

**CRITICAL PERSPECTIVES
ON RACE & HUMAN RIGHTS**

P R I M E R



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The Promise Institute for Human Rights at UCLA School of Law is the center of human rights education, research and advocacy at UCLA and regionally. We work to empower the next generation of human rights lawyers and leaders, generate new thinking on human rights, and engage our students and research to drive positive real world impact.

Introduction

Despite its core commitments to equality and non-discrimination, racial justice and equality have remained marginal within the global human rights agenda to date. Moreover, the international human rights system has been accused of reproducing the racial subordination and inequities that it purports to address: “racism is not outside of their systems but is instead an institutionalized feature of these systems.”¹ Third World Approaches to International Law (TWAIL) scholarship has offered valuable critiques of the international human rights system, regarding it as the latest iteration in a long history of imperial domination of the Third World by the West. In his seminal critique, *Savages, Victims, Saviors*, Makau Mutua describes human rights advocates as the latest addition to the long queue of the “colonial administrator, the Bible-wielding Christian missionary, the merchant of free enterprise, the exporter of political democracy.”²

The global racial justice uprising sparked by the police murder of George Floyd in May 2020 led many within and outside the international human rights system to interrogate how it could better respond to racial subordination and inequality. Confronting the critiques of the human rights frame and bringing race back from the margins of the international human rights agenda offers a path towards this goal and towards realizing the emancipatory potential of the human rights project more broadly.³

This primer is intended to be a resource for students, practitioners, and scholars who are interested in thinking critically about race and human rights. As such, this

¹ E. Tendayi Achime, *Transnational Racial (In)Justice in Liberal Democratic Empire*, 134 Harv. L. Rev. F. 378, 380 (2021).

² Makau Mutua, *Savages, Victims, Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L. J. 201, 218 (2001).

³ On March 8, 2019, UCLA School of Law's Promise Institute, Critical Race Studies Program (CRS), International and Comparative Law Program (ICLP), and Journal of International Law and Foreign Affairs (ILA) hosted a one-day symposium entitled *Critical Perspectives on Race and Human Rights: Transnational Re-Imaginations*. The symposium brought together Critical Race Theory (CRT), Third World Approaches to International Law (TWAIL), and human rights scholars, including the former United Nations High Commissioner for Human Rights, to think critically about the role of human rights in achieving racial justice and equality. Some of the papers presented at this symposium were subsequently published in JILFA's Spring 2020 issue. For more information about this and related convenings, see: S. Priya Morley, *Trans-National Re-Imaginations: UCLA School of Law's Inaugural Series of Convenings on Race, Empire and Human Rights*, <https://promiseinstitute.law.ucla.edu/project/race-human-rights-reimagined-initiative/>.

primer offers a brief introduction to the core United Nations mechanisms and international human rights treaties which seek to address global racial inequality and discrimination. It then explores the critiques of the human rights doctrine and its limitations for achieving racial justice and equality. Finally, it interrogates the future of human rights and racial justice.

Definition: The Third World

For TWAIL scholars, the term “Third World” refers broadly to a “historically constituted, alternative and oppositional stance within the international system.”⁴ More specifically, the Third World denotes a grouping of states which share a set of “geographic, oppositional, and political realities that distinguish it from the West.”⁵ However, this grouping does not imply a homogeneity or absence of diversity among the countries that constitute it. To the contrary, the Third World is made up of “a diverse set of countries, extremely varied in their cultural heritages, with very different historical experiences and marked differences in the patterns of their economics.”⁶

Notwithstanding these differences, Third World countries share a “stream of similar historical experiences across virtually all non-European societies that has given rise to a particular voice, a form of intellectual and political consciousness.”⁷ This consciousness reflects a particular “oppositional dialectic” between European and non-European states, informed by the history of colonialism, extraction, and exploitation of the latter by the former.

Importantly, TWAIL scholars have wielded the term Third World instead of other designations with derogatory connotations such as “less-developed”, “developing” or “underdeveloped,” which convey a relative lack of “progress” or development as compared to the West. Rather, the term Third World has

⁴ Karin Mickelson, *Rhetoric and Rage: Third World Voices in International Legal Discourse*, 16 WIS. INT’L. L.J. 353, 360 (1998).

⁵ Makau Mutua, *What is TWAIL?* 94 PROCEEDINGS OF THE ASIL ANNUAL MEETING 31 (2000).

⁶ B.S. Chimni, *Third World Approaches to International Law: A Manifesto*, 8 INT’L COMMUNITY L. REV. 1, 4 (2006) citing P. WORSLEY, *THE THREE WORLDS: CULTURE AND WORLD DEVELOPMENT* 306 (1984).

⁷ *Id.*

been invoked as a “counter-hegemonic term that is designed to rupture received patterns of thinking.”⁸

Definition: Third World Approaches to International Law (TWAIL)

Third World Approaches to International Law (TWAIL) is a “historically located intellectual and political movement,”⁹ characterized by a “distinctive way of thinking about what international law is and should be,”¹⁰ which is grounded in the perspectives and experiences of the Third World. Since its inception, TWAIL has developed into an “expansive, heterogenous and polycentric dispersed network and field of study.”¹¹ Although TWAIL scholars vary significantly in their emphases, they share certain fundamental political and ideological commitments. These include a recognition of the centrality of the “colonial encounter between Europeans and non-Europeans” to the development of international law, the complicity of international law in legitimizing imperial conquest and colonialism, and the fact that contemporary international law is structured in ways that entrench and perpetuate the legacy of colonial subjugation and disempowerment.¹²

Ultimately, TWAIL scholars seek to “transform international law from a language of oppression to a language of emancipation—a body of rules and practices that reflect and embody the struggles and aspirations of Third World peoples and that, thereby, promote truly global justice.”¹³ TWAIL is thus a “fundamentally reconstructive movement that seeks a new compact of international law.”¹⁴

⁸ Balakrishnan Rajagopal, *Locating the Third World in Cultural Geography*, THIRD WORLD LEGAL STUD. 1, 3-4 (1998-1999).

⁹ Mutua, *What Is TWAIL?*, *supra* note 5, at 38.

¹⁰ Antony Anghie & B. S. Chimni, *Third World Approaches to International Law and Individual Responsibility in Internal Conflict*, 36 STUD. TRANSNAT'L LEGAL POL'Y 185 (2004).

¹¹ James Thuo Gathii, *TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography*, 3 TRADE L. & DEV. 26 (2011).

For a comprehensive account of the origins and history of TWAIL, see Gathii, *TWAIL: A Brief History of Its Origins*; Anghie & Chimni, *Third World Approaches to International Law and Individual Responsibility in Internal Conflict*; Karen Mickelson, *Taking Stock of TWAIL Histories*, 10 INT'L COMMUNITY L. REV. 355 (2008).

¹² Gathii, *TWAIL: A Brief History of Its Origins* at 30.

¹³ Anghie & Chimni, *Third World Approaches to International Law*, *supra* note 10, at 186.

¹⁴ Mutua, *What Is TWAIL?*, *supra* note 5, at 38.

Core International Human Rights Treaties

The first major international human rights instrument was the Universal Declaration of Human Rights (UDHR),¹⁵ adopted in 1948 by the United Nations General Assembly (UNGA). In 1966, the UNGA adopted two core human rights treaties: the International Covenant on Civil and Political Rights¹⁶ (ICCPR) and the International Covenant on Economic, Social and Cultural Rights¹⁷ (ICESCR). Together, the UDHR, ICCPR, and ICESCR constitute the International Bill of Human Rights. The Human Rights Committee¹⁸ and Committee on Economic, Social and Cultural Rights¹⁹ are responsible for monitoring states' implementation of the ICCPR and ICESCR, respectively.

The principles of equality and non-discrimination are enshrined in each of these core human rights treaties. The UDHR affirms that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, color, or national origin.²⁰ Both the ICCPR and ICESCR require state parties to respect or guarantee the rights contained in each treaty without discrimination or distinction of any kind as to "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."²¹

In addition, several other treaties focus specifically on the prohibition of discrimination, including the Convention on the Elimination of All Forms of Discrimination against Women²² (CEDAW) and the International Convention on the

¹⁵ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR]. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹⁶ G.A. Res 2200A (XXI), International Covenant on Civil and Political Rights, (Dec. 16, 1966), [hereinafter ICCPR]. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁷ G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights, (Dec.16, 1966) [hereinafter ICESCR]. <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

¹⁸ Human Rights Committee, OHCHR, <https://www.ohchr.org/en/treaty-bodies/ccpr> (last visited Mar 16, 2022).

¹⁹ Committee on Economic, Social and Cultural Rights, OHCHR <https://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx> (last visited Mar 16, 2022).

²⁰ UDHR, art. 1.

²¹ See ICCPR, art.2(1) and ICESCR, art. 2(2).

²² G.A. Res. 180, Convention on the Elimination of All Forms of Discrimination against Women (Dec. 18, 1979) [hereinafter CEDAW] <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

Elimination of All Forms of Racial Discrimination²³ (ICERD). The implementation of these two treaties is monitored by the Committee on the Elimination of Discrimination Against Women and the Committee on the Elimination of Racial Discrimination, respectively. Both instruments have been ratified by a majority of countries around the world.²⁴ ICERD defines “racial discrimination” as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”²⁵

The United States has lagged behind other countries significantly in its ratification of these treaties. The United States ratified the ICCPR in 1992 but has not ratified the ICESCR. The United States signed ICERD in 1966 but only ratified the treaty in 1994, subject to several reservations. Despite being a state party to ICERD for almost three decades, the Committee on the Elimination of Racial Discrimination has observed that there remain “persistent disparities in the enjoyment of human rights and fundamental freedoms, based on race or ethnic origin” in the United States.²⁶ Beyond the ICCPR and ICERD, there are only a few other core international human rights treaties that the United States has actually ratified, such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and two optional protocols to the Convention on the Rights of the Child. Although the United States signed CEDAW in 1980, it has not yet ratified it.²⁷ Importantly, the United States

²³ G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination, (Dec. 21, 1965) [hereinafter ICERD] <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

²⁴ There are 182 state parties to ICERD and 189 state parties to CEDAW. OHCHR dashboard, OHCHR, <https://indicators.ohchr.org/> (last visited Jun 3, 2022).

²⁵ ICERD, art. 1.

²⁶ CERD, *Concluding observations on the combined seventh to ninth period reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/7-9 (Sep. 25, 2014), para 7.

²⁷ Melanne Verveer & Rangita de Silva de Alwis, *Why ratifying the convention on the elimination of discrimination against women (CEDAW) is good for America's domestic policy*, GEORGETOWN INSTITUTE OF WOMEN PEACE AND SECURITY (Feb. 18, 2021). <https://giwps.georgetown.edu/why-ratifying-the-convention-on-the-elimination-of-discrimination-against-women-cedaw-is-good-for-americas-domestic-policy/>

has also not yet ratified ICESCR,²⁸ a treaty which has direct relevance to marginalized communities vulnerable to multiple forms of discrimination.²⁹

The Role of the Global South in the Creation of International Human Rights

The development of international human rights law is intertwined with the history of struggle against racial subordination and inequality.³⁰ For example, ICERD was the first major human rights treaty to be adopted, predating both the ICCPR and ICESCR.³¹ However, the dominant narrative of the history of human rights often overlooks this fact, focusing on the adoption of the International Bill of Rights (UDHR, ICCPR, and ICESCR) as the defining moments of the human rights movement. The failure to recognize the significance of ICERD to the development of human rights obscures the important historical role and contributions of the Third World. Individuals and states from the Third World were the main driving force behind ICERD, leading the rest of world in understanding racial injustice and inequality as a fundamental human rights issue.³² The first international actors to introduce sanctions against apartheid South Africa were states from the Third World—India and Jamaica.³³ The dominant

²⁸ OHCHR dashboard, OHCHR, <https://indicators.ohchr.org/> (last visited Jun 12, 2022).

²⁹ For example, in its concluding observations on the United States' 2014 periodic report, the Committee on the Elimination of Racial Discrimination found that:

Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination, such as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities, and the International Convention for the Protection of All Persons from Enforced Disappearance.

See CERD, *Concluding observations on the combined seventh to ninth period reports of the United States of America*, *id.* At para 29.

³⁰ See for example, STEVEN L.B. JENSEN, *THE MAKING OF INTERNATIONAL HUMAN RIGHTS* (2016); Makau Mutua, *Savages, Victims and Saviors: The Metaphor of Human Rights*, *supra* note 2; Achiume, *Transnational Racial (In)Justice in Liberal Democratic Empire*, *supra* note 1, at 396, fn 75.

³¹ Achiume, *Transnational Racial (In)Justice in Liberal Democratic Empire*, at 396, fn 75.

³² *Ibid.*

³³ *Ibid.*

historical narratives also leave out the fact that many Western states fervently opposed ICERD, “reluctant to see the colonial staples of racial injustice and inequality placed on the transnational human rights agenda.”³⁴ Nevertheless, these narratives privilege the contributions of the West to human rights, obscuring the ways in which the Third World led and “civilized the West.”³⁵

As well as erasing the significance of ICERD, prevailing narratives obscure the influence of political struggles for racial equality on the emergence of the human rights discourse. For example, the contributions of the global campaign against slavery and the decolonization movements in Africa, Asia and Latin America, are usually omitted from the history of human rights. Steven Jensen argues that “[d]ecolonization was—through its structural transformation of international politics—a decisive factor that actually enabled human rights.”³⁶ Moreover, decolonization served as the very “source of energy” behind the introduction of the resolution by several African states proposing the creation of an international convention on the elimination of racial discrimination, supported by a coalition of African and Asian nations.³⁷

E. Tendayi Achiume has emphasized that “[w]hereas the Third World nation states are typically cast as backward or recalcitrant on human rights issues, their initiative...has been quintessential in framing racial injustice and inequity as a fundamental human rights concern.”³⁸ Despite their pivotal role in shaping earlier articulations of the human rights agenda, the concerns and interests of the Third World have since been marginalized in the global human rights system. For example, the issue of global inequity and the necessity of reforming international economic structures to disrupt the legacies of colonialism was a principal concern for newly independent Third World states.³⁹ However, global distributional inequalities have erased this from the

³⁴ *Ibid.*

³⁵ JENSEN, *THE MAKING OF INTERNATIONAL HUMAN RIGHTS*, *supra* note 30, at 279.

³⁶ *Id.*, at 277.

³⁷ Achiume, *Transnational Racial (In)Justice in Liberal Democratic Empire*, *supra* note 1, at 396, fn 75.

³⁸ *Ibid.*

³⁹ See for example, Anthony Anghie, *Whose Utopia? Human Rights, Development, and the Third World*, 22 *QUI PARLE* 66 (2013).

agenda of modern human rights discourse, which has come to be characterized by an emphasis on civil and political rights.⁴⁰ We discuss this in further detail in the critiques of the human rights system below.

Anti-Racism Initiatives Within the United Nations

In addition to the adoption of the human rights treaties discussed above, the United Nations has established several special procedure mechanisms to eradicate racism and racial discrimination around the world. In 1993, the UN Human Rights Council (then called the Commission on Human Rights) created the mandate of UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (Special Rapporteur). The Special Rapporteur is an independent expert appointed by the UN Human Rights Council to monitor violations of international law, transmit urgent appeals and communications to states, undertake fact-finding country visits, and submit reports to the UN Human Rights Council and UNGA.⁴¹

The United Nations has held several convenings focused on these topics.⁴² The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which was held in Durban, South Africa in 2001, led to the Declaration and Programme of Action (Durban Declaration).⁴³ As the most comprehensive and far-reaching UN pronouncement on racial discrimination and inequality to date, the Durban Declaration represented a historic advancement in putting racial justice on the global human rights agenda. The Conference and resultant Declaration were also historic in that they named slavery and the slave trade as major sources of racism and

⁴⁰ *Ibid.*

⁴¹ This position was held by Achiume from 2017 to 2022.

⁴² Conferences | racism, UNITED NATIONS, <https://www.un.org/en/conferences/racism> (last visited Mar 16, 2022).

⁴³ U.N. Doc. A/CONF.189/12, World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance: Declaration and Programme of Action (Sep. 8, 2001) [hereinafter Durban Declaration]. https://www.ohchr.org/Documents/Publications/Durban_text_en.pdf

discrimination against racially marginalized people, and acknowledged that the effects of colonialism continue to shape social and economic inequalities throughout the world.⁴⁴ The timing of the Durban Conference, immediately before 9/11, halted the momentum it built and impeded the implementation of the Durban Declaration. However, the Durban Declaration led to the creation of the UN Working Group of Experts on People of African Descent, which is comprised of five independent global experts.⁴⁵ The Working Group monitors violations of international law and makes proposals for the elimination of racial discrimination against people of African descent. Since its establishment in 2002, the mandate of the Working Group has been periodically extended by the UN Human Rights Council. To date, the Working Group has issued several reports concerning racial discrimination faced by people of African descent, the latest of which was published in 2021 and addresses the topic of *Environmental justice, the climate crisis and people of African descent*.⁴⁶

In August 2021, 20 years after the Durban Conference, the UNGA established the UN Permanent Forum of People of African Descent that will work to implement the vision of the Durban Declaration.⁴⁷ This advisory board will work with the UN Human Rights Council and serve as a consultation mechanism for people of African descent and other stakeholders. It will “contribute to the elaboration of a UN declaration – a ‘first step towards a legally binding instrument’ on the promotion and full respect of the rights of people of African descent.”⁴⁸ In March 2022, five additional experts were appointed to the existing panel of five members.⁴⁹

⁴⁴ Durban Declaration, art. 13 & 14.

⁴⁵ Working Group of experts on people of African descent, OHCHR, (last visited Mar 16, 2022).

<https://ohchr.org/EN/Issues/Racism/WGAfricanDescent/Pages/WGEPADIndex.aspx>

⁴⁶ Human Rights Council, U.N. Doc. A/HRC/48/78 (Sep. 21, 2021).

<https://www.ohchr.org/en/special-procedures/wg-african-descent/annual-reports>

⁴⁷ U.N. GA Res. 75/314 (Aug. 2, 2021).

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/213/97/PDF/N2121397.pdf?OpenElement>

⁴⁸ General Assembly creates new Permanent Forum of People of African Descent, UN NEWS (Aug. 2, 2021).

<https://news.un.org/en/story/2021/08/1096932>

⁴⁹ President of the Human Rights Council appoints members of Permanent Forum on People of African Descent, OHCHR (March 8, 2022)

<https://www.ohchr.org/en/news/2022/03/president-human-rights-council-appoints-members-permanent-forum-people-african-descent>

The Limits of the UN Human Rights System to Achieve Racial Justice

Despite these affirmative steps, trans-national racism, racial inequality, and discrimination remain pervasive. Even though, as W.E.B. Du Bois described, the “problem of the color line” was one of the key global issues of the twentieth century,⁵⁰ race has remained marginal to international human rights discourses.⁵¹ Notwithstanding the almost 60 years of ICERD’s existence, the broader international human rights universe continues to be characterized by a “general neglect of racial equality.”⁵²

The United Nations has been criticized by both the Special Rapporteur and the Working Group for failing to take adequate steps towards the eradication of racial discrimination and inequality. For instance, in light of the UN Human Rights Council’s lackluster response to the U.S. racial justice uprisings in summer 2020, Achiume argued that “the international human rights frame not only is neglectful of racial justice, but also can suppress the most promising avenues for achieving this racial justice, as this frame has notably done since its inception.”⁵³ Western states exercised their power to dilute the radical demands for racial justice at the “Urgent Debate,” an emergency special session of the UN Human Rights Council held in 2020 in response to the transnational racial justice uprising triggered by the murders of George Floyd and Breonna Taylor by police in the United States.⁵⁴ At the Urgent Debate, civil society and social movements demanded accountability for police violence in the United States specifically, calling for a commission of inquiry to investigate police brutality against racially marginalized groups in the United States.⁵⁵ In the end, the UN Human Rights

⁵⁰ W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK*, 3 (2003).

⁵¹ E. Tendayi Achiume, *Putting Racial Equality onto the Global Human Rights Agenda*, 28 *SUR INT’L J. ON HUM. RTS.* 141 (2018). See also Anna Spain Bradley, *Human Rights Racism*, 32 *HARV. HUM. RTS. J.* 1 (2019).

⁵² Achiume, *Putting Racial Equality onto the Global Human Rights Agenda*.

⁵³ Achiume, *Transnational Racial (In)Justice in Liberal Democratic Empire*, *supra* note 1, at 397.

⁵⁴ *Ibid.* The Urgent Debate was triggered by the transnational racial justice uprising in response to the murders of George Floyd and Breonna Taylor and calls from their families, together with the families of other black Americans killed by police brutality.

⁵⁵ *Ibid.*

Council adopted “a consensus resolution,” which directed the High Commissioner of Human Rights (OHCHR) to prepare a report but failed to mention the United States explicitly or include any substantive enforcement mechanisms.⁵⁶ Achiume has argued that the process of arriving at this weaker resolution is “demonstrative of the complicity of states, particularly Western ones, in ‘maintaining and perpetuating entrenched systems of racism and white supremacy.’”⁵⁷ Pursuant to the UN Human Rights Council resolution, the OHCHR released a report in June 2021 setting out a four-point agenda towards transformative change for racial justice and equality.⁵⁸ The Report was presented to the UN Human Rights Council in July 2021, following which the Council adopted a resolution establishing an independent expert mechanism to further racial justice and equality in law enforcement, “especially where relating to the legacies of colonialism and the Transatlantic slave trade in enslaved Africans.”⁵⁹ The mechanism formally visited the United States in April-May 2023.⁶⁰

Common Critiques of Human Rights

The logics of imperialism and racism permeate not only the operation of international human rights institutions but the very doctrinal foundations of international human rights. Many scholars understand the failure of human rights to disrupt systems of racial hierarchy and inequality to be a consequence of the normative origins and commitments of the doctrine. In particular, the “defining” features of the international human rights doctrine, its supposed universal, timeless, non-partisan, and

⁵⁶ *Ibid.*

⁵⁷ *Id.*, at 388.

⁵⁸ Rep. of U.N. High Commissioner for Human Rights, Concerning UN Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers, U.N. Doc. A/HRC/47/53 (June 1, 2021).

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/122/03/PDF/G2112203.pdf?OpenElement>.

⁵⁹ U.N. Human Rights Council Res. 47/21, U.N. Doc. A/HRC/RES/4721 (July 13, 2021).

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/199/03/PDF/G2119903.pdf?OpenElement>

⁶⁰ OHCHR, Independent Expert Mechanism on Racism and Law Enforcement to visit the United States (April 21, 2023).

<https://www.ohchr.org/en/media-advisories/2023/04/independent-expert-mechanism-racism-and-law-enforcement-visit-united>

non-ideological nature, are seen to contribute to the preservation of existing global racial hierarchies and geopolitical power imbalances in the international system.⁶¹ The following section presents some common critiques of international human rights that human rights scholars and practitioners should grapple with, particularly in their efforts to advance racial justice and equality through a human rights frame.

Challenging the Universality of Human Rights: Human Rights Doctrine as a Eurocentric Project

Since its inception, international human rights law has pronounced its “universal morality and timeless righteousness.”⁶² One of the earliest articulations of modern international human rights law, the UDHR, proclaims itself to be “the common standard of achievement for all peoples and all nations.”⁶³ In this sense, international human rights is understood to be inherently applicable to all humankind regardless of time and place. However, critiques of the human rights frame have challenged this assertion, arguing that claims to universality obscure the culturally specific features of the doctrine. These critiques point out that the human rights doctrine has its roots in a specific intellectual tradition and historical location: Western, particularly European, thought.⁶⁴ International human rights law is therefore not universal, but a Eurocentric

⁶¹ See e.g., Makau Mutua, *Ideology of Human Rights* 36 *VIR. J. INT'L L.* 589 (1996); MAKAU MUTUA, *HUMAN RIGHTS STANDARDS: HEGEMONY, LAW, AND POLITICS* 167 (2016).

⁶² Mutua, *Ideology of Human Rights*, at 607.

⁶³ UDHR, preamble.

⁶⁴ See e.g. Jack Donnelly, *Human Rights and Western Liberalism*, in *HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES* 31 (Abdullahi A. An-Na'im & Francis M. Deng eds., 1990); Virginia Leary, *The Effect of Western Perspectives on International Human Rights*, in *HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES* 15 (Abdullahi A. An-Na'im & Francis M. Deng eds., 1990); Issa G. Shivji, *Constructing A New Rights Regime: Promises, Problems and Prospects*, 8 *SOCIAL & LEGAL STUDIES* 253, 254 (1999); Mutua, *Savages, Victims and Saviors*, *supra* note 2; Rémi Bachand, *Critical Approaches and the Third World: Towards a Global and Radical Critique of International Law*, *SPEECH AT UNIVERSITY MCGILL*, (March 24, 2010).

intellectual and political project.⁶⁵ Such critiques seek to historicize, localize, and contextualize the emergence of human rights norms, to make visible the “genealogical connection that ties them to the historical setting in which they were elaborated.”⁶⁶

These critiques also challenge the presentation of international human rights as non-ideological or apolitical.⁶⁷ Human rights discourse has typically positioned itself as existing outside of politics, as a form of “antipolitics” or a “moral discourse centered on pain and suffering rather than political discourse.”⁶⁸ Critics have contested this characterization, arguing that human rights carry an implicit political vision and that the “language and commitments of international human rights is quintessentially liberal.”⁶⁹ Thus, rather than being ideologically and politically neutral, international human rights expresses a distinctive normative and ideological vision: Western liberalism.⁷⁰ Liberalism is defined by its emphasis on securing individual liberty through democratic political institutions and the protection of liberty, autonomy, and property against state

⁶⁵ See B.S. SAYYID, *A FUNDAMENTAL FEAR: EUROCENTRICISM AND THE EMERGENCE OF ISLAMISM* (2003) 285. Sayyid defines Eurocentricism as a “multidimensional attempt to restore Western cultural practices as universal.” See e.g., Anghie, *International human rights law and a developing world perspective*, *supra* note 39 at 109; Mutua, *Ideology of Human Rights*, *supra* note 61; Binder Guyora, *Cultural Relativism and Cultural Imperialism in Human Rights Law*, 5 *BUFF. HUM. RTS. L. REV.* 211 (1999); A. SHARMA, *ARE HUMAN RIGHTS WESTERN? A CONTRIBUTION TO THE DIALOGUE OF CIVILIZATIONS* (2006); Sebastian Bonnet, *Overcoming Eurocentrism in Human Rights: Postcolonial Critiques-Islamic Answers?* 12 *MUSLIM WORLD. J. HUM. RTS.* 1 (2015); Walter D. Mignolo, *Who Speaks for the “Human” in Human Rights?* 5 *HISPANIC ISSUES ON LINE* 7 (2009); José-Manuel Barreto, *Decolonial Thinking and the Quest for Decolonising Human Rights* 46 *ASIAN J. SOC. SCI.* 484, 490 (2018).

⁶⁶ Barreto, *Decolonial Thinking and the Quest for Decolonising Human Rights*, at 490.

⁶⁷ See e.g. Mutua, *Ideology of Human Rights*, *supra* note 61; Anthony Anghie, *International human rights law and a developing world perspective* in *ROUTLEDGE HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW* 109 (ed. 2013); Bachand, *Critical Approaches and the Third World: Towards a Global and Radical Critique of International Law*, *supra* note 65; MUTUA, *HUMAN RIGHTS STANDARDS: HEGEMONY, LAW, AND POLITICS*, *supra* note 61; Barreto, *Decolonial Thinking and the Quest for Decolonising Human Rights*.

⁶⁸ Wendy Brown, *“The Most We Can Hope For...”: Human Rights and the Politics of Fatalism*, 103 *SOUTH AFRICAN QUARTERLY* 451, 453 (2004).

⁶⁹ Achiume, *Transnational Racial (In)Justice in Liberal Democratic Empire*, *supra* note 1, at 379.

⁷⁰ *Ibid.* See also Makau Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 35 *VA. J. INT’L L.* 339, 341 (1995). Mutua argues that:

“The sacralization of the individual and the supremacy of the jurisprudence of individual rights in organized political and social society is not a natural, “transhistorical,” or universal phenomenon, applicable to all societies, without regard to time and place.”

incursion.⁷¹ It is argued that the international human rights corpus reflects the normative commitments of liberalism through its privileging of the individual over the collective, and the prioritization of civil and political rights over economic, social, and cultural rights.⁷² Moreover, this construction of rights suggests, both implicitly and explicitly, that a particular political system is required in order to effectuate human rights, namely a liberal democracy.⁷³ For many human rights doctrinalists, Western liberal democracy and human rights are “virtually tautological.”⁷⁴

The Eurocentric orientation of international law is further evidenced in its failure to reflect the wisdom, cultures, and values of Third World peoples or to speak to their urgent realities and lived experiences.⁷⁵ In this vein, TWAIL and postcolonial scholars have argued that “the transplantation of the narrow formulation of Western liberalism cannot adequately respond to the historical reality and the political and social needs” of the Third World.⁷⁶ During his time as president of Tanzania, Mwalimu Julius Nyerere famously asked: “What freedom has our subsistence farmer?...Only as his poverty is reduced will his existing political freedom become properly meaningful and his right to

⁷¹ See eg. UDAY SINGH MEHTA, *LIBERALISM AND EMPIRE* 3 (1999); Mutua, *Ideology of Human Rights*, *supra* note 61, at 601; RATNA KAPUR, *GENDER, ALTERITY AND HUMAN RIGHTS* 5 (2018).

Singh provides a useful definition of liberalism as the normative commitment to:

“securing individual liberty and human dignity through a political cast that typically involves democratic and representative institutions, the guaranty of individual rights of property, and freedom of expression, association, and conscience, all of which are taken to limit the legitimate use of authority of the state.”

⁷² Chimni, *Third World Approaches to International Law: A Manifesto*, *supra* note 6, at 17.

⁷³ Achiume, *Transnational Racial (In)Justice in Liberal Democratic Empire*, *supra* note 1, at 379.

⁷⁴ Mutua, *Ideology of Human Rights*, *supra* note 61, at 592.

⁷⁵ See e.g. Mutua, *Ideology of Human Rights*; Barreto, *Decolonial Thinking and the Quest for Decolonising Human Rights*, *supra* note 65; ABDULLAH AHMED AN-NA’IM & FRANCIS DENG, (EDS.) *HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES* (1990); Upendra Baxi, *Voices of Suffering and the Future of Human Rights*, 8 *TRANSNAT’L L. & CONTEMP. PROBS.* 125 (1998); Josiah A.M. Cobbah, *African Values and the Human Rights Debate: An African Perspective*, 9 *HUM. RTS. Q.* 309 (1987); Makau Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 35 *Va. J. Int’l L.* 339 (1995); Sebastian Bonnet, *Overcoming Eurocentrism in Human Rights: Postcolonial Critiques-Islamic Answers?* 12 *MUSLIM WORLD. J. HUM. RTS* 1 (2015); Hakimeh Saghaye-Biria, *Decolonizing the “Universal” Human Rights Regime: Questioning American Exceptionalism and Orientalism*, 4 *REORIENT* 59 (2018); Bilahari Kausikan, *An East Asian Approach to Human Rights*, 2 *BUFF. J. INT’L L.* 263 (1996) but cf. Amartya Sen’s critique of the “Asian Values” debate in Amartya Sen, *Human Rights and Asian Values*, 217 *THE NEW REPUBLIC* 33 (July 14, 1997).

See also Upendra Baxi, *Taking Suffering Seriously* in *LAW AND POVERTY* 32 (U. Baxi ed., 1988) (“the contradiction between declarations of individual rights rooted in human worth, and the reality of grinding poverty of millions mutilating human life itself in poor countries poses a challenge not only to the intellectual integrity of human rights jurisprudence but brings into question the legitimacy of the judiciary and legal profession presented as the founts of justice, fairness and equality”).

⁷⁶ Makau Mutua, *The Banjul Charter and the African Cultural Fingerprint*, *supra* note 75.

human dignity become a fact of human dignity.”⁷⁷ The emphasis of international human rights on liberal politics as panacea fails to address the root causes of the economic inequality and poverty which constitute some of the main challenges faced by much of the Third World.⁷⁸ Moreover, human rights discourse often elides the fact that the economic inequality experienced by the Third World is itself a historical product of exploitation and underdevelopment by Western countries.⁷⁹

Human Rights Doctrine as a “Racist and Colonial Project”

Implicit in the claims of human rights doctrine to universality is an impulse to universalize Eurocentric norms and values.⁸⁰ Critics have argued that by presenting Western liberal democracy and human rights as co-constitutive, human rights doctrine projects a Western civilizational standard for all humanity. It demands that the Third World “climb the civilizational ladder” to Western style liberal democracy, while casting those non-Western societies which fail to do so as inherently backward.⁸¹ As Makau Mutua observed, the international human rights corpus reflects a “binarized view of the world in which the European West leads the way and the rest of the globe follows in a structure that resembles a child-parent relationship.”⁸² This has led many scholars to characterize human rights doctrine as inherently racist and an extension of the civilizing mission of colonialism, or, at the least, a continuation of a long history of

⁷⁷ I.G. SHIVJI, *THE CONCEPT OF HUMAN RIGHTS IN AFRICA* 40 (1989).

⁷⁸ Mutua, *Ideology of Human Rights*, *supra* note 61, at 636.

⁷⁹ See for example, WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* (1972).

⁸⁰ Mutua, *Ideology of Human Rights*, *supra* note 61.

⁸¹ Mutua, *Savages, Victims and Saviors*, *supra* note 2 at 243. See also Nelson Maldonado-Torres, *On the Coloniality of Human Rights*, 114 *REVISTA CRÍTICA DE CIENCIAS SOCIAIS* 117 (2017); Barreto, *Decolonial Thinking and the Quest for Decolonising Human Rights*, *supra* note 65, SHELLEY WRIGHT, *INTERNATIONAL HUMAN RIGHTS, DECOLONIZATION AND GLOBALIZATION: BECOMING HUMAN* (2001); Sundhya Pahuja, *The Postcoloniality of International Law*, 46 *HARV. INT’L L. J.* 459 (2005).

⁸² Makau Mutua, *Human Rights: A Political & Cultural Critique* 8-9 (2002).

imperial domination of the Third World by the West.⁸³ This understanding of international human rights forms part of a broader critique of international law as being “based on the supremacy of white European peoples over non-Europeans, and the “duty” of the former to civilize and control the latter.”⁸⁴ Some decolonial scholars have also argued that the very concept of “humanity” itself and who is considered human for purposes of asserting rights is informed by ideas of colonial difference and race.⁸⁵

Makau Mutua famously described the human rights corpus as enacting, what he describes as, a “savages, victims, and saviors” metaphor.⁸⁶ This metaphor is marked by patent racial connotations,⁸⁷ through which the “international hierarchy of race and color is re entrenched and revitalized.”⁸⁸ In this sense, rather than helping to dismantle the global racial hierarchy, the international human rights corpus contributes to its preservation. The critique of the savior-victim script of international human rights has

⁸³ See e.g., Anghie & Chimni, *Third World Approaches to International Law and Individual Responsibility in Internal Conflict*, *supra* note 10 at 193 (“What is remarkable is the way in which the project of the civilizing mission has endured over time, and how its essential structure is preserved in certain versions of contemporary initiatives, for example, of “development,” democratization, human rights, and “good governance,” which posit a Third World that is lacking and deficient and in need of international intervention for its salvation.”)

Mutua, *What is TWAIL?*, *supra* note 5 (“The last five centuries of European hegemony manifest a pattern. The pattern is the long queue of the colonial administrator, the Bible-carrying missionary come to save the heathens, the commercial profiteer, the exporter of political democracy, and now the human rights crusader.”)

See also Mutua, *Savages, Victims and Saviors*: *supra* note 2; Bachand, *Critical Approaches and the Third World*, *supra* note 65; MAHMOOD MAMDANI, *SAVIORS AND SURVIVORS: DARFUR, POLITICS AND THE WAR ON TERROR* (2010).

⁸⁴ Mutua, *What is TWAIL?*, *supra* note 5, at 36.

⁸⁵ Mignolo, *Who Speaks for the “Human” in Human Rights?*, *supra* note 65 at 17. Mignolo argues that “[h]umanity has been created upon philosophical and anthropological categories of Western thought and based on epistemic and ontological colonial differences.”

⁸⁶ Mutua, *Savages, Victims and Saviors*: *supra* note 2. According to Mutua, the “grand narrative of human rights contains a subtext that depicts an epochal contest pitting savages, on the one hand, against victims and saviors, on the other.” The “savage” refers to the backward illiberal, anti-democratic or otherwise authoritarian state which violates the rights and dignity of its citizens, the “victims.” The victim figure is a “powerless, helpless innocent whose naturalist attributes have been negated by the primitive and offensive actions of the state.” Finally, the “savior” refers to the human rights corpus itself, namely the United Nations, Western governments, international non-governmental organizations and Western charities. These actors position themselves as saviors or redeemers who rescue, protect and vindicate victims while restraining and civilizing the savage responsible states.

⁸⁷ Mutua records that “[i]n the human rights narrative, savages and victims are generally non-white and non-Western, while the saviors are white.” He cautions that there is also a sense in which human rights “can be seen as a project for the redemption of the redeemers, in which whites who are privileged globally as a people – who have historically visited untold suffering and savage atrocities against non-whites – redeem themselves by “defending” and “civilizing” “lower,” “unfortunate,” and “inferior” peoples.” Mutua, *Savages, Victims and Saviors*, *supra* note 2, at 207-8.

⁸⁸ *Id.* at 207.

also been raised by postcolonial feminist scholars, specifically in relation to Western responses to violations of the human rights of Third World women.⁸⁹

Women's Human Rights as an Extension of the Civilization Mission

Feminists of color and TWAIL scholars have pointed out the failure of formal equality to address inequalities at the intersection of race, class, geography, and other points of disadvantage.⁹⁰ In her discussion of the twenty-year U.S. war in Afghanistan and its effect on women through the lens of TWAIL, Ratna Kapur criticizes the motivation to “emancipate” Afghan women in what has been referred to as the first “feminist war”.⁹¹ The notion of rescuing the “other woman” has been an intrinsic feature of international and human rights legal interventions.⁹² In this narrative, the “other woman” is almost always from the Third World and is almost always seen as left behind in the movement towards liberal ideas of progress and modernity.⁹³ For Kapur, the problem is that invading Afghanistan mobilized the negative assumptions ascribed to the veil as an oppressive and subordinating practice of the religion of Islam towards women, and gender equality became the antidote.⁹⁴

⁸⁹ See e.g., Chandra T. Mohanty, *Under Western Eyes; Feminist Scholarship and Colonial Discourses*, 30 *FEMINIST REV.* 61 (1988); Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-Colonial Feminist Legal Politics*, 15 *HARV. HUM. RTS. J.* 1 (2002); Sara Salem, *Feminist critique and Islamic feminism: The question of intersectionality*, 1 *THE POSTCOLONIALIST* 1 (2013); OYERÓNKE OYEWUMÍ (ED.), *AFRICAN WOMEN AND FEMINISM: REFLECTING ON THE POLITICS OF SISTERHOOD* (2003); ADRIEN K. WING, *GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER* (2000).

⁹⁰ Catherine Powell and Adrien K. Wing, *Introduction to the Symposium on Feminist Approaches to International Law Thirty Years On: Still Alienating Oscar?* 116 *AJIL UNBOUND* 259, 261 (2022). See also Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, *U. CHI. LEGAL F.* 139 (1989); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581 (1990).

⁹¹ Catherine Powell and Adrien K. Wing, *Introduction to the Symposium on Feminist Approaches to International Law*, at 262.

⁹² Ratna Kapur, *The First Feminist War in all of History: Epistemic Shifts and Relinquishing the Mission to Rescue the "Other Woman"* 116 *AJIL UNBOUND* 270, 270 (2022). See also Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics* 15 *HARV. HUM. RTS. J.* 1 (2002).

⁹³ Ratna Kapur, *The First Feminist War in all of History*, at 271.

⁹⁴ *Id.* at 272. “The veil” is used generically to include its various manifestations being the hijab, jilbab, abaya, niqab, burqa, and chador.

Postcolonial feminists and TWAIL critiques have long interrogated the so-called gains of feminism within the institutional framework of human rights. They argue that the array of more rights and resolutions in favor of women have not necessarily led to more liberation for women in Afghanistan and elsewhere in the world.⁹⁵ Instead, they have had both regulatory as well as disempowering and exclusionary effects.⁹⁶ Simultaneously “the epistemic violence produced through the advancement of liberal imperial endeavors in the name of women’s rights have assumed knowledge about the ‘other woman’ without doing the hard work of knowing her”.⁹⁷

The Human Rights System as “Hypocritical”

Critics have also described the operation of the broader international rights system as marked by hypocrisy and inherent contradiction. They observe that human rights discourse has historically been characterized by a “heaven-hell” binary distinction between “an all but ‘perfect’ West and an all but ‘hellish’ Third World.”⁹⁸ This divides the world into two types of societies: Western societies free of human rights violations and Third World societies which are “virtually constituted by incessant epidemics of the most horrendous sorts of human rights violations.”⁹⁹ Even though Western countries are notorious for human rights violations against racial and ethnic minorities within their own borders and against Third World migrants who seek to cross these borders, the West is typically shielded from human rights scrutiny or intervention.¹⁰⁰ Human rights violations are presented as a problem of the Third World, with international institutions and Western human rights groups focusing almost exclusively on human

⁹⁵ *Id.* at 274.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Obiora C. Okafor & Shedrack C. Agbakwa, *Re-Imagining International Human Rights Education in Our Time: Beyond Three Constitutive Orthodoxies*, 14 LEIDEN J. OF INT’L L. 563 (2001).

⁹⁹ *Id.* at 566.

¹⁰⁰ See e.g. Achiume, *Transnational Racial (In)Justice in Liberal Democratic Empire*, *supra* note 1.

rights abuses in “backward” non-Western states.¹⁰¹ This hypocrisy is heightened by the fact that the West has, by and large, failed to make reparation for the immense human rights violations of slavery and colonialism and their persisting legacies of racial inequality, subordination and discrimination.¹⁰²

Human Rights as “Stratagems of Imperialistic Foreign Policy”¹⁰³

Related to the criticism of the double standards of the human rights system, is the argument that the rhetoric of rights has been co-opted by the West to advance its own strategic, geopolitical and security interests.¹⁰⁴ At the core of this critique is the assertion that the West instrumentalizes international human rights, invoking the language of rights to legitimize its neoliberal and military interventions in the Third World.¹⁰⁵ This argument is also particularly salient in relation to international financial institutions such as the World Bank, which are accused of deploying the human rights

¹⁰¹ *Id.*; see also Mutua, *Ideology of Human Rights*, *supra* note 63, at 609; Makau Mutua, *Human Rights International NGOs: A Critical Evaluation*, in *NGOs AND HUMAN RIGHTS: PROMISE AND PERFORMANCE* 151 (ed., 2001).

¹⁰² See e.g. OLÚFEMI O. TÁIWÒ, *RECONSIDERING REPARATIONS* (2022); Rep. of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and racial intolerance, UN Doc. A/74/321 (August 21, 2019).
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/259/38/PDF/N1925938.pdf?OpenElement>.

The West has also ignored growing calls for “climate reparations,” which demand that the West accounts to the rest of the world for its historical and continuing role in the current climate crisis. There is increasing evidence showing that the historical forces of racial capitalism, colonialism, slavery and their devastating ecological imprints have driven the process of climate change. Moreover, countries of the Global North continue to consume most of the world’s natural resources and generate the vast majority of pollution and waste. Despite the West’s disproportionate contribution to the climate crisis, it is countries of the Global South that are most vulnerable to the effects of climate change. The asymmetrical relationship between responsibility for and vulnerability to climate change has given rise to arguments that the Global South is owed climate reparations by the Global North.

See e.g. Maxine Burkett, *Climate Reparations*, 10 MELB. J. INT’L. L. 509 (2009); Olúfemi O. Táiwò and Beba Cibralic, *The Case for Climate Reparations*, FOREIGN POLICY (October 10, 2020); Maxine Burkett, *Root and Branch: Climate Catastrophe, Racial Crises, and the History and Future of Climate Justice*, 134 HARV. L. REV. F. 326 (2021); Carmen G. Gonzalez, *Racial Capitalism, Climate Justice, and Climate Displacement*, 11 OÑATI SOCIO-LEGAL SERIES 108 (2021); Usha Natarajan & Kishan Khoday, *Locating Nature: Making and Unmaking International Law*, 27 LJIL 573 (2014).

¹⁰³ Upendra Baxi, *Voices of Suffering and the Future of Human Rights*, *supra* note 75, at 147 (*title casing added*).

¹⁰⁴ See e.g. Mutua, *Ideology of Human Rights*, *supra* note 63.

¹⁰⁵ See e.g. Baxi, *Voices of Suffering and the Future of Human Rights*, *supra* note 75, at 147; O. A. Badaru, *Examining the Utility of Third World Approaches to International Law for International Human Rights Law*, 10 INT’L COMMUNITY L. REV. 379 (2008); RATNA KAPUR, *GENDER, ALTERITY, AND HUMAN RIGHTS* 7 (2018).

discourse to discipline governments of the Third World into the adoption of economic liberalization and free markets.¹⁰⁶ This has given rise to what TWAIL and postcolonial scholars have termed a “market friendly version”¹⁰⁷ or “neo-liberal rendition” of human rights.¹⁰⁸ Wendy Brown has remarked how international human rights act as a “guise in which super power global domination drapes itself” as well as “a guise in which the globalization of capital drapes itself.”¹⁰⁹ This rendition of human rights elides the ways in which neoliberal economic policies, such as the structural adjustment programs of the World Bank and International Monetary Fund, frequently have devastating social and economic consequences for Third World populations, exacerbating or creating the conditions for human rights violations.¹¹⁰ The instrumentalization of human rights by the West to serve its own geopolitical interests links to TWAIL critiques of international law and politics more broadly as instruments of Western hegemony and imperialism.¹¹¹

Conclusion: The Future of Human Rights Norms and Their Emancipatory Potential

Despite the acknowledged normative and cultural deficits of international human rights norms, the human rights framework retains the potential for progressive, emancipatory politics. Indeed, the critiques of human rights emerging from “Africans, Asians, Muslims, Hindus, and a host of critical thinkers from around the world are one avenue through which human rights can be redeemed and truly universalized.”¹¹²

¹⁰⁶ Anghie, *International human rights and a developing world perspective*, *supra* note 67, at 119-20.

¹⁰⁷ Upendra Baxi, *Voices of Suffering and the Future of Human Rights Symposium: International Human Rights at Fifty: a Symposium to Commemorate the 50th Anniversary of the Universal Declaration of Human Rights*, 8 *TRANSNAT'L L. & CONT. PROB.* 125, 163-64 (1998).

¹⁰⁸ Anghie, *International human rights and a developing world perspective*, *supra* note 67, at 120.

¹⁰⁹ Brown, “*The Most We Can Hope For...: Human Rights and the Politics of Fatalism*,” *supra* note 68, at 451.

¹¹⁰ See e.g., Anghie, Anthony, *Whose Utopia? Human Rights, Development, and the Third World*, *supra* note 39; Badaru, *Examining the Utility of Third World Approaches to International Law for International Human Rights Law*, *supra* note 105.

¹¹¹ See e.g. ANTHONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2007); JOSÉ-MANUEL BARRETO (ED.), *HUMAN RIGHTS FROM A THIRD WORLD PERSPECTIVE: CRITIQUE, HISTORY AND INTERNATIONAL LAW* (2013); Mutua, *What is TWAIL?*, *supra* note 5; Chimni, *Third World Approaches to International Law: A Manifesto*, *supra* note 6; Mickelson, *Rhetoric and Rage*, *supra* note 4; Pahuja, *The Postcoloniality of International Law*, *supra* note 81.

¹¹² Mutua, *Savages, Victims, and Saviors*, *supra* note 2, at 243.

Decolonial scholars have advocated that, together with these critiques, there must come a process of “retrieving as valid a tradition of human rights that has flourished in the colonised world since the 16th Century.”¹¹³ Through this movement for the ‘decolonization’ and/or ‘multiculturalization’ of human rights, a cross-cultural, post-imperial conception of human rights can be built.

As recently demonstrated, the international human rights system has emancipatory potential despite its limitations. Transnational solidarity and social movements, like Black Lives Matter and the Via Campesina international peasant’s movement, continue to use the international human rights regime to challenge the system from within. Other marginalized groups such as domestic workers have used the language of human rights to organize, marshal international solidarity, and ask for inclusion in a framework that ensures their access to decent work. As these movements illustrate, human rights framing and rights-assertion remains important for historically marginalized groups.

By centering race and empire within our work, we can create radical new possibilities for fundamentally rethinking and expanding the normative scope of human rights, in particular to counter the marginalization of racial justice in the international human rights corpus to date. As the racial justice uprisings of 2020 have made clear, racial subordination is a global, transnational phenomena and so too must be efforts to organize against it.

¹¹³ Barreto, *Decolonial Thinking and the Quest for Decolonising Human Rights*, *supra* note 65, at 490.

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