



## THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

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# Race & Empire in International Law at the Intersection of TWAIL & CRT

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*In January 2020, E. Tendayi Achiume & Ash Ü. Bâli convened the UCLA Law Review symposium, 'Transnational Legal Discourse on Race and Empire'. The resulting symposium issue was published as volume 67:6, fully available [here](#). In the following excerpt from their symposium introduction, '[Race and Empire: Legal Theory Within, Through, and Across National Borders](#)', Professors Achiume and Bâli situate the symposium within its broader intellectual context: renewed momentum among Third World Approaches to International Law (TWAIL) scholars to engage Critical Race Theory (CRT) scholars in collaboration aimed at deeper understanding of issues of shared concern. They argue that building a global, transnational TWAIL/CRT project will create productive insights about ideologies of racial domination and racial injustices in a domestic, international, and transnational context. By combining the insights of CRT and TWAIL together, it becomes possible to theorize imperialism and racism more extensively than is currently possible within each approach separately. We thank UCLA Law Review for permission to publish this excerpt.*

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We come to this project primarily as international legal scholars invested in the commitments broadly associated with TWAIL, best understood as an 'expansive, heterogeneous and polycentric dispersed network and field of study.'<sup>1</sup> Within TWAIL, the Third World is a 'counter hegemonic discursive tool that allows us to interrogate and contest the various ways in which [geopolitical] power is used,'<sup>2</sup> and it is an 'anti-imperial and anti-racist project.'<sup>3</sup> It is a category that enables fundamental diagnosis and critique of international law and its operation, and that

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<sup>1</sup> James Thuo Gathii, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography' (2011) 3 *Trade, Law & Development* 26, at 26.

<sup>2</sup> See Balakrishnan Rajagopal, 'Locating the Third World in Cultural Geography' (1999) 15 *Third World Legal Studies* 1, at 19.

<sup>3</sup> John Reynolds, *Empire, Emergency and International Law* (CUP, 2017) at 21: 'TWAIL is 'a social and political consciousness that bands together a diversity of actors through their common marginalisation by the particularities of global North hegemony.'

opens up meaningful if imperfect opportunities for shoring up the emancipatory potential of international law.<sup>4</sup> TWAIL is less about a dogmatic insistence on the Third World as a stable or unchanging, well-defined geographic or even geopolitical formation, and more about flexible but focused attention to the Third World as tracking a common experience of political, economic, and social subordination in the global hierarchy of power relations. Finally, as powerfully articulated by one of TWAIL's founders, James Gathii, the Third World is also a 'subaltern epistemic location'; that is, a site of knowledge production about international law that aims to disrupt dominant approaches, which to this day explicitly and implicitly treat the West as the only legitimate and plausible source of international legal knowledge.<sup>5</sup>

The TWAIL umbrella unifies scholars with diverse interests and methodologies, but scholars who still typically share the foundational premise that international law cannot be understood or analyzed apart from its mutually constitutive relationship with empire, specifically European colonialism and its enduring contemporary legacies.<sup>6</sup> TWAIL's contributions to international legal scholarship range from illuminating how historical antecedents of modern international law embodied and advanced colonial logics of racialized exploitation, expropriation, and extermination, to deconstructing the contemporary legacies of these antecedents in different fields of international law. Other TWAIL scholars have focused on the reconceptualization of international law to disrupt its embedded hierarchies of power.<sup>7</sup> A common thread within TWAIL that is salient for our subsequent analysis, then, is its critical foregrounding of empire (past and present):

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<sup>4</sup> For analysis of the meaning, value, and limits of the concept of the 'Third World', see B. S. Chimni, 'Third World Approaches to International Law: A Manifesto' (2006) 8 *International Community Law Review* 3, at 4–7; Makau Mutua, 'What Is TWAIL?' (2000) 94 *ASIL Proceedings* 31, at 31–32; Karin Mickelson, 'Rhetoric and Rage: Third World Voices in International Legal Discourse' (1997) 16 *Wisconsin International Law Journal* 353, at 355–62; Reynolds (2017) 21–24.

<sup>5</sup> James Thuo Gathii, '[The Promise of International Law: A Third World View](#)', Grotius Lecture at the 2020 Virtual Annual Meeting of the American Society of International Law (25 June 2020).

<sup>6</sup> Our description of Third World Approaches to International Law (TWAIL) here is a cursory articulation of the aspects of the approach most salient for our analyses in this Article. For background on TWAIL (its history and commitments), see, for example, Gathii (2011); Mutua (2000); Obiora Chinedu Okafor, 'Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?' (2008) 10 *International Community Law Review* 371; Mickelson (1998); and Luis Eslava, '[TWAIL Coordinates](#)', *Critical Legal Thinking*, 2 April 2019. A number of scholars have aggregated useful bibliographies of TWAIL scholarship. See, for example, Gathii (2011); Gathii (2020) 28–66. The inauguration in August 2019 of the *Third World Approaches to International Law Review* (TWAILR) marked the launch of 'the first continuous publication dedicated to the TWAIL network,' and is a valuable repository of TWAIL scholarship and other commentary. Laura Betancur-Restrepo, Amar Bhatia, Usha Natarajan, John Reynolds, Ntina Tzouvala & Sujith Xavier, '[Introducing the TWAIL Review](#)', *TWAIL Review* 30 August 2019.

<sup>7</sup> See, e.g., Vasuki Nesiah, 'Theories of Transitional Justice: Cashing in the Blue Chips' in Anne Orford & Florian Hoffman (eds.), *Oxford Handbook of International Legal Theory* (OUP, 2016) 779 (offering a critique and reconceptualization of the field of transitional justice); Kishan Khoday & Usha Natarajan, 'Fairness and International Environmental Law From Below: Social Movements and Legal Transformations in India' (2012) 25 *Leiden Journal of International Law* 415 (proposing means for more equitable reconstruction of international environmental law); E. Tendayi Achiume, 'Syria, Cost-Sharing and the Responsibility to Protect Refugees' (2015) 100 *Minnesota Law Review* 687 (reconceptualizing the doctrine of the responsibility to protect in the context of refugee protection).

Where we might think of empire as referring to social, political, and economic interconnection among sovereign nations but on fundamentally unequal terms that structurally benefit powerful nations, while structurally disadvantaging and exploiting subordinated nations.<sup>8</sup>

We also come to this project as scholars invested in the commitments broadly associated with CRT, which proceeds from the premise of race as a social construction, according to which physical features and lineage are imbued with social, political, economic and even legal meaning.<sup>9</sup> CRT has its origins in the study of U.S. law,<sup>10</sup> but it has traveled far outside the borders of the United States.<sup>11</sup> Of particular relevance to our analysis here is the emphasis CRT places on interrogation of law as implicated in racial subordination, rather than existing outside of the problem, merely as solution. CRT scholars have, among other things, mapped the mutually constitutive relationships among race, racial subordination, and the law; examined law's historical and contemporary role in the construction of race and racial subordination; and exposed the different ways that racial subordination persists including through legal interventions ostensibly tailored to promote equality.<sup>12</sup> We want to be clear that no singular description of TWAIL could do justice to the work and aims of all scholars who identify with the tradition, and the same is true with respect to CRT.

As we describe in more detail below, this Symposium Issue and a number of convenings that preceded it reflect renewed momentum among TWAIL scholars to engage with CRT; to center race as analytically productive in analysis of empire; and even to consider what a TWAIL-CRT broad strokes research agenda might look like. Although our focus is on a series of engagements at the intersection of

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<sup>8</sup> See, e.g., E. Tendayi Achiume, *Migration as Decolonization* (2019) 71 *Stanford Law Review* 1509, at 1520 n.36, and 1540–41 (defining empire along these lines and reviewing relevant literature on this definition).

<sup>9</sup> Ian Haney López, *White by Law: The Legal Construction of Race* (NYU Press, 2006) 7. For a review of definitions of race and racism within CRT, see Ruth Gordon, 'Critical Race Theory and International Law: Convergence and Divergence' (2000) 45 *Villanova Law Review* 827, at 838 n.45.

<sup>10</sup> For an overview of CRT, see generally Devon W. Carbado, 'Critical What What?' (2011) 43 *Connecticut Law Review* 1593; and Kimberlé Crenshaw et al. (eds.), *Critical Race Theory: The Key Writings That Formed the Movement* (New Press, 1995).

<sup>11</sup> See, e.g., Debito Arudou, 'Japan's Under-Researched Visible Minorities: Applying Critical Race Theory to Racialization Dynamics in a Non-White Society' (2015) 14 *Washington University Global Studies Law Review* 695; Adelle Blackett, 'Follow the Drinking Gourd: Our Road to Teaching Critical Race Theory and Slavery and the Law, Contemplatively, at McGill' (2017) 62 *McGill Law Journal* 1251; Laura Carlson, 'Critical Race Theory in a Swedish Context' (*Juridisk Tidskrift*, Working Paper No. 1, 2012); Tanya K. Hernandez, 'The Value of Intersectional Comparative Analysis to the "Post-Racial" Future of Critical Race Theory: A Brazil-U.S. Comparative Case Study' (2011) 43 *Connecticut Law Review* 1407; Joel Modiri, 'The Colour of Law, Power and Knowledge: Introducing Critical Race Theory in (Post-) Apartheid South Africa' (2012) *South African Journal on Human Rights* 405; Esther Ojulari, 'The Social Construction of Afro-Descendant Rights in Colombia' in Corinne Lennox (ed.), *Contemporary Challenges in Securing Human Rights* 19 (Institute of Commonwealth Studies, 2015).

<sup>12</sup> The July 2011 Issue of the *Connecticut Law Review*, 'Critical Race Theory: A Commemoration', offers a range of illustrative examples of CRT's interventions in legal scholarship and academia. See generally Commentary: Critical Race Theory: A Commemoration (2011) 43 *Connecticut Law Review* 1253–1701.

TWAIL and CRT, our account is neither exhaustive of all encounters between the two frames, nor is it exhaustive of the field of analytical possibilities (and even pitfalls) that ought to be associated with bringing TWAIL and CRT jointly to bear on legal engagement with race and empire. Rather, we highlight themes, concepts, and insights generated at the 'TWAIL-CRT' convenings we have hosted, and also those that have emerged across the rich and varied contributions to this Issue. Our aim is less a definitive account, and more a meaningful contribution that builds on prior related efforts canvassed below—one that fosters generative debate and even contestation in the service of developing deeper and more sophisticated legal understanding of topics of shared concern among TWAIL and CRT scholars.

By marking CRT as a lens we understand ourselves to be pursuing in tandem with TWAIL, we mean simply to highlight our efforts to center race as the critical analytical category for understanding the operation of contemporary global governance regimes. TWAIL scholars already do this work in various and compelling ways, without explicit invocation of a merged TWAIL-CRT lens.<sup>13</sup> We take an explicit approach in this Article, in large part as a way of forging links among scholars who pursue questions of shared interest, but using frames, approaches, and literatures that remain largely siloed.

### **A Brief Intellectual History**

Race and racial subordination have long been a focus of work in TWAIL, implicit in some projects and explicit in others. Foundational work in the TWAIL canon can be understood as unpacking the racial character of colonialism and the foundational role of empire in making international law. Mohammed Bedjaoui, a pioneer Third World international lawyer and legal scholar, for example, approached international law through a lens that highlighted its historical intimacy with racial discrimination.<sup>14</sup> And among American race theorists, there is a tradition that has sought to situate domestic race struggle and analysis in its international context, perhaps epitomized in the work of W.E.B. Du Bois,<sup>15</sup> and among lawyers, in the work of Henry J. Richardson.<sup>16</sup> Citing the words of Kimberlé Crenshaw, one

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<sup>13</sup> See, e.g., Aziz Rana, *The Two Faces of American Empire* (HUP, 2010) 3 (offering the incisive lens of 'settler empire'—which centers race and historical and contemporary imperial projects—as essential for making sense of American Democracy).

<sup>14</sup> See Mohammed Bedjaoui, *Towards a New International Economic Order* (UNESCO, 1979) 63.

<sup>15</sup> Du Bois's address to the Pan African Congress of 1919 might be seen as such an intellectual origin point. See, e.g., Walter Rucker, "'A Negro Nation Within the Nation': W.E.B. Du Bois and the Creation of a Revolutionary Pan-Africanist Tradition, 1903–1947" (2002) 32 *Black Scholar* 37; see also Sean Elias, 'W.E.B. Du Bois, Race, and Human Rights' (2009) 4 *Societies Without Borders* 273 (2009).

<sup>16</sup> See, e.g., Henry J. Richardson III, *The Origins of African American Interests in International Law* (Carolina Academic Press, 2008); Henry J. Richardson III, 'U.S. Hegemony, Race, and Oil in Deciding United Nations Security Council Resolution 1441 on Iraq' (2003) 17 *Temple International & Comparative Law Journal* 27; Henry J. Richardson III, 'Excluding Race Strategies From International Legal History: The Self-Executing Treaty Doctrine and the Southern Africa Tripartite Agreement' (2000) 45 *Villanova Law Review* 1091.

of CRT's founding scholars, Antony Anghie, one of TWAIL's founders, has noted that a principal concern among TWAIL scholars has been 'their attempt, in fields as diverse as international economic law and immigration law, to uncover 'the ongoing dynamics of racialized power and its embeddedness in practices and values which have been shorn of any explicit, formal manifestations of racism.'<sup>17</sup>

In various ways, then, TWAIL scholars have engaged racial subordination, even though, of course, they have not done so exhaustively. In 2000, however, Ruth Gordon convened a landmark symposium at Villanova with a specific focus on CRT and international law,<sup>18</sup> and the issue that resulted from this convening is essential reading for anyone seeking to understand the history, trajectory, and substance of scholarly encounters on race and international law from CRT and TWAIL perspectives. Contributors to that volume, among other things, explored what both TWAIL and CRT stand to gain from engagement with each other.<sup>19</sup> They highlighted the work that critical race scholars have done to address racial discrimination in the structure and operation of the international human rights system,<sup>20</sup> including through intersectional analyses that bring structures such as gender to bear.<sup>21</sup>

### **Bringing CRT and TWAIL (Back) Into Conversation at UCLA**

In March 2019, we hosted a conference and workshop at UCLA School of Law with the explicit aims of bringing TWAIL and CRT scholars into conversation around two themes. In doing so, we were inspired by a number of prior events. In July 2018, Antony Anghie convened a monumental TWAIL [conference](#) at the National University of Singapore School of Law, with the aim of examining TWAIL's past, present, and future. The program included 165 delegates and [over one hundred abstracts](#) from a breathtakingly diverse group of TWAIL scholars. In August 2018, Justin Desautels-Stein, with Jim Anaya and Tendayi Achiume, led a [workshop](#) on International Law and Racial Justice at the University of Colorado, Boulder, School of Law. That workshop challenged participants to consider the place of race-centric analysis in contemporary international legal scholarship.

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<sup>17</sup> Antony Anghie, 'Civilization and Commerce: The Concept of Governance in Historical Perspective' (2000) 45 *Villanova Law Review* 887, at 890–91; see also Reynolds (2017) 24 ('The primary thrust of TWAIL is to understand and deconstruct the role of international law in creating and perpetrating racialized hierarchies and structural material inequalities.'). For a discussion of race in international law, and a review of scholarship on race and global political economy, including by TWAIL scholars, see Chantal Thomas, 'Race as a Technology of Global Economic Governance' (2021) 67 *UCLA Law Review* 1860.

<sup>18</sup> Gordon (2000) 827 (marking that symposium as 'the first symposium to address comprehensively how [CRT] might inform, and be informed by, an international perspective').

<sup>19</sup> See, e.g., Keith Aoki, 'Space Invaders: Critical Geography, the "Third World" in International Law and Critical Race Theory' (2000) 45 *Villanova Law Review* 913.

<sup>20</sup> See Hope Lewis, 'Reflections on Blackcrit Theory: Human Rights' (2000) 45 *Villanova Law Review* 1075, at 1077–1084 (2000).

<sup>21</sup> *Ibid* 1081 & nn.13–14.

The first of our March 2019 events, a Symposium entitled [\*Critical Perspectives on Race and Human Rights: Transnational Re-Imagings, \(Critical Perspectives on Race and Human Rights\)\*](#), centered specifically on critical consideration of the human rights frame's role in the pursuit of racial justice and equality. Inspired in part by the momentum of the TWAIL Singapore convening, we were motivated to create a space for critical reflection regarding the possibilities and limitations of pursuing racial justice and equality using the language and frame of human rights. In broad terms, the international human rights movement anchored in the Global North and even international human rights scholars have [failed to name and confront racial injustice, notwithstanding the twentieth and twenty-first century ascendance of the human rights frame](#). We both teach a doctrinal course on international human rights law and have repeatedly been struck by the short shrift given to racial justice and inequality in the leading international human rights law textbooks. They regularly (and rightly) engage significantly with gender justice and equality, including through analysis of the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW), but engage with the racial justice and equality framework in a fairly cursory fashion, and with insufficient treatment of the International Convention on the Elimination on All Forms of Racial (ICERD). A notable exception is Jeanne M. Woods and Hope Lewis's [textbook](#), which substantively engages gender and racial discrimination intersectionally using the human rights frame. We brought together leading TWAIL and CRT scholars,<sup>22</sup> early career scholars, and even the former United Nations High Commissioner for Human Rights for a perspective from within the global human rights machinery.<sup>23</sup> Our goal was to foster a transnational conversation among domestic and international legal scholars, and incubate a network of multidisciplinary academics interested in advancing critical, reconstructive, and even radical engagements with the human rights frame broadly construed, but with a focus on racial justice. A number of papers presented at the *Critical Perspectives on Race and Human Rights* symposium were subsequently published in the *UCLA Journal of International Law and Foreign Affairs*, and showcase scholarship on diverse racial justice issues in the spirit of TWAIL and CRT.<sup>24</sup>

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<sup>22</sup> See [video recordings](#) of the plenary panels that combined TWAIL-CRT scholars in conversation on three themes: Race, Political Equality and Human Rights; Race, Migration, and Human Rights; and Race, Socio-Economic Inequality, and Human Rights.

<sup>23</sup> For an interview with the March 2019 symposium keynote lecturer and former UN High Commissioner on Human Rights, Prince Zeid bin Ra'ad Zeid al Hussein, on the themes of critical perspectives on race and human rights as they relate to the United Nations, see Q&A With Prince Zeid bin Ra'ad Zeid al-Hussein (2020) 24 *UCLA Journal of International Law & Foreign Affairs* 1.

<sup>24</sup> See Dominic Npoanlari Dagbanja, 'The Invisible Border Wall in Australia' (2019) 23 *UCLA Journal of International Law & Foreign Affairs* 221; Kristen Carpenter & Alexey Tsykarev, '(Indigenous) Language as a Human Right' (2020) 24 *UCLA Journal of International Law & Foreign Affairs* 49; Catherine Powell, 'Race, Gender, and Nation in an Age of Shifting Borders: The Unstable Prisms of Motherhood and Masculinity' (2020) 24 *UCLA Journal of International Law & Foreign Affairs* 133; Janine Silga, 'The Ambiguity of the Migration and Development Nexus Policy Discourse: Perpetuating the Colonial Legacy?' (2020) 24 *UCLA Journal of*

The second of our March 2019 event had two parts: (1) a paper workshop pairing senior and early career scholars and at which the former provided feedback and mentorship to the latter;<sup>25</sup> and (2) a smaller workshop entitled *Race, Empire and International Law*, that moved beyond human rights, and invited TWAIL and CRT scholars to bring their respective frames to bear on race, empire, and international law more broadly. That smaller workshop delved more deeply into convergences and divergences among TWAIL and CRT, and interrogated the history of transnational legal analysis and political mobilization challenging racial domination. In a sort of reprisal and expansion of the conversation begun at the Villanova symposium workshop, participants discussed the difficulties and the possibilities of subaltern knowledge production across different fields (such as law, sociology, history) and at different scales (domestic and international), and interrogated some of the very premises that had motivated the convening. For example, can we meaningfully talk about race globally or transnationally or must race always be engaged locally? Can we meaningfully talk about empire, even European colonial empire, in global terms when important distinctions inhere, for example, between settler and nonsettler colonial projects? The January 2020 convening at UCLA of the annual *UCLA Law Review* Symposium was the most recent occasion for gathering the scholars participating in these conversations to develop and present research and arguments that grew out of the sustained engagements described herein. We believe the articles in this Issue showcase the significant contributions that a TWAIL-CRT union stand to make to our legal understanding of racial injustice and inequality as transnationally constituted and sustained.

The keynote speech delivered by Aziz Rana on [Law and Empire in the American Century](#) and the comment responding to it by Vasuki Nesiiah (entitled [An Un-American Story of the American Empire: Small Places, From the Mississippi to the Indian Ocean](#)) wonderfully capture our goals in bringing the traditions of CRT and TWAIL to bear on questions of race and empire across these gatherings and especially in the contributions to this Issue. Rana's address surfaces interlinkages—between CRT's contestation of traditional approaches to constitutional law and TWAIL's contestation of conventional international law scholarship—that make visible the braided logics of settler empire and American global primacy, which together co-constitute the intrinsically racial project (and transnational projections) of the

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*International Law & Foreign Affairs* 163; Mia Lattanzi, 'Settler Colonialism Through the Court: Domestic Interpretations of International Law' 24 (2020) 24 *UCLA Journal of International Law & Foreign Affairs* 201.

<sup>25</sup> Race and empire are rarely engaged with any significance in legal education and our goal was to foster access for early career scholars to more established CRT-TWAIL scholars who were well-suited to provide them with useful feedback. We began teaching a TWAIL seminar at UCLA School of Law for this very reason. Furthermore, as we explain below, the vitality of any intellectual tradition requires investment in early career scholars, who can push its boundaries, refine its insights and address its deficiencies.

American century. In her contribution, Nesiah reflects on alternate futures for CRT and TWAIL—new transnational solidarities to which Rana alludes—noting how thinking through these two traditions together ‘can be generative in developing our analysis of the race politics of Empire,’ even as imperial unraveling generates its own new possibilities. In a similar vein, Adelle Blackett’s contribution with Alice Duquesnoy on [\*Slavery Is Not a Metaphor: U.S. Prison Labor and Racial Subordination Through the Lens of the ILO’s Abolition of Forced Labor Convention\*](#) offers another example of blended CRT and TWAIL scholarship in its analysis of the United States’s dialogue with the International Labor Organization on slavery and race in prison labor.

We argue that a TWAIL-CRT lens surfaces the dual and contingent nature of Third World sovereignty—according to which this sovereignty is formally asserted or vitiated in the international system on terms set by First World nation states. We also explore how different bodies of international law function and thrive as systems of racial governance, in which racial governance refers to the different ways that race creates a means of ordering bodies and territories on a hierarchy according to which imperial exploitation can occur. Race, here, functions as a technology of empire, much along the lines elaborated by Chantal Thomas in her article on [\*Race as a Technology of Global Economic Governance\*](#), which provides a discussion of race in international law, and a review of scholarship on race and global political economy, including by TWAIL scholars. Thomas notes that ‘[t]he wealth of rich country economies is policed and enforced through borders and exclusion,’ and that the single most significant determinant of ‘modern-day slavery’ is immigration controls. Sherrily Munshi’s article on [\*Unsettling the Border\*](#) is also essential reading for its powerful illustration of the urgency of situating the study of borders and migration in their proper context of race in empire including for settler colonial nations. Similar themes are taken on in John Reynolds’s piece on [\*Emergency and Migration, Race and the Nation\*](#), which maps the manner in which emergency law and crisis responses further consolidate Europe’s racial borders, calling special attention to the ‘racialized regional nationality’ that the EU has produced. Reynolds traces the deployment of nationality as a proxy for race, functioning as a heavily racialized marker of hierarchy and mobility that regulates migration, relying in part on international law framings of emergency, to preserve the hegemony of Whiteness. In our own analysis on First World interventions in Libya, we show that treating Libya as an Arab ‘transit’ state for Sub-Saharan Black Africans—racialized as definitionally non-Libyan—enabled vast interdiction operations using race as a proxy for unauthorized migration and establishing a European ‘racial border’ on Libyan soil. We argue that the paradigms of humanitarianism, counterterrorism, and migration regulation as deployed in Libya showcase how international law structures regimes of racial governance in line with

Reynolds's pithy formulation: 'racist, reactionary, legal.' Katherine Fallah & Ntina Tzouvala's article on [Deploying Race, Employing Force: 'African Mercenaries' and the 2011 NATO Intervention in Libya](#) offers another vital perspective on the intervention in Libya. Fallah & Tzouvala provide an excellent discussion of the course of the United Nations Security Council action in Libya and the interactions between international law, race, and empire in that context. They examine the function of racialized and gendered narratives about 'African mercenaries' to demonstrate the complicities of international law in the reproduction of racial hierarchies.

Wadie Said's article on [The Destabilizing Effect of Terrorism in the International Human Rights Regime](#) provides a detailed history and analysis of the racialized character of the international counterterrorism regime. Said argues that the counterterrorism apparatus maintained by the United Nations broadly reflects American and European priorities and structures, and entails a clear racial component in linking the predominant threat of terrorism to Islam, the majority religion in many countries across Africa and Asia. The article does important work in showing how racial and religious bias are countenanced and justified in counterterrorism enforcement. On a different front but with commonalities in terms of how racial hierarchies are perpetuated, Mtiangai Sirleaf's [Racial Valuation of Diseases](#) shows how stark global health inequities are reinforced by 'racial valuation' – the process by which differing values are assigned to individuals or groups based on their racial designation and the position within the social hierarchy that it implies. Sirleaf theorizes racial valuation and examines how the historical and scientific construction of race through slavery, colonialism, and neocolonialism has influenced the emergence of racial valuation norms and influenced material conditions in health, including in the racially-inflected impacts of the Covid-19 coronavirus.

A substantial number of the articles in our Symposium address crucial theoretical, historical and epistemological questions about different elements of the relationships between race and international law, and between CRT and TWAIL. Christopher Gevers' contribution, ["Unwhitening the World": Re-Thinking Race and International Law](#), discusses neglect and inadequate engagement with race by mainstream and critical public international lawyers. Gevers argues that even TWAIL scholars have insufficiently grappled with race and international law, including by sometimes conflating race with culture. This dovetails in interesting and important ways with Darryl Li's contribution, [Genres of Universalism: Reading Race Into International Law, With Help From Sylvia Wynter](#), which interrogates the ways in which ICERD reproduces barriers to theorizing race as a transnational structure of exploitation and subordination and explores how TWAIL scholarship might better theorize processes of racialization. Li uses the work of Sylvia Wynter to

delineate 'race and empire as distinct yet overlapping categories,' by re-centering the transatlantic slave trade in the foundational period of international law, where TWAIL and other scholars have failed to do so. Justin Desautels-Stein's article, [A Prolegomenon to the Study of Racial Ideology in the Era of International Human Rights](#), asserts the absence and necessity of a critical race approach to international law. Through a study of racial ideology in the history of international legal thought, Desautels-Stein seeks to diagnose the lack of attention to race and racism in international legal scholarship, and why it is essential for that to be corrected. Tendayi Achiume & Devon Carbado's piece on [Critical Race Theory Meets Third World Approaches to International Law](#) addresses the epistemic separation to date between CRT and TWAIL, despite the clear parallels between them in how they have exposed and challenged (in their respective domestic and international legal spheres) white supremacy, liberal colorblindness and inclusion regimes, neoliberal racialised claims about the social responsibility and agency of Black people and African nations, and more. For Achiume & Carbado, CRT and TWAIL are also both ultimately united in a certain commitment to transformation of and within law. They both attempt in their own ways to harness law's emancipatory potential for racial justice, while remaining clear-eyed about the limits and costs of such engagements and the need to also pursue change in other arenas and through broader social movements. James Thuo Gathii's article on [Writing Race and Identity in a Global Context: What CRT and TWAIL Can Learn From Each Other](#) ties many of the themes of the Symposium together, arguing persuasively that there is an opportunity for learning, sharing, and collaboration between critical race theorists and TWAIL scholars. Such collaboration, Gathii argues, can help us to better trace issues of race and identity in the imperial, transnational, and global histories of international law and their contemporary continuities. It can help us to connect the domestic and the international, and the transnational histories that have undergirded and reinforced White supremacy, as well as anticolonial resistance. Building a global, transnational TWAIL/CRT project will create productive insights about ideologies of racial domination and racial injustices in a domestic, international, and transnational context. By combining the insights of CRT and TWAIL together, it becomes possible to theorize imperialism and racism more extensively than is currently possible within each approach separately.

### **The Value of Intellectual Community**

In a 2003 article, B.S. Chimni and Antony Anghie referred to scholarship produced by the first generation of postcolonial international lawyers as TWAIL I, and to the scholarship that followed that generation of scholars as TWAIL II.<sup>26</sup> Even as it built

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<sup>26</sup> Antony Anghie & B. S. Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflicts' (2003) 2 *Chinese Journal of International Law* 77, at 79–86 (describing the innovations of the first generation of TWAIL scholars, and the subsequent deepening and expansion of

on TWAIL I, TWAIL II critiqued important tenets in this earlier work, and we might think of the 2018 Singapore conference as heralding TWAIL III—the third generation of TWAIL scholars, variously building on the insights of TWAIL II, even as they contest, and maybe even reject its parameters and preoccupations. This Symposium Issue, and its predecessor convenings discussed in Part I suggest that at least one defining feature of TWAIL III might include deeper theoretical and doctrinal engagement with race, including through closer encounters with CRT, alongside similar engagement with other structures such as gender and class among others, and the critical traditions that examine those forms of structural subordination.

At the time of the writing of this Article, the United States and many other nations have been in the midst of a transnational [uprising against systemic racism](#) triggered by the brutal murder of George Floyd in Minneapolis on May 25, 2020, after a white police officer kneeled on his neck for almost a full nine minutes. Antiracism movement demands for racial justice have even found their way to the halls of the UN Human Rights Council, which held an [urgent debate](#) on systemic racism in law enforcement in the United States and elsewhere in the world on 17 June 2020. In light of this state of affairs, which signals the persistence of global structures of racial injustice and inequality, transnational legal analysis that engages race and empire—such as that embodied in this Issue—is timely and pressing.

At our various TWAIL-CRT convenings at UCLA, participants highlighted the importance of deliberately fostering intellectual community through workshops, conferences, publications, and platforms that provide occasions for knowledge exchange and coproduction, including among more senior and early career academics. Creating spaces for such exchange is especially vital for critical scholars whose methods and approaches are regularly neglected and in some cases, actively undermined in mainstream academic fora and even in legal education itself. At the time of writing, attacks on Critical Race Theory in particular had even escalated to the highest levels of political office—the sitting president of the United States, whose ethnonationalist commitments are [internationally condemned](#), [denounced CRT](#) in an executive memorandum.

For us, convening and participating in this Issue and the Symposium related to it manifests our commitment to furthering TWAIL's research agenda and intellectual community, as many other scholars have done elsewhere, as well as a contribution to the scholarship on race, empire, and international law.

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critique of the second generation to account for the realities of the changing “post-” colonial international order).