "War Against Terror" (especially during and after the Afghanistan war) to redefine the doctrines of self-defense, pre-emptive self-defense, and humanitarian intervention. He argues that treaty arrangements have been utilized by the United States to effectively undermine the sovereignty of Afghanistan and Iraq, similarly to the past Mandate System and recreating the Vitorian phenomenon.[28] The United States continues to practice imperialism[29] by disguising it under the notion of creating democratic self-

23 *Ibid.*, 260
24 *Ibid.*
25 *Ibid.*, 241.
26 *Ibid.*, 248.
27 *Ibid.*
28 *Ibid.*, 278-287; Vijayashri Sripati. "The United Nations' Role in Post-Conflict Constitution-Making Processes: TWAIL Insights", International Community Law Review 10, no. 4 (2008), 411–20.
29 *Ibid.*

government,[30] instilling the belief that Iraq must replicate the United States model of government in order for it to be truly independent.[31] But, shrouded behind this veil, it was the United States who benefited the most from these arrangements, giving them access to the much-needed "continued oil supply" they so relentlessly wanted.[32] This, in essence, further proves how the concept of sovereignty for Third World states is nothing more than an illusion and how First World states will always be the leading –or rather the only– actor of international law development.

Anghie's work invites the audience through a rollercoaster of frustration through the development of international law. It is hard to disagree that, since the Middle Ages until today, the Third World states have been subjugated, ostracized, and forced into the realm of international law. They were never involved in its development, whether in the past, present, and perhaps, the future. However, despite all that, Anghie closes with a challenge for international law scholars that they might chart some ways to rethink the system of international law. A challenge that has been taken up by TWAIL scholars around the world, striving to reorient Eurocentric international law into the true international law, was set to be. He writes:

"I continue to hope, together with the many scholars who are working to reconstruct an international law precisely because of their awareness of the many ways in which it has operated to exclude and subordinate people on account of their gender, race, and poverty, that international law can be transformed into a means by which the marginalized may be empowered."

C. Analysis

Anghie's work on the development of international law is undoubtedly remarkable, providing an exceptional historical analysis. However, it is important to acknowledge certain limitations within Anghie's book. One notable critique is that Anghie's analysis sometimes relies on generalizations and broad strokes, which may not fully capture the diverse range of experiences and perspectives within the Third World. A more nuanced and context-specific

30 *Ibid.*, 280.
31 *Ibid.*, 285.
32 Shayma Bashawieh. "Military Intervention from a Global South Perspective: A TWAIL Analysis," Revue YOUR Review 1 (2014), 107.

approach could have provided a more accurate portrayal of how international law impacts different regions and states. The book also lacks clear solutions or policy recommendations for addressing the challenges and inequalities present in international law. While highlighting historical injustices and power imbalances is crucial, proposing tangible steps for reform and transformation would have strengthened the book's practical implications. By addressing these shortcomings, Anghie's work could have offered a more comprehensive and actionable framework for reshaping the future of international law.

Additionally, there are also important questions that remain unanswered. One of these questions would regard the intentions and motivations of influential jurists throughout history. Were jurists such as Francisco de Vitoria and John Austin merely reflecting on events that had already occurred, or did they deliberately construct legal concepts that were subsequently used to justify colonial expansion?

This question strikes at the heart of understanding the complex relationship between international law and colonialism. It raises doubts about whether certain legal principles and doctrines were truly driven by a genuine pursuit of justice and universal norms or if they were intentionally crafted to legitimize and perpetuate colonial domination. By questioning the intentions and awareness of jurists, we are compelled to critically evaluate the role of legal discourse in perpetuating and legitimizing colonial expansion. This inquiry forces us to confront uncomfortable truths about the complicity of legal systems in systemic injustices and power imbalances that have shaped the global order. Nonetheless, answering these questions is not a simple task, as it requires a careful examination of historical evidence and a deep understanding of the intellectual and cultural milieu in which legal concepts emerged.

TWAIL, recognized as a prominent critical perspective for unpacking international law, has gained substantial recognition. Scholars like Mohsen al Attar and Bhupinder S. Chimni are regarded as the pioneers of TWAIL, shaping its foundations. Moreover, an increasing number of scholars have embraced TWAIL as a framework to assess international law, with many citing Anghie's work as a reliable reference to the history of international

law's predatory past. Notable figures such as Joseph R. Slaughter[33] and Makau Mutua[34] (the USA, although Mutua is originally Kenyan), Obiora C. Okafor (Canada),[35] Fajri M. Muhammadin (Indonesia),[36] Prabhakar Singh (India),[37] Ntina Tzouvala (Australia),[38] Khaled Al-Kassimi (Uni Emirates of Arabia),[39] and countless others have integrated TWAIL into their research.

Nonetheless, as TWAIL works gain prominence worldwide, a critical question arises: What steps can Third World states take to dismantle the persistent and deeply rooted faults in international law? Should they completely reject international law altogether or navigate the rigged affairs of the existing system? This concern is underlined by Naz K. Modirzadeh in her article titled "[L]et Us All Agree to Die a Little: TWAIL's Unfulfilled Promise". Modirzadeh criticizes TWAIL for its perceived lack of a "programmatic vision" that outlines what an ideal international order should look like, as well as the absence of "prescriptive proposals" to actualize such a vision.[40] This criticism highlights the need for TWAIL to develop concrete strategies and recommendations for transforming the international legal order and creating a more just and equitable global system.

33 Joseph R Slaughter. "Hijacking Human Rights: Neoliberalism, the New Historiography, and the End of the Third World", Human Rights Quarterly 40, no. 4 (2018), 735–75.

34 Makau Mutua. "What Is TWAIL?", American Society of International Law, Proceedings of the ASIL Annual Meeting 94 (2000), 31–38; Makau Mutua. "Savages, Victims, and Saviors: The Metaphor of Human Rights", Harvard International Law Journal 42, no. 1 (2001), 201–46.

35 Obiora Chinedu Okafor. "Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective", Osgoode Hall Law Journal 43 (2005), 171.

36 Fajri Matahati Muhammadin. "The United Nations' Beirut Declaration and Its 18 Commitments on Faith for Rights': A Critique From An Islamic Perspective", IIUM Law Journal 28, no. 1 (2020), 73–112; Fajri Matahati Muhammadin. Universalitas Hak Asasi Manusia Dalam Hukum Internasional: Sebuah Pendekatan Post-Kolonial, in ed. Hak Asasi Manusia: Dialektika Universalisme vs Relativisme Di Indonesia. (Yogyakarta: LKiS, 2017), 1–20.

37 Prabhakar Singh. "International Law as Intimate Enemy", Oregon Review of International Law 14 (2012), 376.

38 Ntina Tzouvala. "The Specter of Eurocentrism in International Legal History", Yale Journal of Law & the Humanities 31, no. 2 (2021), 413–34.

39 Khaled Al-Kassimi. "A 'New Middle East' Following 9/11 and the 'Arab Spring' of 2011?—(Neo)-Orientalist Imaginaries Rejuvenate the (Temporal) Inclusive Exclusion Character of Jus Gentium", Laws 10, no. 2 (2021), 29.

40 Modirzadeh, Naz K. "'[L]et Us All Agree to Die a Little': TWAIL's Unfulfilled Promise", (March, 2023).

D. Conclusion

Regardless of these unanswered questions, Anghie's book remains a paragon centerpiece in explaining the "other" debate and the alternative story of international law. This book can be an advantageous and informative read for different groups. Read by academic scholars, this book successfully provides a complete and comprehensive overview of the development of international law from an atypical perspective. Read by law students, this book may supplement studies on international law in order to attain a balanced outlook, especially for those who have primarily been taught international law exclusively through the perspective of Western-centric textbooks. Overall, readers are bound to be entertained by Anghie's outlook and analyses, which are both academically sound and exceptionally written.