

**TO THE OUTERMOST PARTS OF THE GALAXY:
IMAGINATION'S PUISSANCE IN DECOLONIZING
INTERNATIONAL LAW**

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Abstract

*This paper examines how imagination, despite its historical instrumentalization as a colonial methodology in international law as revealed in Koskenniemi's *To the Uttermost Parts of the Earth*, be repurposed as a decolonial tool. By drawing a temporal analogy, it first introduces imagination's role in the early European international legal thought by exploring Koskenniemi's examples of bricolage alongside Anghie's 'dynamic of difference' to underscore the need for disenchantment. It then looks into present-day counter-narratives emerging from Global South imaginations encapsulated in the third world approaches to international law or the TWAIL movement that challenge the colonial ever-present. Finally, it advocates for speculative thinking drawn from various sources as a means of envisaging alternative futures for international law, with particular emphasis on scientific and other types of fictions. The paper concludes by arguing for a structured yet creative decolonial imagination agenda that can help overcome the persistence of colonial legacies in international law while maintaining sufficient space for revolutionary thinking about world order.*

Keywords: *Coloniality of International Law; Decolonial Resistance; Legal Fiction; Legal Imagination; Third World Approaches to International Law.*

MENUJU UJUNG GALAKSI: DAYA IMAJINASI DALAM DEKOLONISASI HUKUM INTERNASIONAL

Intisari

Makalah ini mengkaji bagaimana imajinasi, meskipun secara historis telah diinstrumentalisasi sebagai metodologi kolonial dalam hukum internasional sebagaimana ditunjukkan oleh Koskenniemi dalam *To the Uttermost Parts of the Earth*, dapat digunakan kembali sebagai alat dekolonial. Dengan menggunakan analogi temporal, makalah ini pertama-tama membahas peran imajinasi dalam pemikiran hukum internasional Eropa awal melalui contoh-contoh bricolage yang diuraikan oleh Koskenniemi serta konsep *dynamic of difference* dari Anghie untuk menegaskan pentingnya proses *disenchantment* (pembongkaran ilusi atau pesona kolonial). Selanjutnya, makalah ini menelaah narasi tandingan kontemporer yang lahir dari imajinasi Global Selatan, sebagaimana tercermin dalam gerakan *Third World Approaches to International Law (TWAIL)*, yang menantang keberlangsungan kolonialisme dalam hukum internasional masa kini. Pada akhirnya, makalah ini mengadvokasi pemikiran spekulatif yang bersumber dari berbagai tradisi sebagai sarana untuk membayangkan masa depan alternatif bagi hukum internasional, dengan penekanan khusus pada fiksi ilmiah dan bentuk-bentuk fiksi lainnya. Makalah ini menyimpulkan bahwa agenda imajinasi dekolonial yang terstruktur namun tetap kreatif dapat membantu mengatasi keberlanjutan warisan kolonial dalam hukum internasional, sembari mempertahankan ruang yang memadai bagi pemikiran revolusioner mengenai tatanan dunia.

Kata Kunci: *Kolonialitas Hukum Internasional; Resistensi Dekolonial; Fiksi Hukum; Imajinasi Hukum; Pendekatan Dunia Ketiga terhadap Hukum Internasional (TWAIL).*

A. Introduction

In his book *To the Uttermost Parts of the Earth*, Martti Koskenniemi built on his past works that attempt to trace how the history of international law¹—if it even deserves to be called international as such²—was closely intertwined with the enterprises of European rulers to exert authority and was justified in doing so by ambitious men of the time.³ The conclusions contained in this paper serve as an awakening for those subscribing to the idea of ‘imagination’ as a means of creating a better world.⁴ It defies what many scholars, including Koskenniemi himself, have posited as respective definitions of the parlance, such as *inter alia*, the exercise of creativity,⁵ a type of normativity⁶ and of morality,⁷ as well as the integration of literary thoughts in legal reasoning.⁸ Koskenniemi’s historical account leads one to infer that imagination exists as a neutral innate thing to the biological human in that our minds are souls naturally crave to shape the world around us to fit our desired vision without necessary regard for the moral foundations atop which it stands.

Koskenniemi’s primary contribution in this book lies in his borrowing of the term ‘bricolage’ and its situating in a new epistemological framework for international law’s imagination.⁹ Born of French structuralist thinking, bricolage refers to the process of collecting materials, in this case vocabularies, available to them to bring about an understandable conception that bridges the gap between the known and the new thing.¹⁰ The so-called bricoleurs—or, according to Lythgoe, architects¹¹—are engaged in the intellectual practice

1 Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, 1st ed. (Cambridge University Press, 2001).

2 Martti Koskenniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870*, 1st ed. (Cambridge: Cambridge University Press, 2021).

3 Martti Koskenniemi, *To the Uttermost*, 1.

4 Antonio Cassese, *Realizing Utopia: The Future of International Law* (Oxford: Oxford University Press, 2012).

5 Koskenniemi, *The Gentle Civilizer*, 403.

6 Martti Koskenniemi, “Constitutionalism as Mindset: Reflections on Kantian Themes About International Law and Globalization,” *Theoretical Inquiries in Law* 8, no. 1 (December 2006): 9–36.

7 Martti Koskenniemi and Theodor Meron, “The Pull of the Mainstream,” *Michigan Law Review* 88, no. 6 (May 1990): 1946, 1953.

8 Richard Weisberg and James B. White, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression*, 74, no. 2 (March 1974): 986.

9 Martti Koskenniemi, *To the Uttermost*, 2.

10 Claude Lvi-strauss, *The Savage Mind* (The University of Chicago Press, 1966), 16–22.

11 Manchester International Law Centre, ‘Melland Schill Lecture 2022 - Legal Imagination and the History of International Power’ (Youtube, 21 April 2022) <youtu.be/7kOq91xQP1s?si=MiwX5719V7Pts92> accessed 7 December 2024.

of trying to conceive something practically out of thin air. For that purpose, Koskenniemi claims that imagination needs to be understood as operating within context whereby it is (1) an act of persuasion, (2) a product of institutional environments, (3) the use of familiar materials for novel merits, (4) the construction of a hierarchy of values to resolve normative indeterminacy, and (5) the authoritative use of language in a milieu of controversy.¹²

Noting how the supposed bygones still heavily influence the way that international law functions today,¹³ particularly in limiting our ideas of what the world could be and how the law plays into its making,¹⁴ this paper carries on the discourse left at the end of the book in relation to the broader study of critical international law that thus far tends to be nihilist rather than positively contributing to the shaping of a better world¹⁵ such that a more positive light can be (re)shed on legal imagination. Aimed at encouraging alternative thinking through temporal analogies, it sets out to uncover and connect the dots between divergent perspectives engaging with imagination. By suggesting alternative components that can be pieced together to form the bricolage of international law, this paper argues that where colonizers once used imagination to extend their reach to the uttermost parts of the earth, the colonized and their proponents can now harness that same tool to bring about decolonial futures that stretch to the outermost parts of the galaxy.

B. The Past – Imagination as Colonial Methodology

History, as told in the book, has shown that imagination in international legal thought was not merely a coincidence of colonialism but rather integral to its methodological architecture. The deliberate creation and systematic usage of legal constructs that position European authorities above non-European peoples who are seen as not just worthy of but even needing subjugation or ‘civilization’ were markers of the imagination’s early colonial disposition.¹⁶ This section goes over how the process unfolded through the lens of critical

12 Martti Koskenniemi, *To the Uttermost*, 4–8.

13 Martti Koskenniemi, *To the Uttermost*, 3.

14 Martti Koskenniemi, *To the Uttermost*, 4.

15 Chimni, “Third World Approaches to International Law: A Manifesto,” *International Community Law Review* 8, no. 1 (2006): 26.

16 Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*, 1st ed. (Cambridge University Press, 2005), 37.

legal scholarship.

While eventually a regional phenomenon, the first well-recorded instrumentalization of legal imagination in Europe traces back to a rendezvous in the early 1300s among Italian and French jurists.¹⁷ Through expressions adopted from Roman law, they expostulated the conditions enabling the perpetuation of a feudal society, namely ‘*dominium*,’ which refers to both property rights and authority over others.¹⁸ This was plied predominantly by the Church, headed by the pope, to ground its pronouncements as the only legitimate one across mankind as ordained by God.¹⁹ What ensued was a battle of narratives between the Church’s lawyers and that of the French king, resulting in the devising of even more notions like the Lord King whose ambitions of secular rule grew to a point of desiring effective control over all lands in Christendom.²⁰ ‘*Ius gentium*’ was excogitated, then, to reconcile natural (divine) and human laws²¹ as well as to justify the existence of independent kingdoms and their interactions therewith.²²

This first chapter of the book is significant not just owing to it setting the scene for centuries to come but also because it shows how, from the beginning, legal thinkers have attempted to impose the rules of their land upon that of others for the supposed distinguished qualities they possess. There are mainly two steps to the expansionist activity of the bricoleur, which ought to be deconstructed should one aspire to reverse such coloniality of imagination: (1) occurrence of an encounter between different groups and (2) imposition of values through apparatuses like laws to engross a side as intended subjects, together implicating superiority of one over the other.

Anghie used the terminology ‘dynamic of difference’ to explain the endless cycles of artificial gap-creation and gap-filling through legal doctrines that follow the event of an encounter.²³ Invoking Francisco de Vitoria as a key figure whose works form an important conduit for imperialistic ideology reaching faraway lands, he argued that dichotomization among peoples and

17 Martti Koskenniemi, *To the Uttermost*, 9.

18 Martti Koskenniemi, *To the Uttermost*, 31.

19 Martti Koskenniemi, *To the Uttermost*, 31–5.

20 Martti Koskenniemi, *To the Uttermost*, 48–50.

21 Martti Koskenniemi, *To the Uttermost*, 78.

22 Martti Koskenniemi, *To the Uttermost*, 84–5.

23 Anghie, *Imperialism, Sovereignty and the Making of International Law*, 117.

of their status underscores colonial international law.²⁴ Vitoria's worldview, however, was marked by strategic selectivity in that he seemed to have deliberately picked some cultural traits of the American Indians as falling under the same ontological characters as those of the Spaniards while dismissing others that did not serve in the interest of establishing *ius gentium* to justify the exacting of Spanish rule over them.²⁵ To the eyes of the Renaissance man, it seems that no two distinct ways of life can come into contact and be both seen as good enough to hold full sway over the interactions of their peoples. One had to give in, and the venerated civilizations of Europe were never going to yield to the idiosyncrasies of pestilential outsiders.

This was the mentality that induced the likes of Bynkershoek and later Wheaton to take things to a more extreme level by asserting that in a world of diverse mores, legal currency should be afforded only to the 'most civilized [nations]'.²⁶ With international law progressively departing from naturalist thought, positivism—despite its potential to dismantle exclusionary worldviews—instead reinforced them through institutions like the League of Nations and later the United Nations, which projected an appearance of inclusivity while preserving Western power structures.²⁷ The global governance system, as we see it today, unfortunately, is a living remnant of this. As a paramount example, Article 38(1)(c) of the Statute of the International Court of Justice, despite authoritative elaboration against its tenor,²⁸ stipulates vividly that among the primary sources of international law are general principles of law 'recognized by civilized nations.' Though some may accept said facile explanation at face value, the praxis of international law, as a matter of fact, continues to be dominated by the concepts birthed in Western establishments

24 Anghie, *Imperialism, Sovereignty and the Making of International Law*, 29.

25 Anghie, *Imperialism, Sovereignty and the Making of International Law*, 22.

26 Anghie, *Imperialism, Sovereignty and the Making of International Law*, 53.

27 Anghie, *Imperialism, Sovereignty and the Making of International Law*, 54–5.

28 ILC, 'Second report on general principles of law' (27 April–5 June and 6 July–7 August 2020) UN Doc A/CN.4/741/Corr.1 2, para 2(b). Members of the Commission agreed that the phrase 'civilized nations' is "anachronistic and should no longer be employed" since today, "all nations must be considered to be civilized." See also a commentary to the matter's connection with the persistence of colonialism in modern time, Sué González Hauck, 'All nations must be considered to be civilized': General Principles of Law between Cosmetic Adjustments and Decolonization' (Verfassungsblog, 21 July 2020) <<https://verfassungsblog.de/all-nations-must-be-considered-to-be-civilized>> accessed 10 December 2024.

that inherently profess the post of magisterial standard setter.²⁹

Enchantment, then, comes into play as the second phase of the bricoleur's agenda that explains the persistence of their bricolage through time. Being an invasive ideology, colonialism would not survive had it not been caused by some manipulation on those it seeks to make captive through a procedure transfiguring their perception of the world as being in a state of wonder or awe.³⁰ This takes place across various domains, beginning in the classrooms of colonized communities, wherein young people are systematically made to think of European technologies, governance structures, and even cultures and religions as superior marvels to be admired and adopted through literature that helped internalize such views.³¹ Discourse is deliberately used as a tool of domination that shapes people's thoughts, motivations, and desires.³² This 'enculturating machinery,' according to Wynter, produces behaviours that often work against the interests of individuals while cementing existing power structures, as demonstrated clearly in the colonial racial dynamics described in one of Fanon's seminal books.³³ An enchanted view of international law desensitizes it from the malicious properties that it is rife with by highlighting only its benefits.³⁴ The longer one is exposed to portrayals of grandiose, which is essentially how it is depicted in the mainstream, the more believable it becomes, and the harder it is for him to think of deconstructing and making radical changes to it. This is made harder by the fact that international law's flaws hide in plain sight, covered through supposedly egalitarian decision-making processes that, if looked at more closely, are non-detachable from much subterfuge of power relations.³⁵

Codification as enchantment, originally a *modus operandi* in the civil

29 Martti Koskenniemi, "Histories of International Law: Dealing with Eurocentrism," *Rechtsgeschichte - Legal History* 2011, no. 19 (2011): 160.

30 Jane Bennett, *The Enchantment of Modern Life: Attachments, Crossings, and Ethics* (Princeton University Press, 2016), 3–5.

31 Gauri Viswanathan, *Masks of Conquest: Literary Study and British Rule in India* (New York Chichester, West Sussex: Columbia University Press, 2014).

32 Sylvia Wynter, "On Disenchanting Discourse: 'Minority' Literary Criticism and Beyond," *Cultural Critique*, no. 7 (1987): 243.

33 Frantz Fanon, *Black Skin, White Masks* (Pluto Press, 1986), 18.

34 Ian Hurd, "Enchanted and Disenchanted International Law," *Global Policy*, December 2015, 97.

35 *Ibid*; See also Donald J. Puchala, "World Hegemony and the United Nations," *International Studies Review* 7, no. 4 (2005): 571–84. Economic prowess of a [hegemon] state is a top contributing factor to influencing the decisions of others, but other things like the voting system at the UN Security Council perpetuate hierarchies under the guise of consensus-building.

law tradition popular on the European mainland, is seen by Bentham and his peers as especially useful in the reinforcement of societal understandings attributable to unambiguity and systematization, among other features.³⁶ This view is doubly interesting considering how this proposition sits in juxtaposition with another notable claim that (re)enchantment is needed to repulse the effects of law's dwindling down into mere instruments with neither independent meaning, purpose, nor value that make for its mystique.³⁷ By scrutinizing the virtues³⁸ and thinking of the law as an art of reason,³⁹ for instance, jurists will obtain liberty to shape systems as seen fitting and necessary.⁴⁰ These contradicting submissions explicate the malleable nature of enchantment that changes depending on its wielder, akin to imagination in the broad sense.

C. The Present – Imagination as Resistance of the Subaltern

To think of reorientating imagination's agenda to free instead of to subjugate means to remould its make-up in favour of unorthodoxy. Accepting that some parts of a bricolage are not made of the most felicitous elements is the prelude to what comes next: carving out the defects and putting more appropriate ones in their place. Indeed, the resulting patchwork will be one of distinct colours and rather unorderly from what was initially imagined, but it is precisely where the beauty lies. In the imagination of international law, this translates to making a space—very likely in a disruptive manner—for previously suppressed views of the marginal in the process of defining what the law is and how it should be done.

The third world approaches to international law (TWAIL)—often synonymized with decolonial—movement ironically finds its origins as a realization by Western scholars of the hegemony that lives through the veins of international law in seeking to propagate their own conjectures.⁴¹

36 Gunther A. Weiss, "The Enchantment of Codification in the Common-Law World," *Yale Journal of International Law* 25:435 (2000): 475–82.

37 Yishai Blank, "The Reenchantment of Law," *Cornell Law Review* 96, no. 4 (2011): 633, 643.

38 Yishai Blank, "The Reenchantment," 650–4.

39 Yishai Blank, "The Reenchantment," 654–7.

40 This is not to say that ascribing too much power to the idealized or romanticized version of legal authority like the judge (see *ibid* 657–60) does not open a big door for the obscuring and legitimization of existing power structures and inequalities.

41 James Thuo Gathii, "TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a

Finding itself reproduced in different forms throughout no less than three generations,⁴² the TWAIL of the present-day encompasses an array of different motions that turn away from Eurocentric projections of power and authority in celebration of plurality.⁴³ Be it in human rights,⁴⁴ law of the sea,⁴⁵ or outer space governance,⁴⁶ TWAIL is a giant vessel that welcomes all who dare to cross the ocean of conformity in search of a new reality, handing back its definition to those historically marginalized and silenced. The flexibility provided by this broad encompassing allows for substantial interactions with other schools of thought, including, fundamentally, critical race theory⁴⁷ and feminist legal studies.⁴⁸ TWAIL could provide an alternative conception of and a platform for imagination, as an inclusive exercise of critique grounded at the peripheries from which other ideas may flourish by methodically centering subaltern voices against dominant narratives.⁴⁹

Preeminent TWAIL scholars have warned against fascination with

Tentative Bibliography,” *Trade, Law and Development*, no. 3 (2011): 26, 28–32. . D. P. Fidler, “Revolt Against or From Within the West? TWAIL, the Developing World, and the Future Direction of International Law,” *Chinese Journal of International Law* 2, no. 1 (January 2003): 29.

42 James Thuo Gathii, “TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography,” 32–4.

43 James Thuo Gathii, “TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography,” 34–5.; Chimni, *Third World*, 16.

44 Makau wa Mutua, “Savages, Victims, and Saviors: The Metaphor of Human Rights,” *Harvard International Law Journal* 42 (2001): 201–45.; Nelson Maldonado-Torres, ‘On the Coloniality of Human Rights’ in Boaventura De Sousa Santos and Bruno Martins (eds), *The Pluriverse of Human Rights: The Diversity of Struggles for Dignity* (Routledge 2021); Walter D. Mignolo, “WHO SPEAKS FOR THE ‘HUMAN’ IN HUMAN RIGHTS?,” *Cadernos de Estudos Culturais* 3 (2011): 157.

45 Endalew Lijalem Enyew, “Sailing with TWAIL: A Historical Inquiry into Third World Perspectives on the Law of the Sea,” *Chinese Journal of International Law* 21, no. 3 (December 2022): 439.; Scott J. Shackelford, *The Tragedy of the Common Heritage of Mankind* (Stanford Environmental Law Journal publisher, 2009), 109. Rafsi Albar, “Common Heritage of Mankind at the Expense of Indigenous People’s Rights? BBNJ Treaty and Beyond,” *Harvard Human Rights Journal*, 2023.

46 See, for example, Perpetua Akoth Adar, “Space and the Future of Humanity: A TWAIL Critique of International Space Law and Space Discourse,” *Third World Approaches to International Law Review* 3, no. 3 (2022): 92--15; Cassandra Steer, “Who Has the Power? A Critical Perspective on Space Governance and New Entrants to the Space Sector,” *Georgia Journal of International and Comparative Law* 48, no. 3 (2020): 751–59.

47 E. Tendayi Achiume and Devon W. Carbado, “Critical Race Theory Meets Third World Approaches to International Law,” *UCLA Law Review*, May 3, 2021

48 Vasuki Nesiah, “Decolonial CIL: TWAIL, Feminism, and an Insurgent Jurisprudence,” in *Customary International Law: A Third World Perspective*” (Cambridge University Press, 2018), 112:313–18.

49 Makau W. Mutua, ‘What Is TWAIL?’ (2000) 94 Proceedings of the American Society of International Law 31, 37.

structures that almost always favour those who hold power through the interested parties to advance their affairs at the expense of those beneath them.⁵⁰ With the growing recognition of a collapsing global governance,⁵¹ there is now a more pronounced urgency to be released from this global framework in search of a new frame that provides for agency to those who experience the repercussions of international lawmaking to the highest degree. The resistance against the enchanted imagination of established legal orders—where law is presented as neutral, universal, and benevolent—begets even more revolutionary movements like the FWAIL (Fourth World Approaches to International Law) as an impetus for the advocacy of [indigenous] peoples, transcending the Westphalian nation-state shell.⁵² Such critical exercises unhook law from incantations by bringing to light the motives behind its crafting,⁵³ thereby allowing for a sharper critique of established norms and revealing the problematic concentration of power facilitated.

Following this process of repulsing, although not always, is the offering of alternative enchanting potions in the hopes of painting a picture of what reform for the greater good could look like.⁵⁴ Diversity constitutes TWAIL's prevailing quality; not in a mere performative manner, but by actually incorporating previously marginalized knowledge systems to the fore, enriching the discipline with intellectual rigor and epistemological fairness. Its appeal, which has enticed scholars and practitioners from across the globe, has allowed for an enrichment of literature, providing approaches for and from everyone. Religion is a classic example of how TWAIL has diversified the pool of concepts/approaches that international law's literature has access to and recourse to. Principles contained in Islamic Sharia such as *maslaha*

50 B. S. Chimni, *International Institutions Today: An Imperial Global State in the Making*, 15, no. 1 (2004): 1–37; Nico Krisch, *International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order*, 16, no. 369 (2005): 369–408.

51 B. S. Chimni, *International Institutions*, 7.

52 Hiroshi Fukurai, *Fourth World Approaches to International Law (FWAIL) and Asia's Indigenous Struggles and Quests for Recognition under International Law* 5, no. 221 (2018): 221–31.

53 Hurd, "Enchanted and Disenchanted International Law," 97.

54 James Thuo Gathii and Mark Pollack, "The Agenda of Third World Approaches to International Law (TWAIL)," in *International Legal Theory: Foundations and Frontiers* (Cambridge University Press, 2022), 170. It needs to be noted, however, that the absence of a centralized and/or well-defined agenda has been among the biggest criticisms of TWAIL. Naz Khatoun Modirzadeh, "Let Us All Agree to Die a Little": TWAIL's Unfulfilled," *Harvard International Law Journal* 65, no. 79 (2023): 80–131.

(public interest), *urf* (custom), and *istislah* (consideration of public good) have so much potency to serve as inspirations for international law thanks to its comprehensive jurisprudential methodologies known as *usūl al-fiqh*.⁵⁵ However, it has been largely overlooked by international law academic and practitioners alike, as well as underutilized by international institutions and courts, such as by the International Court of Justice when identifying general principles of law.⁵⁶

Other overlooked concepts might also help us rethink the fundamental premises of international law. For instance, the South African legal concept Ubuntu, which predates Western-labelled ideas like cosmopolitanism, encourages the reconceptualization of justice as not just a matter of the individual but also of the community as a unison.⁵⁷ Similarly, the concept of *Pachamama*—meaning mother earth—in Andean legal thought calls into question the universality of Western conceptions of human rights that do not seriously engage with the connection between humans and nature as their source of life that deserves better legal protection by being ascribed legal personhood.⁵⁸ These examples illustrate how much we have been deprived of a full and objective account of philosophical lexicons from around the globe, which, if sufficiently infused in the glossary of international law, could make for fitting surrogates in filling the field’s numerous lacunas.

Moving beyond colonial imaginaries⁵⁹ and employing imagination to decolonize international law allows the exercise of thinking beyond disciplinary boundaries, with TWAIL serving as a catalyst. While TWAIL’s coming into being was closely tied to the political subordination of those

55 For introductory readings about *usūl al-fiqh*, see Majid Khadduri (tr), *Al-Shāfi’i’s Risāla: Treatise on the Foundations of Islamic Jurisprudence* (The Islamic Texts Society 1997); Abdelwahab Khallaf, *The Science of the Principles of Islamic Jurisprudence: The Methodology of Islamic Law* (Mouhsine El Hammioui tr, Dar Al-Kotob Al-Ilmiyah 2016).

56 Clark Lombardi, *Islamic Law in the Jurisprudence of the International Court of Justice: An Analysis*, *Chicago Journal of International Law* 8, no. 1 (2007); Anghie, *Imperialism, Sovereignty and the Making of International Law*, 111.

57 Severino Ngoenha, “Ubuntu: New Model of Global Justice?,” *African Journal of Indigenous Knowledge Systems* 5, no. 125 (2006): 131.

58 Aurelio de Prada Garcia, “Human Rights and Rights of Nature: The Individual and Pachamama,” August 2020, 1–23.

59 Colonial imaginaries here is different from imagination as it refers to the social contexts related to the process of imagining. See Chiara Bottici, *Imagination, Imaginary, Imaginal: Towards a New Social Ontology?*, *A Journal of Knowledge, Culture, and Policy* 33, no. 5 (2019): 433–41.

coming to be known as the Global South within the international legal order,⁶⁰ it constitutes a manifestation of a broader decolonial intellectual movement. The 1955 Bandung Conference—a historic occasion when newly independent nations together envisioned alternatives to the binary Cold War framework forced upon them by the superpowers⁶¹—provides a historical illustration of how decolonial imagination can generate international legal transformation. Decolonial legal imagination often finds its strength in the integration of parallel intellectual traditions from the likes of sociology,⁶² anthropology,⁶³ and psychology.⁶⁴ In economics, for example, decolonial imagination is needed to fully comprehend the infrequently appraised aspect of centuries-long extractive colonialism that shaped global economic disparities of our time.⁶⁵ A threefold imaginative process is therefore needed for the purpose of seeing the realities of the day: recognizing international law’s colonial foundations, understanding the historical development, and envisioning alternatives. TWAIL scholarship initiates this process, but its transformative potential is reached when one rightfully emphasizes ‘third world approaches’ and its peoples instead of confining themselves to the discipline of ‘international law.’

D. The Future – Imagination as Speculative Liberation

Throughout human history, the downtrodden have demonstrated resilience and ingenuity in finding pathways to liberation by pushing back

60 Makau Mutua and Antony Anghie, “What Is TWAIL?,” *Proceedings of the Annual Meeting (American Society of International Law)* 94 (2000): 45, JSTOR.

61 Sally Wood, ‘Retrieving the Bandung Conference ... moment by moment’ (2012) 43 *Journal of Southeast Asian Studies* 523, 526.

62 Martin Savransky, “A Decolonial Imagination: Sociology, Anthropology and the Politics of Reality,” *Sociology* 51, no. 11 (2017).

63 Julian Aguon, “On Loving the Maps Our Hands Cannot Hold: Self-Determination of Colonized and Indigenous Peoples in International Law,” *UCLA Asian Pacific American Law Journal* 16, no. 47 (2010).

64 Glenn Adams and Sara Estrada-Villalta, “Theory from the South: A Decolonial Approach to the Psychology of Global Inequality,” *Current Opinion in Psychology* 18, no. 37 (2017).

65 Yuen Yuen Ang, ‘The 2024 Nobel laureates are not only wrong about China, but also about the West’ (ThinkChina, 12 November 2024) <Clark Lombardi, *Islamic Law in the Jurisprudence of the International Court of Justice: An Analysis*, 8, no. 1 (2007); Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge Studies in International and Comparative Law (Cambridge: Cambridge University Press, 2005), 111.> accessed 13 December 2024.

against oppressors.⁶⁶ Notwithstanding the shrivelling likelihood of physical insurrections in today's normalized and seductive state of tyranny,⁶⁷ solace and glimpses of hope can be found back in the same exact place where everything began: the mind. Dreaming of a decolonized future means, first and foremost, letting go of all presuppositions—inclusive potentially presuppositions about what it means to be colonial and decolonial—in coming up with revolutionary ideas and new narratives in service of present-day resistance. Radical ideas that do not necessarily conform to the status quo ought to be introduced as motors that move society's conscience to be more inclined towards departure from the colonial ever-present.

Developing such imaginations could and in fact should be done through a process that makes use of inspirations from existing postulations found across both fictional and non-fictional sources. As per the former, as illustrated by Koskenniemi, theological doctrines were instrumentalized in the production of justification for the colonial project.⁶⁸ Nevertheless, as illustrated in this piece, some theological concepts might provide a great starting point in aiming for an international law that might work as a liberatory project.⁶⁹ Ideas born from religious teachings can be contextualized in international legal discourse to challenge Eurocentric notions of justice and sovereignty by offering the conceptions of community obligations beyond the state-centric Westphalian paradigm.

Technology also has a fundamental connection to law. Film, television, and video games, alongside the ease of access to books and other print materials in digital forms, enable the rapid production and spreading of

66 Simon Batterbury and Tim Forsyth, "Fighting Back: Human Adaptations in Marginal Environments," *Environment* 41, no. 6 (1999).

67 See Byung-Chul Han, 'Why Revolution is No Longer Possible' (Our World, 3 November 2015) <<https://ourworld.unu.edu/en/why-revolution-is-no-longer-possible>> accessed 14 December 2024.

68 Koskenniemi, *To the Uttermost Parts of the Earth* (n 2) 78.

69 See, for example, David Tombs, *Latin American Liberation Theology* (Brill 2002); Anantanand Rambachan, *A Hindu Theology of Liberation: Not-Two Is Not One* (SUNY Press 2015); Hamid Dabashi, *Islamic Liberation Theology: Resisting the Empire* (Routledge 2008).

works in science fiction,⁷⁰ alternative histories,⁷¹ and fantasy.⁷² Each of them operates in a world wherein the legal system exists as one of the enabling factors for the characters' problem(s). All of these genres could contribute just as much to the advancement of legal thought as they have benefited from making it a creative source for plot- and world-building.⁷³ Imagined realities can, seen in this fashion, become sandboxes to experiment with ideas that can precipitate change by making space for pluriversal epistemologies in lieu of proclamations of universality.

Black/African science fiction (BASF), which comprises the subgenres of Afrofuturism (black culture in America and other diasporic lands) and Africanfuturism (culture and values in Africa),⁷⁴ is a landmark of how thinking the impossible can help a group heal through expression.⁷⁵ It is also instrumental in repelling law's rigidity and launching incursion towards Euro-modern paradigms that are rife with biases and value-non-neutrality that are coincidentally revealed.⁷⁶ BASF does not shy away, per se, from using anthropomorphism as one of the tools to testify against the wrongs that have taken place by dislodging the privileged human from their pedestal and demanding accountability for damages done unto others.⁷⁷ Such a creative and critical tradition could inform treaty negotiations, judicial interpretations, and institutional design to have concrete mechanisms for redistributing power within the global governance system. BASF embodies in itself a toiling to

70 Mitchell Travis, "Making Space: Law and Science Fiction," *Law & Literature* 23, no. 2 (2011): 241–61.

71 Gavriel Rosenfeld, "Why Do We Ask 'What If?' Reflections on the Function of Alternate History," *History and Theory* 41, no. 4 (2002): 90–103. See also Ingo Venzke, "What if? Counterfactual (Hi)Stories of International Law" *Asian Journal of International Law* 8, no. 4 (2018): 403–41.

72 See, for example, Jeffrey E. Thomas and Franklin G. Snyder (eds), *The Law and Harry Potter* (Carolina Academic Press 2010).

73 Travis, *Making Space*, 247.

74 Folúkẹ Adébí sí, "Black/African Science Fiction and the Quest for Racial Justice through Legal Knowledge: How Can We Unsettle Euro-modern Time and Temporality in Our Teaching?" *Law, Technology and Humans* 4, no. 2 (2022): 24–39.

75 *Ibid* 32–3.

76 *Ibid* 27–8. Euro-modern paradigm refers to describes a specific vision and version of modernity linked closely to Euro-modern laws which have perpetuated racial injustice and other forms of colonial legacies (see *ibid* 25).

77 See Folúkẹ Adébí sí, "The Sea Casts Its Net of Justice Wide: A Speculative Judgment for What Has Been Left to the Waters of Despair," in *The Anthropocene Judgments Project: Futureproofing the Common Law*, ed. Nicole Rogers and Michelle Maloney (London: Routledge, 2023), 59–72. In this chapter, Adébí sí situates the reader in a world where nature calls for justice from humans for their misdoings.

find the answer to the perennial question of what the world could have been like and where everyone would have been if the smallest of things had turned out differently.⁷⁸ There is perhaps no more befitting example for this than the discourse started by Marvel’s *Black Panther* and its sequel *Wakanda Forever* in their re-inscription of the development frame as part of ‘white mythology’⁷⁹ on the one hand and the welcoming of the imperative of attributing due authority over natural resources to formerly colonized nations on the other⁸⁰. The example demonstrates the extent of freedom of reverie made possible with just a single move away from empirical reality. Integrating these cultural productions into legal analysis could help scholars and practitioners articulate counter-hegemonic principles like resource sovereignty and reparative justice to challenge the extractive international economic law regime.⁸¹

Equally as useful as positive enchantment is cautionary imagination—the kind that forces us to think about the worst possible scenarios—that helps remind and prevent us from falling into dystopia. Forewarnings of the future drawn from various sources are informative in that they increase the urgency to enact drastic change to the ways of the past lingering in the present. Climate fiction like Kim Robinson’s *The Ministry for the Future* (novel) and Kevin Reynolds’s *Waterworld* (movie), for example, illustrate the relationship influence that political actions have in transforming law and, eventually, humankind. These narratives force us to reconsider our approaches to environmental law that have been anthropocentric, and to shift toward biocentric models that recognize the neglected agency of the non-human. Religious tellings of the end times, be it in Christianity with the Armageddon scenario or Islam with the coming of the Mahdi, inspire polity in an intriguing manner unlike other, prompting the faithful to strive to be among the righteous

78 Taking the same work as an example, this can be done by critically examining law’s complicity in the perpetuation of colonial-capitalism (ibid 60) or prompting imagination on alternative concepts of harm, justice, and remedies (ibid 70).

79 Christopher Gevers, “Hiding in Plain Sight: Black Panther, International Law and the ‘Development Frame,’” *Osgoode Hall Law Journal* 59, no. 1 (2022): 109–43

80 Radhika Kapoor, ‘An International Law Analysis of Black Panther: Wakanda Forever’ (Opinio Juris, 2 December 2022) <<http://opiniojuris.org/2022/12/02/an-international-law-analysis-of-black-panther-wakanda-forever>> accessed 15 December 2024.

81 See Lorenzo Cotula, “(Dis)integration in Global Resource Governance: Extractivism, Human Rights, and Investment Treaties,” *Journal of International Economic Law* 23, no. 2 (2020): 431–54; Jingzhong Ye et al., “The Incursions of Extractivism: Moving from Dispersed Places to Global Capitalism,” *The Journal of Peasant Studies* 47, no. 1 (2019): 155–83.

and play their divinely anointed part in a world nearing its final chapter.⁸² Eschatology can be harnessed to uproot the international law's temporal framing from presentism to accounting for the need for humankind's existence in the next many generations. Whatever it may be, cautionary imagination helps to rethink our convictions today that can determine whether we will even see tomorrow.

What is noteworthy in this last and [for now] final type of imagination is that it is one that provides the most leeway for the user. We shall, however, remain cautious of this leeway, and ponder this free wondering with the seeking of tangible outcomes in the real world. For those wanting to engage with imagination as an element of the decolonial blueprint, there is homework to formulate a schema that sets the parameters and perimeters for guiding the speculative thinking involved in this enterprise.

E. Finding the Furthest Ends of Possibility

Like a deeply disconcerted galactic citizen having had enough of Coruscant and wishing to run away from the Empire's epicentre to find and serve a purpose in the Rebel Alliance by racing to the Outer Rim, one who wishes to reach satisfaction by playing their part in decolonizing international law needs to carefully plan their journey—charting the path to travel, identifying stops along the way, and fuelling the hyperdrive.⁸³ In spite of international law's seemingly promising trajectory as a movement that has seen a tremendous growth of support over the decades,⁸⁴ the issue of setting agenda is a persistent hindrance to meaningful engagement with international law as a value-propagating network.⁸⁵ Those who believe in a vision of a more equitable global order, be they scholars or practitioners, should come together to devise a collective outlook that would help counteract the colonial ever-present and begin to imagine the specifics of a new alternative.

82 See, for example, Roberto V. Loureiro, 'Politics and Eschatology: Christian, Muslim and Liberal Traditions and Their Visions of Humankind's Future' (PhD dissertation, Texas A&M University 2010); Stephen Kierulff, "Belief in 'Armageddon Theology' and Willingness to Risk Nuclear War," *Journal for the Scientific Study of Religion* 30, no. 1 (1991): 81–93.

83 These are all references to the *Star Wars* franchise.

84 James Thuo Gathii and Mark Pollack, "Agenda," 32.

85 In TWAIL's case, for instance, its aspiration is to become an inclusive movement without prerequisite for membership, making it thus by definition unframeable as a totalizing political framework. See Modirzadeh (n 54), 96.

The law school, for one, is the best place to kick off this ambitious undertaking. Although being pessimistic comes naturally for anyone who has come to the realization that coloniality is ingrained in all facets of life, it is in the classrooms that we should still seek to devise conventions for a better future beyond our lifetime. Just as the law is biased towards power, students should be radicalized such that they are able and willing to confront the harsh truths of immortalised colonial systems.⁸⁶ For starters, there should be full acknowledgement that European epistemologies are not the only ones, and that others who we have thus far neglected have great merits to be considered.⁸⁷ From there, real diversification ought to be implemented in terms of knowledge attainment and subsequent production by rethinking reading lists to include the voices that have not been heard as much as they deserve.⁸⁸ Boundaries of knowledge disciplines that were not even present centuries ago should be undone and replaced with a spirit of disobedience,⁸⁹ enabling the breaking of all walls and being truly free at last.

* * *

*Lives of great men all remind us
We can make our lives sublime,
And, departing, leave behind us
Footprints on the sands of time.*⁹⁰

86 Folúkẹ Adébí sí, “Decolonising the Law School: Presences, Absences, Silences ... and Hope,” *The Law Teacher* 54, no. 4 (2020): 471–84.

87 Mohsen al Attar and Shaimaa Abdelkarim, “Decolonising the Curriculum in International Law: Entrapments in Praxis and Critical Thought,” *Law and Critique* 34, no. 1 (2023): 41–60, at 48.

88 *Ibid* 50.

89 *Ibid* 55.

90 Henry Longfellow, ‘A Psalm of Life’ (1838).

BIBLIOGRAPHY

- Anghie, Antony. *Imperialism, Sovereignty and the Making of International Law*. 1st ed. Cambridge University Press, 2005.
- Antonio Cassese. *Realizing Utopia: The Future of International Law*. Oxford: Oxford University Press, 2012.
- Aurelio de Prada Garcia. "Human Rights and Rights of Nature: The Individual and Pachamama." August 2020, 1–23.
- B. S. Chimni. *International Institutions Today: An Imperial Global State in the Making*. 15, no. 1 (2004): 1–37.
- Bennett, Jane. *The Enchantment of Modern Life: Attachments, Crossings, and Ethics*. Princeton University Press, 2016.
- Cassandra Steer. "Who Has the Power? A Critical Perspective on Space Governance and New Entrants to the Space Sector." *Georgia Journal of International and Comparative Law* 48, no. 3 (2020): 751–59.
- Chiara Bottici. *Imagination, Imaginary, Imaginal: Towards a New Social Ontology?* 33, no. 5 (2019): 433–41.
- Chimni. "Third World Approaches to International Law: A Manifesto." *International Community Law Review* 8, no. 1 (2006): 3–27.
- Clark Lombardi. "Islamic Law in the Jurisprudence of the International Court of Justice: An Analysis." *Chicago Journal of International Law* 8, no. 1 (2007): 86–118.
- Claude Lvi-strauss. *The Savage Mind*. The University of Chicago Press, 1966.
- Enyew, Endalew Lijalem. "Sailing with TWAIL: A Historical Inquiry into Third World Perspectives on the Law of the Sea." *Chinese Journal of International Law* 21, no. 3 (December 2022): 439–97.
- Fidler, D. P. "Revolt Against or From Within the West? TWAIL, the Developing World, and the Future Direction of International Law." *Chinese Journal of International Law* 2, no. 1 (January 2003): 29–76.
- Frantz Fanon. *Black Skin, White Masks*. Pluto Press, 1986.
- Glenn Adams and Sara Estrada-Villalta. "Theory from the South: A Decolonial Approach to the Psychology of Global Inequality'." *Current Opinion in Psychology* 18, no. 37 (2017).
- Gunther A. Weiss. "The Enchantment of Codification in the Common-Law World." *Yale Journal of International Law* 25:435 (2000): 438–532.
- Hiroshi Fukurai. *Fourth World Approaches to International Law (FWAIL) and Asia's Indigenous Struggles and Quests for Recognition under International Law*. 5, no. 221 (2018): 221–31.
- Hurd, Ian. "Enchanted and Disenchanted International Law." *Global Policy*, December 2015, 96–101.
- James Thuo Gathii. "TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography." *Trade, Law and Development*, no. 3 (2011).

- James Thuo Gathii and Mark Pollack. "The Agenda of Third World Approaches to International Law (TWAIL)." In *International Legal Theory: Foundations and Frontiers*. Cambridge University Press, 2022.
- Julian Aguon. "On Loving the Maps Our Hands Cannot Hold: Self-Determination of Colonized and Indigenous Peoples in International Law." *UCLA Asian Pacific American Law Journal* 16, no. 47 (2010).
- Koskenniemi, Martti. "Constitutionalism as Mindset: Reflections on Kantian Themes About International Law and Globalization." *Theoretical Inquiries in Law* 8, no. 1 (December 2006): 9–36.
- . "Histories of International Law: Dealing with Eurocentrism." *Rechtsgeschichte - Legal History* 2011, no. 19 (2011): 152–76.
- . *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*. 1st ed. Cambridge University Press, 2001.
- Koskenniemi, Martti, and Theodor Meron. "The Pull of the Mainstream." *Michigan Law Review* 88, no. 6 (May 1990): 1946–62.
- Makau wa Mutua. "Savages, Victims, and Saviors: The Metaphor of Human Rights." *Harvard International Law Journal* 42 (2001): 201–45.
- Martin Savransky. "A Decolonial Imagination: Sociology, Anthropology and the Politics of Reality." *Sociology* 51, no. 11 (2017).
- Martti Koskenniemi. *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870*. 1st ed. Cambridge: Cambridge University Press, 2021.
- Mutua, Makau, and Antony Anghie. "What Is TWAIL?" *Proceedings of the Annual Meeting (American Society of International Law)* 94 (2000): 31–40. JSTOR.
- Naz Khatoon Modirzadeh. "Let Us All Agree to Die a Little": TWAIL's Unfulfilled." *Harvard International Law Journal* 65, no. 79 (2023): 80–131.
- Nico Krisch. *International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order*. 16, no. 369 (2005): 369–408.
- Perpetua Akoth Adar. "Space and the Future of Humanity: A TWAIL Critique of International Space Law and Space Discourse." *Third World Approaches to International Law Review* 3, no. 3 (2022): 92--15.
- Rafsi Albar. "Common Heritage of Mankind at the Expense of Indigenous People's Rights? BBNJ Treaty and Beyond." *Harvard Human Rights Journal*, 2023.
- Scott J. Shackelford. *The Tragedy of the Common Heritage of Mankind*. Stanford Environmental Law Journal publisher, 2009.
- Severino Ngoenha. "Ubuntu: New Model of Global Justice?" *African Journal of Indigenous Knowledge Systems* 5, no. 125 (2006): 131.
- Simon Batterbury and Tim Forsyth. "Fighting Back: Human Adaptations in Marginal Environments." *Environment* 41, no. 6 (1999).
- Vasuki Nesiiah. "Decolonial CIL: TWAIL, Feminism, and an Insurgent Jurisprudence." In *Customary International Law: A Third World*

- Perspective”, 112:313–18. Cambridge University Press, 2018.
- Viswanathan, Gauri. *Masks of Conquest: Literary Study and British Rule in India*. New York Chichester, West Sussex: Columbia University Press, 2014.
- Walter D. Mignolo. “WHO SPEAKS FOR THE ‘HUMAN’ IN HUMAN RIGHTS?” *Cadernos de Estudos Culturais* 3 (2011): 157–72.
- Weisberg, Richard, and James B. White. *The Legal Imagination: Studies in the Nature of Legal Thought and Expression*. 74, no. 2 (March 1974): 986.
- Wynter, Sylvia. “On Disenchanted Discourse: ‘Minority’ Literary Criticism and Beyond.” *Cultural Critique*, no. 7 (1987): 207.
- Yishai Blank. “The Reenchantment of Law.” *Cornell Law Review* 96, no. 4 (2011): 633–70.