

Alternative Modernity as a Possible Foundation of International Law: Some Epistemic Formulations

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Abstract

The Third World Approach to International Law (TWAIL) has listed out the problematic foundations of international law but it has not ventured into significantly altering the discourse and language of international law *per se*. The immediate problem which we encounter is that of identifying and delineating the sources of international law, and we find Europe writ large everywhere. The entire Renaissance in Europe since the 1500s and the Enlightenment as its byproduct *looked into* the wisdom of ancient Greece and Rome which was completely lost to them and was known only through Arab translations. A link was drawn, whether real or mythical, with the ancient yore, which then informed their idea of the present. Even law, as a means to achieve “justice,” acquires mythical proportions. A self-intuitive understanding of justice or justice for all living creatures constituting the globe is an intrinsic part of those societies untouched by colonial contact, as well as folk and spiritual traditions of the Global South. If we are to recreate a sense of place and time at the present, it can dig into this past to create a theoretical framework of international law, for an alternatively modern, non-European world which is always about to come. And as a means to approach this alternative modernity of the Global South, an inspiration is drawn from the writings of Akeel Bilgrami, Mahatma Gandhi, Rabindranath Tagore, and others, and attempt to develop the foundations of a theoretical framework to depart from the imposed “modernity” of the Global North as a foundation for international law.

Key Words: Global North, Global South, International law

I. Epistemic Violence / Introduction

The origins of international law as it stands today is European.¹ It started after the treaty of Westphalia in 1648.² When it began with the Spanish conquests of the “New World,” legal ideas and justifications were needed for the sake of the coloniser to live up to its own self-esteem in order to exercise colonial control over the vast continent of Americas.³ It is this imperative which led to the growth of international law. The imperial consensus of international law waned as a fall-out of the Second World War even though it led to a more concrete organisation in the form of the United Nations (UN) coupled with Universal Declaration of Human Rights (UDHR) envisioning a better world.⁴ The language, the form and the content of the UN and UDHR can be said to be in continuation and in conformity with the “Enlightenment Project” of Europe and modernity, or *colonial modernity*, for the post-colonial world as a larger result of it, which has not received a serious challenge in its foundations till date.⁵ The Marxist critique of international law was also a European project based on European political realities as a result of rising

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1. MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960*, at 1-10 (1st ed. 2001). The Treaty of Westphalia was actually peace negotiations between various principalities in European to end their endless wars based on religious reasons, especially the Thirty Years' War and the Eighty Years' War which raged between different protestant and catholic states.
 2. *Id.*
 3. ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* 1-31 (1st ed. 2005). The biggest anomaly is that of America being discovered by Columbus, as if America did not preexist Columbus, or the European discovery of it. This is the reason why in a lot of Euro-American literatures, it is still referred to as the 'New World,' a new world to be conquered, colonized, and populated by Europeans.). For more, see HOWARD ZINN, *A PEOPLE'S HISTORY OF UNITED STATES* (reissue ed. 2016).
 4. See KOSKENNIEMI, *supra* note 1. UDHR came out as a direct consequence of the Second World War and wanted to ensure the right to life with human dignity as the least commonly acceptable right in the world which included freedom of speech, freedom of religion, freedom from fear and freedom from want. These ideals of human existence remain unchallenged as acceptable principles. And if a state is violating these rights as a matter of practice – even then they at least offer an excuse of doing the same in the name of freedom.
 5. See Martti Koskenniemi, *Histories of International Law: Dealing with Eurocentrism*, in *RECHTSGESCHICHTE* 152 (2011). We will see later in the article how the worldview of the Global South is best articulated by the 'unalienated life' before any other rights. It will also be seen that most of these rights which emerged out of modernity – a modernity which was induced after colonial contact – are given and protected by the state or descendants of former colonial state structures whereas, 'unalienated life' is something which is given by the very fact of being live human beings living in societies.

industrialisation and has its own limitations in addressing the foundations of international law theory and practice when a large part of the world has come out of colonial yoke.⁶ The Third World Approach to International Law (TWAIL) has listed out the problematic foundations of international law including something like a “benign natural law” in excellent writings of Anthony Anghie and others but it has not ventured into significantly altering the discourse and language of international law *per se* to begin with.⁷ There

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6. KARL MARX, DISPATCHES FOR THE NEW YORK TRIBUNE: SELECTED JOURNALISM OF KARL MARX 211-19 (2007). In a quintessential post-*Orientalism* phase begun by Edward Said, a cogent criticism can be levelled against Karl Marx as well for an intuitive support of British colonialism (and a presentiment of its disastrous consequences but necessary for bringing about industrial revolution and then a socialist order) and almost name-calling entire “Orientals” being governed by oriental despotism, with an almost diabolical presumption of Europe being *free* of despotism or the oriental kind of despotism, betraying the classical functioning of a European colonial mind as far as *colonialism* itself is concerned. In this respect, unfortunately even Marx, because of European genealogical origins of his thought, has a European notion of *development*, and a European solution to an Indian problem, or an *Oriental* problem for that matter. A perfect antidote to Marx’s views on India and Indians is provided by Mahatma Gandhi’s *Hind Swaraj*. See SURESH SHARMA & TRIDIP SUHRUD, M K GANDHI’S HIND SWARAJ: A CRITICAL EDITION (2010).
7. See ANGHIE, *supra* note 3, at 21-22, 29 (While appearing to promote notions of equality and reciprocity between the Indians and the Spanish, Vitoria’s scheme must be understood in the context of the realities of the Spanish presence in the Indies. Seen in this way, Vitoria’s scheme finally endorses and legitimizes endless Spanish incursions into Indian society. Vitoria’s apparently innocuous enunciation of a right to ‘travel’ and ‘sojourn’ extends finally to the creation of a comprehensive, indeed inescapable system of norms which are inevitably violated by the Indians. For example, Vitoria asserts that “to keep certain people out of the city or province as being enemies, or to expel them when already there, are acts of war.” Thus, any Indian attempt to resist Spanish penetration would amount to an act of war, which would justify Spanish retaliation. Each encounter between the Spanish and the Indians therefore entitles the Spanish to ‘defend’ themselves against Indian aggression and, in so doing, continuously expand Spanish territory. Vitoria further endorses the imposition of Spanish rule on the Indians by another argument, which relies explicitly on the cultural differences between the Spanish and the Indians. In establishing his system of *jus gentium*, Vitoria characterizes the Indians as having the same ontological character as the Spanish. This is a crucial prerequisite for his elaboration of a system of norms which he presents as neutral, and founded upon qualities possessed by all people. According to Vitoria, Indian personality has two characteristics. First, the Indians belong to the universal realm like the Spanish and all other human beings because, Vitoria asserts, they have the faculty of reason and hence a means of ascertaining *jus gentium* which is universally binding. Secondly, however, the Indian is very different from the Spaniard because the Indian’s specific social and cultural practices are at variance from the practices required by the universal norms – which in effect are Spanish practices – and which are applicable to both Indian and Spaniard. Thus, the Indian is schizophrenic, both alike and unlike the Spaniard. The gap between the Indian and the Spaniard – a gap that Vitoria describes primarily in cultural terms by detailed references to the different social practices of the Spanish and the Indians – is now

are some proponents of TWAIL till today, even though it emerged in the dark days of the Cold War era, because some of the concerns of the “third world” or the “Global South” as they are referred to today, are still present, like the protracted issues of agriculture even when intellectual property rights concerns of the Global North were accepted and largely implemented under the World Trade Law regime, or the issues of technology transfer or the free movement of labour to illustrate just a few major examples. Even when a historical hagiography of non-European practices of international law is listed out, it is tested against the prevailing European notions to find validity and relevance, or even a mere mention of it.⁸ This negative self-definition is also limiting and problematic as it betrays a sense of inferiority among post-colonials. It creates a constant sense of urgency and an element of reaffirmation amongst post-colonials to prove to their own selves first, of how they also have ideas and systems like those of their former colonial masters, and then offer this blueprint to the former colonial masters to get their affirmation and assent.

Colonialism and colonial rule as a footboard for international law was even a sentiment between the coloniser and the colonised, where in the latter part of their direct rule, it was not even economically rewarding, and yet it continued to exist and sustain.⁹ It is perhaps part of the reason why Professor Koskenniemi tellingly puts 1960 as the final year of the fall of international law.¹⁰

internalized; the ideal, universal Indian possesses the capacity of reason and therefore the potential to achieve perfection. This potential can only be realized, however, by the adoption or the imposition of the universally applicable practices of the Spanish. The discrepancy between the ontologically ‘universal’ Indian and the socially, historically, ‘particular’ Indian must be remedied by the imposition of sanctions which effect the necessary transformation. Indian will regarding the desirability of such a transformation is irrelevant: the universal norms Vitoria enunciates regulate behaviour, not merely between the Spanish and the Indians, but among the Indians themselves; thus the Spanish acquire an extraordinarily powerful right of intervention and may act on behalf of the people seen as victims of Indian rituals: “It is immaterial that all the Indians assent to rules and sacrifices of this kind and do not wish the Spaniards to champion them” (at 29). Thus, Spanish identity or, more broadly, an idealised Western identity, is projected as universal in two different but connected dimensions of Vitoria’s system; Spanish identity is both externalized, in that it acts as the basis for the norms of *jus gentium*, and internalized in that it represents the authentic identity of the Indian.)

8. Koskenniemi, *supra* note 5.

9. ASHIS NANDY, *INTIMATE ENEMY: LOSS AND RECOVERY OF SELF UNDER COLONIALISM* (2d ed. 2009).

10. *See* KOSKENNIEMI, *supra* note 1.

For Europe, there has been an organic and unilinear growth from the Renaissance, to the Reformation, to Counter-Reformation to the Enlightenment, and so on. It was never knee-jerked into it. The term 'Modern' or 'modernity' are themes which are complex and complicated for the post-colonial world. The 'modernity' in which these former colonies were forcibly brought about has been slipshod along with an evisceration of their entire systems of living. Therefore, for the post-colonials, they could not arrive to modernity organically and on their own genius. It was forced upon them at huge costs of their material and spiritual well-being. These post-colonial societies are still reeling under the weight of European modernity, with places like India still having traditional forms of living running side by side with choking cities. The resistances which these traditional societies articulate to the colonial modernity now represented by the Indian state and bureaucracy gets articulated in varied concoctions, including the naxal violence in its most virulent and violent forms. It is in these systemic and seismic zones of polity that these post-colonial societies need to rest upon their own mental and physical resources to bring about a better future. And when there are these societies, reformulating their *own* ideas to suit with the times as well as the nature, theoretical constructs and practical concerns of international law is bound to change.

Are there alternative ways of reaching an international law regime which is more representative in its theoretical character along with enhancing its effect and reach in making a "better world"¹¹ which was purportedly the driving ideal of all international law writers and thinkers? Is there an alternative modernity itself which is thankfully free of the Enlightenment Project which mired the world in industrial destruction, indiscriminate profiteering, political and state violence and a series of wars? Can this European modernity lumped on to non-European societies be thrown away or should be thrown away lock, stock and barrel?

11. Initially it was nothing but a better world for Europeans, or a better Europe for Europeans. Even great thinkers like Immanuel Kant spoke of a pacific union among republican states of Europe for a peaceful and prosperous Europe. It had to see two World Wars before coming close to it in the form of today's European Union.

II. Ontological Problems and Prospects

Derrida called Abraham a murderer under ethics for having circumcised his sons and then being ready to sacrifice him to the Almighty based on Godly visions.¹² If at all, he should have sacrificed his own self rather than committing this crime. American proliferation of arms to Afghan rebels and then trying to contain the Frankenstein monster in the form of the Taliban is akin to this circumcision of international law; and the invasion of Iraq is akin to sacrificing Isaac at the altar based on a self-delusion of spreading freedom and democracy. On the parameter of ethics informing international law, these incidents are among the more recent violations of international law. So, on the one hand, it could be seen on a legalistic framework of international law for *saving* Afghans and Iraqis from themselves, thousands had to be butchered at the altar of freedom and democracy which still remains elusive to these people. On the other, it should be seen from a Gandhian perspective of alternative modernity as identified by Akeel Bilgrami: The former colonial powers and the still powerful states should “*cleanse its sins*” by self-reformation and leading by an example by becoming the *Gandhian moral exemplar*.¹³ This vision of international law which is provided with theoretical substance by Tagore and Sri Aurobindo can be another theoretical addition of a future international law, which is more representative of the world rather than the Enlightenment Consensus created by Europe.¹⁴ Such theoretical explanations providing an alternative foundation would then inform the practice of international law.

The immediate problem which we encounter is that of identifying and delineating the sources of international law, and we find Europe writ large everywhere. And what did Europe do? The entire Renaissance and the Enlightenment as its byproduct looked into the wisdom of ancient Greece and Rome which was completely lost to them and was known only through Arab

12. SonytoBratsoni, *Jacques Derrida on Religion 1/2*, YOUTUBE (June 4, 2012), <https://www.youtube.com/watch?v=gyOWAcpIaB8>; SonytoBratsoni, *Jacques Derrida on Religion 2/2*, YOUTUBE (June 7, 2012), <https://www.youtube.com/watch?v=X4v7kh-f7Yc>.

13. Akeel Bilgrami, *Gandhi, The Philosopher*, 38 *ECON. & POL. WKLY.* 4159 (2003).

14. A preliminary attempt has been made with regard to Sri Aurobindo and human unity by an international law scholar Professor B.S. Chimni. For more, see B.S. Chimni, *Retrieving “Other” Visions of the Future: Sri Aurobindo and the Ideal of Human Unity*, in *SITUATING SRI AUROBINDO: A READER* 130 (Peter Hechs ed., 2013).

scholars and Arabic works on ancient Greeks and Romans.¹⁵ It changed the way Europe thought after the 1500s. Now, whenever they look into a public law idea or public international law idea for that matter they trace it to Greece and Greek practices. A link was drawn whether real or mythical with the ancient yore which then informed their idea of the present. Myth as a social function and function for the working of even a political nation-state is pertinent to note.¹⁶ Law as a means to acquire justice is also a mythical notion trying to keep our bearings right in the present world. Law is always mourning to keep up with the social and political realities to bring about justice which is a more intuitive understanding of a certain society and which is always about to come but never arrives. This self-intuitive understanding of justice or justice for all living creatures constituting the globe is an intrinsic part of ancient Indian, or Native American, or various tribal cultures across the globe. If we are to recreate a sense of place and time at the present it can dig into this past to create a theoretical framework of an international law which is always about to come. It can be the “centre, an eccentric centre”¹⁷ of a future international law theory as

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15. JOHN M. HOBSON, *THE EASTERN ORIGINS OF WESTERN CIVILIZATION 173-83* (2004) (Most of the scientific discoveries and advances in mathematics were brought to Europe by the Arabs, who in turn got it from the Indians; including Europe’s rediscovery of its own Greek past was made known by the Arabs like Averroes, Ibn Tufayl and the Jewish Arab scholar Maimonides.); AMARTYA SEN, *IDENTITY AND VIOLENCE: THE ILLUSION OF DESTINY* (2006) (The work goes in great detail in contradicting the ‘clash of civilizations’ hypotheses and identifies how Jews and other minorities enjoyed greater freedom and even respect and often rose high in the courts of Arab and Turk rulers unlike the then Europe which was wallowing in the *dark ages*. The work also highlights how Indian mathematics and Greek philosophy was transmitted to Europe by the Arabs of medieval and late-medieval times which in all probabilities became a progenitor for the *Renaissance* which started the *European Age* for the word. Much in league with the *Vishwa-kobi* Rabindranath Tagore, the work also highlights how the *eastern world* today should not close its doors and exchange of ideas and people in order to restrict the full potential of its *growth* in all meanings of the term.); GEORGE GHEVERGHESE JOSEPH, *THE CREST OF THE PEACOCK: NON-EUROPEAN ROOTS OF MATHEMATICS* (3d ed. 2010) (an excellent work on the transfer of science and mathematics from the non-European world to Europe which led to Renaissance, then the Enlightenment, and so on).
16. C. G. JUNG, *MEMORIES, DREAMS, REFLECTIONS 170-222, 299-354* (Aniela Jaffé ed., Clara Winston & Richard Winston trans., reissue ed. 1989); BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* (rev. ed. 2016) (He deals particularly with the historical roots of nationalism as a political idea in Europe and how it got transplanted in the rest of world through colonialism. At an ideational level, nationalism as it emerged post-Westphalia, is nothing but an imagined community catering to the interests of power groups.).
17. This is how Derrida, when he is most accessible, defines as the first gesture, a sentiment, which leads to deconstruction; reaching the *centre, an eccentric centre* of the *idea* or *text*

far as tracing its sources are concerned. And for the non-European world, for a non-modern world, an alternatively modern world, it could be sometimes real and immediate or it could be a mythical connection drawn as was drawn for the nascent Europe.

All legal concepts, to begin with, or perhaps to even end with, are fictions or myths. Human society, law and civilisation are fictional or mythical in that sense. For example, something like *terra nullius* flies in our face. Whose understanding of law was it? Whose understanding of land law was it? How was that land law applied? Europeans landed on the American continent (North and South), and decided how the unwritten code, or sometimes even written but not understood, understanding of community ownership of land, forest, river, natural resources and the like amongst Native Americans was not law or was not a right understanding or application of law, and therefore the whole continent lay before Europeans to be claimed as their own – *since it is terra nullius* – no one lives there, or no one claims ownership, i.e., no one claims ownership under the European understanding of law in general and land laws in particular.¹⁸

Another fundamental and oft-cited example which comes to mind is that of the sources of international law – “*law recognized by civilized nations*”¹⁹ – which has not been changed till date to reflect the changing times of a decolonised world, and is nothing but self-explanatory. Why in all investment law treaties, the term used is “*expropriation*” when at least the terminology used could have been “*appropriation*”? It reflects the whole thought process which goes behind choosing a particular terminology and framing a certain provision as part of law, read international law here. Today, after the fangs of colonialism have been visibly removed, in terms of the actual ways in which both “*expropriation*” and “*appropriation*” may be used, might amount to the same field of action. But the problem is in the genealogical origins of the term and how it was used by the *colonial masters*. The Constitution of Bhutan is a good example of using indigenous terminologies and Sanskrit terms to define its legal system and polity and offer rights and responsibilities rather than taking whole hog colonial legislations and offer it as *the* constitution for a

which is to be deconstructed. For more, see KIRBY DICK & AMY ZIERING KOFMAN, DERRIDA: SCREENPLAY AND ESSAYS ON THE FILM (1st ed. 2005).

18. For more, see BARTOLOME DE LAS CASAS, A SHORT ACCOUNT OF THE DESTRUCTION OF THE INDIES (1st ed. 1992); ANGHIE, *supra* note 3.

19. UNITED NATIONS, STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 38 (1946) [hereinafter STATUTE OF ICJ].

post-colonial nation like that of India.²⁰ The pitfalls of such colonial modernity is in the form of religious concretisation and radicalisation;²¹ the implantation of wishy-washy political ideals which do not speak in the language, form and substance of the rural peasantry of India;²² and the resultant communalisation and surge of modern nationalism not in its most benign form and not as against colonial rule but as a foundation for even a secularised resurgent, self-confident, burgeoning nation.²³

III. Prospects for Theoretical Constructs of an Alternatively Modern International Law

Once the language and forms of expression change, it would be far more representative of the world and would certainly affect its practices like Nietzsche said, “I am dynamite,” and we know how he is one.²⁴ He was

20. DRUK-GI CHA-THRIMS-CHEN-MO [CONSTITUTION] (Bhutan).

21. Ashis Nandy, *An Anti-Secularist Manifesto*, 22 INDIA INT’L CTR. Q. 35 (Spring 1995).

22. It was Mahatma Gandhi who spoke in the language of the people, *looked* and resembled the Indian masses and therefore people understood him and followed him as their leader. *See also* WALTER HAUSER & KAILASH CHANDRA JHA, CULTURE, VERNACULAR POLITICS, AND THE PEASANTS: INDIA, 1889-1950: AN EDITED TRANSLATION OF SWAMI SAHAJANAND’S MEMOIR (2015) (It was in fact because of Swami Sahajanand Saraswati, who even more than Gandhi, epitomized the folk culture of rural peasantry, made the struggle for India’s freedom a mass based movement. He linked India’s freedom from colonial yoke to the abolition of zamindari, changing the contours of India’s public sphere and public law for all times to come. It is only now that his works and contributions are coming to light.).

23. *See* Nandy, *supra* note 21, at 37; *see also* Sudipta Kaviraj, *On the Structure of Nationalist Discourse*, in THE IMAGINARY INSTITUTION OF INDIA: POLITICS AND IDEAS 85 (2010); PARTHA CHATTERJEE, NATIONALIST THOUGHT AND THE COLONIAL WORLD: A DERIVATIVE DISCOURSE 1-35 (2d ed. 1993).

24. JACQUES DERRIDA, THE EAR OF THE OTHER: OTOBIOGRAPHY, TRANSFERENCE, TRANSLATION 31-32 (Christie McDonald ed., Peggy Kamuf & Avital Ronell trans., 1988) (quoting Friedrich Nietzsche from *Ecce Homo*, “I know my fate [*Ich kenne mein Los*]. One day my name will be associated with the memory of something monstrous [*Ungeheures*]- a crisis without equal on earth, the most profound collision of conscience [*Gewissens-Kollision*], a decision [*Entscheidung*] that was conjured up against everything that had been believed, demanded, hallowed so far. I am no man, I am dynamite. Yet for all that, there is nothing in me of a founder of a religion – religions are affairs of the rabble; I find it necessary to wash my hands after I have come into contact with religious people. I *want* no “believers”; I think I am too malicious to believe in myself; I never speak to masses – I have a terrible fear that one day I will be pronounced *holy*: You will guess why I publish this book *before*; it shall prevent people from doing mischief with me. I do not want to be a holy man; sooner even a buffoon. Perhaps I am a buffoon. Yet in spite of that – or rather *not* in spite of it, because so far nobody has been more mendacious than holy men – the truth speaks out of me . . . The

prophetic enough to identify how his ideas would be distorted in times to come. It needed another Jewish philosopher, Walter Kaufman, to reinstate Nietzsche as one of the prime movers in the history of ideas. Plato, Aristotle, Kant, Hegel, Marx, and Nietzsche, among many others, have been great influences on how states have defined themselves and their activities and what is their vision in the future even though there has never been a Platonic state, or a Nietzschean state, or even a Marxist state by the self-admission of Marxist thinkers and scholars. The truth of the matter is human mind and the behavior is far too complex to be pigeonholed in any particular idea or political ideology. Ideas can only inform the formation and functioning of a state and not a community of individuals otherwise it verges on state tyranny which is what we witnessed in the recent history of the world. But how we understand and define state itself needs an alternative definition. It is like Hegel saying how India does not have a state so it cannot have a history and there are political thinkers who say how India is still a state in the making (of course in a European sense) so even at the present moment we are not having any history according to Hegel.²⁵

A. Professor Akeel Bilgrami's Theoretical Prescription

Professor Bilgrami finds the whole social contractarian approach problematic, and by this analogy finds contract itself to be a problem. In this process, he is ready to “disinherit the entire tradition of liberal thought of the Enlightenment.”²⁶ He finds it to be a problem because of primarily two reasons: (a) Linking of the notion of property to a notion of personal liberty; and (b) the incentivization of talent.²⁷

It has been this linking of the notion of property to the notion of personal liberty which has brought the two most important ideological descendants of the Enlightenment in constant conflict with each other. He goes on to say, linking of the notion of property to a notion of the personal liberty which its

concept of politics will have merged entirely with a war of spirits; all power structures of the old society will have been exploded – all of them are based on lies: there will be wars the like of which have never yet been seen on earth. It is only beginning with me that the earth knows *great politics* [*grosse Politik*]. (“Why I Am a Destiny”).

25. G. W. F. HEGEL, *THE PHILOSOPHY OF HISTORY* 156-85 (2004).

26. School of Criticism and Theory, *Alternative Modernities?: A View from the South*, CORNELL U. (Aug. 8, 2013), <http://www.cornell.edu/video/alternative-modernities-a-view-from-the-south> (lecture by Akeel Bilgrami) [hereinafter Bilgrami at Cornell].

27. *Id.*

ownership bestows on one, a liberty that is carried in a right and therefore enshrined in the law of the land. How the position of private property, when seen in these terms of liberty, undermines equality in the economic sphere and therefore in other spheres has been the subject of extensive commentary and Marx was of course its most famous and powerful critic.²⁸

It is this reductionist view of liberty which is solely linked to the ownership of property and then gets enshrined and protected under law which ensures its constant conflict with equality and resultant disenchantment with the modern state specifically in the post-colonial societies. The post-colonial world had inherited both an exploitative economic set-up attuned to catering to the interests of the colonisers, and also a regressive legal system of a powerful police-state,²⁹ of capital punishment,³⁰ and non-recognition of the rights of sexual minorities,³¹ to name a few.

According to Bilgrami, and rightfully so, when liberty is attached to talent, it promotes social and economic inequality.³² For example, in a consumerist driven economic world order; poetry, classical and folk music, literature, philosophy might be considered a refuge for “*less talented*” or less economically efficient and productive individuals; whereas merchant capital, stock exchange, corporate firms, start-ups, network-driven social media and corporate deals, IP law – because of the money involved and the incentivisation it receives – might be considered to be “*more talented*.”

Unfortunately, the conflict between liberty and equality did not remain confined in the Western world, or the first world, now identified as the Global North but got transferred and transmitted in an even more regressive manner in the formerly colonised, those which had colonial contact, now called the Global South.

So long as this conflict between the two ideas of liberty and equality continues to dominate the functioning of the world, the goals and agenda set up by international law best represented by the preamble to the UN Charter

28. *Id.*

29. For example, through the AFSPA (Armed Forces Special Powers Act), the Indian state gives additional powers to armed powers in some parts of the country which runs counter to a liberal state’s guarantee of liberty. When warring nation-states are pitted against one another, national security is pitched to a degree where rights of citizens come a cropper.

30. Capital Punishment is still legal in the country under PEN. CODE § 302 (1860) (India).

31. Under PEN. CODE § 377 (India), same-sex relationship and cohabitation is illegal and is defined as “unnatural sexual offences.”

32. Bilgrami at Cornell, *supra* note 26.

and its first two articles cannot be achieved and there is going to be constant unrest and disaffection as a result of it.

Professor Bilgrami raises a few questions, in which for those from the Global South there is intuitive understanding about. They are:

- I. How and when, some might ask, did it come to pass in a whole dominant part of the globe that the world came to be seen not merely as a place to live in but a place to master and control?
- II. The South's more philosophical observers would notice for instance that in the North philosophers have for twenty hundred years recurrently raised, in epistemology, skeptical questions about our knowledge about the external world. But sometime in the seventeenth century, primarily in the hands of Descartes, a new conclusion was drawn. *If one can doubt our knowledge of the external world, quite possibly the external world does not exist* (emphasis added).
- III. The ancients who formulated skeptical doctrines *never concluded that the world may not exist from their assertion that there was no knowledge of it* (emphasis added). Why not? Because *they did not assume that the only way to relate to the world was via knowledge* (emphasis added).
- IV. It was Descartes' innovation, one that expressed a transformation in his time, whose legacy is that of an increasing detachment of outlook towards the world we live in, elevating the idea – of living in it itself – into some highly cognitively mediated relation that underlies the mastery and control we are trying to genealogically diagnose.³³

He lists out four pertinent questions which set the agenda for thinking in the Global North and affected the Global South in its wake and in the process set the tone for “development” and “international law” in the world:³⁴

- (a) How and when did they transform the concept of nature into the concept of natural resources?
- (b) Second, how and when did they transform the concept of human beings into the concept of citizens?
- (c) Third, how and when did they transform the concept of people into the concept of populations?
- (d) And fourth, how and when did they transform the concept of knowledges to live by into the concept of expertise to rule by?

33. *Id.*

34. *Id.*

He also points out that this conflict is mercifully absent in the Global South.³⁵ The Global South in its pre-colonial contact and away from the metropolitan location celebrated the concept of an *unalienated life* itself. The Global South today is again beset by the same western problem of a conflict between liberty and equality.

In these circumstances, what shall be the view from the Global South? It is the “concept of an unalienated life,” which is a view from the South drawing from traditions “not wholly dominated by the metropolitan frameworks” and are part of “folk, spiritual and popular traditions of the south.”³⁶ Even within the Global North, there has been a long tradition of dissent against the dominant order but their powerfully articulated views and humane actions remained marginalised in front of the rising tide of colonialism.

Today, there is no consent to be part of the “nature of state” in a classical social contractualist sense.³⁷ “Consent” was *ipso facto* assumed by social contractualists from John Locke until Robert Nozick after the initial *assumption* of assent.³⁸ Such an epistemic violence committed against the concept so crucial to “social contract,” and to “contract” itself is mind boggling.³⁹

Another conception of the Global North which wreaked havoc throughout the last three centuries, more particularly in the twentieth century in the form of two World Wars, is when ‘state’ got prefixed and hyphenated with ‘nation’ in the beginning. Nation-state became a behemoth and a self-serving agent at the cost of other nation-states, and nationalism, which articulated the collective voice of suppressed collectivities of people, and became the foremost influence of power and violence. Unlike the Global North, for the Global South, nationalism was “synonymous with anti-imperialism” which is why the *European modernist* aspirations of nation-state building remains unfulfilled for an ancient civilisation but a modern state like India, remains unfulfilled.⁴⁰

When state got hyphenated with nation as a prefix, it led to virulent and jingoistic forms of nationalism and totalitarianism, the supreme example

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. Kaviraj, *supra* note 23.

being Germany in the 1930s and 40s. This feeling of supremacy is explained by Bilgrami as

[t]his was the method of finding an external enemy within the territory and the population and despising it as the other and subjugating them (the Jews, the Irish, Protestants in catholic countries and Catholics in protestant countries) and thereby instigating a feeling among the rest of the population of a sense of a privileged possession of this new entity, the nation, as ours.⁴¹

He then expresses the concern for the Global South,

“[f]rom the perspective of some part of the South, one could only hope that this entire trajectory by which Europe came to be what it is, an assembly of nation-states should not be imitated even as it fell into nation-statehood after decolonisation. This was how citizenship began in the north and it is to repair the ravages wrought by this method that the north had to various civic measures measures and ideologies such as secularism, a political doctrine, something distinct from the large social process of secularisation and later, actually because of quite different issues having to do with immigration and so on, policies such as multi-culturalism, where and only where such damage had not already occurred and become entrenched in the South rather than adopt secularism in act of pointless mimicry, it would be better instead to disallow the damage to occur among its people in the first place. That is how I think, from the traditional perspective of the South could see. There is no reason to adopt secularism. We don’t have the problem which was intended to repair in the first place.⁴²

For states like India and many others in the Global South, which are already multicultural, multiethnic, multilingual, multi-religious and so on and have lived like this and lived well and largely peacefully for several millennia need not take the classical liberal political philosophy’s grudging acceptance of immigrants in their societies through a *new* political philosophy of

41. Bilgrami at Cornell, *supra* note 26.

42. *Id.*

“multiculturalism.”⁴³ In a Foucauldian reversal of gaze,⁴⁴ the Global North should come out of its *ghetto of a hyphenated nation-state* and learn to accept diversity and differences within their state borders like their poor country-cousins from the Global South. It is only then that the Global North will be able to get over its assimilationist tendencies and accept the other in its otherness.

Then, of course, in liberal political philosophy, civility was contrasted with cruelty. Civility was the special refuge of aristocracy and nobility who were the harbingers of civilisation, legal systems and constitutions to govern the rural peasantry and the working classes who were, in this political formulation, signifiers of cruelty. Law, legal systems, and constitutions were required to control and administer and give a certain civilised direction to these wretched masses of people. In this same league, one of the sources of international law got identified as the “law recognized by civilized nations.”⁴⁵ It presupposes cruelty or uncivility at its backdrop or background.

Professor Bilgrami points it out

*[i]n the semantic stipulation, civility was contrasted with cruelty which was the property of the lifestyles and behaviours of the ruled populace. When I call the semantics, I mean to suggest that this distribution of locations for civility and cruelty respectively had nothing to do with the empirical concerns of evidence and observation. These were stipulations of how these words were to be used and internalised independent of the facts of behaviours and locations. So civility was the property of the lifestyles of the propertied classes and the courts and the monarchs, cruelty of the ruled population.*⁴⁶

He goes on to say

[t]he self-deceptive effect of the semantics, part civility, was to create a screen that hid from the European monarchs and their courts and the

43. *Id.*

44. For more, see MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (1991); MICHEL FOUCAULT, *THE ORDER OF THINGS: AN ARCHAEOLOGY OF HUMAN SCIENCES* (reissue ed. 1994).

45. STATUTE OF ICJ, *supra* note 19, art. 38.

46. Bilgrami at Cornell, *supra* note 26.

propertied classes the cruelty of their own perpetration on the brute populous who alone were counted by the Semantics as capable of cruelty and from the Southern view in the modern western North, this screen of self-deception morphed over from the notion of civility into the more abstract domains of rights and constitutions and codes whereby cruelty came to be understood by nations who possess such rights and constitutions as only occurring in nations that do not possess them. Thus, the cruelty perpetuated by the former on the distant lands of the latter were hit from the perpetrators because cruelty can only really happen in lands without rights and constitutions, an attitude quite prevalent to this day when it still pervasively assumes that cruelty can only really happen say in Mugabe, Zimbabwe or Saddam's Iraq but not in the metropolitan west.⁴⁷

Therefore, the Global South need not first import the problems of the Global North and then mend those problems again with the ameliorative measures applied in the Global North, which includes secularism. Secularism also has not been able to counter another modernist colonial imprint of communalism and communal violence. As the political psychologist Ashis Nandy points out, “the post-seventeenth-century idea of nation-state and secularism have both been complicit with ethnoreligious violence during the last two centuries . . . Data on mass violence show that secular states, backed by secular ideologies, account for at least two-third of all the deaths in organized mass violence during the twentieth century.”⁴⁸

The conclusion, which is also perhaps the only possible solution, which Bilgrami offers, is ideal: “Nobody in a society or group is well off if someone is badly off.”⁴⁹ It is telling and prophetic when he points the lack of any such assertion or even sloganeering coming from the social philosophers from the Global North in its entire intellectual history since the “self-congratulatory” period of enlightenment.⁵⁰ It reminds one of Mahatma Gandhi's Talisman again when he said

I will give you a talisman. Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of

47. *Id.*

48. ASHIS NANDY, REGIMES OF NARCISSISM, REGIMES OF DESPAIR 54-55 (1st ed. 2013).

49. Bilgrami at Cornell, *supra* note 26.

50. *Id.*

the poorest and the weakest man [woman] whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him [her]. Will he [she] gain anything by it? Will it restore him [her] to a control over his [her] own life and destiny? In other words, will it lead to swaraj [freedom] for the hungry and spiritually starving millions? Then you will find your doubts and your 'self' melt away.⁵¹

Mahatma Gandhi goes on to reconcile Indian nationalism, which was in opposition and a counter to colonialism, with internationalism in the following words:

It is not nationalism that is evil, it is the narrowness, selfishness, exclusiveness which is the bane of modern nations which is evil. Each wants to profit at the expense of, and rise on, the ruin of the other. Indian nationalism has, I hope, struck a different path. It wants to organize itself or to find full self-expression for the benefit and service of humanity at large.⁵²

He goes on to speak about universal brotherhood or sisterhood in the following terms:

My mission is not merely brotherhood of Indian humanity. My mission is not merely freedom of India, though today it undoubtedly engrosses practically the whole of my life and the whole of my time. But through realisation of freedom of India I hope to realize and carry on the mission of brotherhood of man. My patriotism is not an exclusive thing. It is all embracing and I should reject that patriotism which sought to mount upon the distress or the exploitation of other nationalities. The conception of my patriotism is nothing if it is not always in every case without exception consistent with the broadest good of humanity at large.⁵³

Also, in Gandhi's vision of nationalism, there is no scope for an internal or an external enemy and the race question never crops up in its virulent and

51. PYARELAL, MAHATMA GANDHI: THE LAST PHASE: VOLUME II 65 (1958) (emphasis added).

52. *The Selected Works of Mahatma Gandhi: Vol-5: Voice of Truth*, GANDHI SEVAGRAM ASHRAM, <http://www.gandhiashramsevagram.org/voice-of-truth/gandhiji-on-nationalism-andinternationalism.php> (last visited March 9, 2017) (referring to *Young India*, June 18, 1925, at 211).

53. *Id.* (referring to *Young India*, April 4, 1929, at 107).

violent form which was ravaging the Global North. He says in the following lines:

*Just as the cult of patriotism teaches us today that the individual has to die for the family, the family has to die for the village, the village for the district, the district for the province, and the province for the country, even so a country has to be free in order that it may die, if necessary, for the benefit of the world. My love, therefore, of nationalism or my idea of nationalism is that my country may become free, that if need be the whole of the country may die, so that the human race may live. There is no room for race hatred there. Let that be our nationalism.*⁵⁴

Once this ideal or sloganeering (“nobody in a society or group is well off if someone is badly off”), which is alternatively modern, is taken seriously to form the discourse for international law, a global order will automatically emerge which will be representative of the legitimate concerns of all the states and their populace and not the prefixed and hyphenated nation-states as such. If the fact of one’s well-offness is linked to someone’s less-offness, it would automatically lead to a better world, whether within states or without states as a body-politik. This analogy, when extrapolated to international law, would become the phenomenological analogy for international law. This is also where Professor Akeel Bilgrami reasserts the spirit of Mahatma Gandhi, and places his ideas in complex philosophical categories, hitherto not thought about, or if thought about then *not lived*, and establishes him not just as an unmeditated man of action but as a philosopher who lived his ideas as a moral exemplar.⁵⁵ Furthermore, this exemplary moral life, Mahatma Gandhi wanted to live in a way which did not make any other human lives worse off than he himself.

IV. Tagore and International Law

One of the supreme examples of the creative genius of the Global South was the Bengali poet Rabindranath Tagore, who also happened to be the first Asian to have won the Nobel Prize for Literature. Not that Nobel Prize alone lends credibility to the greatness of a poet, thinker and philosopher; but a

54. *Id.* (referring to Gandhiji in *Indian Village* (1927), at 170).

55. Bilgrami, *supra* note 13.

Nobel Prize to a Global Southerner who always stood by his beliefs, to be given global and European recognition at the heydays of empire which controlled most of Asia, Africa and Latin America, amounts to something and speaks volumes about the man and his work. What becomes crucial in understanding the significance of Tagore is his cosmopolitanism and humanity even when suffering under the colonial regime which inspired creativity, resistance and challenge across nations in Asia, Africa and Latin America.⁵⁶ The colonisation of Korea created a sense of affinity between Korea and India; and Tagore's poetry of "Korea lighting the eternal lamp in the east" created a sense of pride and confidence among Koreans during its Japanese colonisation.⁵⁷ It ensured his status as the most famous foreign poet in Korea apart from of course the larger impact he had on Korean literature.⁵⁸ This was coupled with a critique of jingoistic nationalism in Japan and Europe which again brought him closer to the suffering masses of the Global South, including Korea and the rest of Asia.⁵⁹ It is something akin to the hopeful imagination of Immanuel Kant for a "perpetual peace" of republican European states.⁶⁰ But Europe took nearly two centuries since this essay by Kant and two World Wars to come together in the form of European Union. Kant's pacific union was not imagined for the whole world but was meant to be confined to that of Europe. On the other hand, we have a cosmopolitan vision of Tagore, who did not even receive regular school education and wrote all his masterpieces in his native Bengali language (apart from his famous essays, which were written in English), and yet achieved global fame, instilled a sense of self-confidence for the entire Global South, and a special affinity with the colonised world which constituted most of Asia, Africa and Latin America.

56. Martha C. Nussbaum, *Patriotism and Cosmopolitanism*, in FOR LOVE OF COUNTRY? 3 (1996).

57. Kim Woo Jo, *Korea*, in RABINDRANATH TAGORE: ONE HUNDRED YEARS OF GLOBAL RECEPTION 25 (Martin Kämpchen & Imre Bangha eds., 2014).

58. *Id.*

59. SISIR KUMAR DAS, THE ENGLISH WRITINGS OF RABINDRANATH TAGORE VOLUME TWO: PLAYS, STORIES, ESSAYS 417 (reprt. ed. 2012) (essays on Nationalism). See also Subhoranjan Dasgupta, *Tagore's Critique of Nationalism*, in TAGORE: AT HOME IN THE WORLD 97 (Sanjukta Dasgupta & Chinmoy Guha eds., 1st ed. 2013).

60. IMMANUEL KANT, PERPETUAL PEACE: A PHILOSOPHICAL SKETCH (1795), <http://isites.harvard.edu/fs/docs/icb.topic248058.files/March%2017%20readings/Kant%20Perpetual%20Peace%20section%20II.pdf>.

Tagore was among the first critics of extreme and virulent forms of nationalism which he witnessed while on his trip to Japan. A poet and a thinker has a presentiment of what is to come, which in the sacralised world-view of the Global South, gets mixed up with religion and spirituality. Whether it was a poetic sentiment or a spiritual understanding, the poet Tagore foresaw of what was to come and history betrayed all what Japan did to most of Asia, including Korea and China. What is even more important, in this global view from the South, is how to avert any such future happenings of untold misery. Tagore, in the same breath he made in a criticism of extreme nationalism, also spoke of the creative unity of mankind. Tagore says

“[i]n everyday life our personality moves in a narrow circle of immediate self-interest. And therefore our feelings and events, within that short range, become prominent subjects for ourselves. In their vehement self-assertion they ignore their unity with the All. They rise up like obstructions and obscure their own background.”⁶¹

This creative unity is extremely essential is eliciting the most empathetic and humane responses from all the human actors and agents involved in writing down the rules of international law, and more importantly, in interjecting on behalf of these rules to implement them not just in letter but in its spirit as well. This is where the behavioral school of international law and international relations becomes very important. Even the Yale law school scholars focus on individuals or group of international actors deciding the fate of the rest of the world.⁶² It is in these circumstances that Tagore’s idea of creative unity becomes immediately essential and necessary apart from its general importance for everyone else and for all times to come. It no longer remains just the yearnings of an idealist romantic composing and singing songs in the sylvan surroundings of Santiniketan, the school and university opened by him. He, in his earnestness for unity, does not discount the differences; in fact, he provocatively and convincingly exhorts each individual to celebrate and revel in the diversity of the world.⁶³

61. DAS, *supra* note 59, at 509.

62. W. Michael Reisman, *The View from the New Haven School of International Law*, 86 AM. SOC. INT’L L. PROC. 118 (1992).

63. AMARTYA SEN, *THE ARGUMENTATIVE INDIAN: WRITINGS ON INDIAN HISTORY, CULTURE AND IDENTITY* 118-20 (1st ed. 2005).

He goes on to say

[o]ur mind has faculties which are universal, but its habits are insular. There are men who become impatient and angry at the least discomfort when their habits are incommoded . . . The modern age has brought the geography of the earth near to us, but made it difficult for us to come into touch with man. We go to strange lands and observe; we do not live there. We hardly meet men: but only specimens of knowledge. We are in haste to seek for general types and overlook individuals.

When we fall into the habit of neglecting to use the understanding that comes of sympathy in our travels, our knowledge of foreign people grows insensitive, and therefore easily becomes both unjust and cruel in its character, and also selfish and contemptuous in its application.”⁶⁴

A true unity could only be achieved if the superficialities which people have surrounded themselves with could be shed. These artificial superficialities restrict in the proper growth of creative unity coupled with respect and empathy for the other. There is no room, not even a mention of internal or external enemy formulations in the thoughts and writings of Tagore. He is immensely positive, not naïve in the least, without the least bit of artifice, and reaffirms our faith in humanity and its future in harmony with nature. After all, with no global legislator, it can only place its buck on the goodness of human nature, and if the individual human actor or set of actors are for creative unity of mankind, international law theory and practice will become far more universal, representative and empathetic.

Tagore is critical of the ‘modern,’ read notions of development of the Global North, and in the same breath critiques ‘utility’ and ‘utilitarianism,’ which reduces ‘nature’ to ‘natural resources’ in Professor Bilgrami’s sense, when he says

a relationship of pure utility humiliates man - it ignores the rights and needs of his deeper nature; it feels no compunction in maltreating and killing things of beauty that can never be restored . . . The facts that man is brave and kind, that he is social and generous and self-sacrificing, have some aspect of the complete in them; but the fact that he is a manufacturer of gunny-bags is too ridiculously small to claim the right

64. DAS, *supra* note 59, at 530.

of reducing his higher nature to insignificance. The fragmentariness of utility should never forget its subordinate position in human affairs. It must not be permitted to occupy more than its legitimate place and power in society, nor to have the liberty to desecrate the poetry of life, to deaden our sensitiveness to ideals, bragging of its own coarseness as a sign of virility. The pity is that when in the centre of our activities we acknowledge, by some proud name, the supremacy of wanton destructiveness, or production not less wanton, we shut out all the lights of our souls, and in that darkness our conscience and our consciousness of shame are hidden, and our love of freedom is killed.⁶⁵

V. Conclusion

With the changing economic reality, multiple voices are being heard but all these multitudinous voices are drowned in surrealism, and still the only voice heard is that of the European worldview and its extraction in the form of American worldview which is in the form of realism. Realism alone cannot explain the full reality and lacks the subtlety of expression to represent a complex human mind and behavior both in art as well the *real* world. Realism as the only option governing international law makes the world so much poorer as against the vast array of options available which have the potential to make life and law beautiful, and a celebration of human creative potentials. It is in the same spirit, some of the most creative minds broke free of the dull and drab realism in art and even form itself. As in art so also in international law, this ‘form,’ this ‘selfish form’ of realism, needs to be broken to unleash the positive potentials of modernity, ‘an alternative modernity’ into impressionism, post-impressionism, fauvism, Dadaism, modernism, post-modernism and the like. Not in its orthodox form, but post-modernism as a theme has been somewhat dealt with by Professor Koskenniemi, yet it does not offer an ‘alternative modernity discourse’ to international law. It functions very much in the prevailing European discourse of international law. This is where scholars and thinkers from the Global South can chip in and fill in the much-needed gap which is turning into an ever-widening gorge.

The *clichéd* part of the response would be to delve into ancient and classical original sources, then early and late medieval sources, and then early

65. *Id.* at 538-39.

modern period to create a whole hagiographic tradition to begin with, as an alternative understanding of how the world would be governed, and how we would constitute the understanding of the law under which the world would be governed in the future. All these possible additions could be made to the understanding of international law to make it richer and more vibrant. I would like to add the quote of Schopenhauer which he wrote in the preface to the first edition of *The World as Will And Representation* in August, 1818

[b]ut if he has shared in the benefits of the Vedas, access to which, opened to us by the Upanishads, is in my view the greatest advantage which this still young century has to show over previous centuries, since I surmise that the influence of Sanskrit literature will penetrate no less deeply than did the revival of Greek literature in the fifteenth century; if, I say, the reader has already received and assimilated the divine inspiration of ancient Indian wisdom, then he is best of all prepared to hear what I have to say to him.⁶⁶

Notwithstanding the fact that Orientalism has had its day, and we are in a post-orientalist phase where the wide flourishes of Said are being questioned and challenged its profound and long-lasting impact is still felt. The studying of post-colonial societies has not been the same since Said's Orientalism.⁶⁷ But, even if we are to consider orientalism seriously and put Schopenhauer's optimism in a cloud of doubt, it passes scrutiny based on above discussions of myth in a Jungian manner and Said's own curious silence⁶⁸ over the views of thinkers from the Global South itself who remained either uninfluenced or largely unaffected by the metropole in the Global North.

Thus, we would see that the First Buddhist Council held at Rajgriha or modern day Rajgir, immediately after the death of Gautam Buddha, was the first organised attempt by human civilisations to reach peace and tranquility for human and non-human animals. The second international meet was the Second Buddhist Council held at Vaishali under Kalasura around a century after Gautam Buddha's mahaparinirvana for the same ends of peace to entire humanity. The third international meet was the Third Buddhist Council held at Pataliputra under Ashoka, the veritable Mauryan Emperor. Professor Schumann

66. ARTHUR SCHOPENHAUER, SCHOPENHAUER: THE WORLD AS WILL AND REPRESENTATION, VOLUME I, at 8-9 (Christopher Janaway ed., Judith Norman & Alistair Welchman trans., 1st ed. 2010).

67. For more, see EDWARD W. SAID, ORIENTALISM (2001).

68. Bilgrami at Cornell, *supra* note 26.

writes “[a] Third Council was held at Pataliputta (Patna) in 253 BC under the patronage of the great Indian Buddhist Emperor Asoka Moriya (Skt Asoka Maurya). This assembly of a thousand monks was presided over by Moggaliputa Tissa.”⁶⁹ This is when Pataliputra was the largest urban conglomerate in the known world. The Fourth and the last Buddhist Council was held under Kanishka in modern day Kashmir. I think such organised attempts at peace and brotherhood for any region of the world was perhaps made only with the formation of the League of Nations for Europe after the First World War. And we just need to compare the precepts of the League of Nations with the available documents and discussions at the four Buddhist Councils and Buddhist doctrines to understand how developed and advanced the ideas of humanity and international law were at the Buddhist Councils more than two thousand years ago, and realise how the same conclusions took so long for the ‘modern’ Global North to reach which could have been adequately sourced in the Global South.⁷⁰ These ideas can become a major source and form the theoretical foundation of international law for a better and more equitable world and which is far more representative in character at the same time.

The Ashokan edicts and rock pillars contain a whole list of *sadachar* or good conduct which had nothing to do with any Dharma/Dhamma in particular but was certainly inspired by Buddhism which was the dominant tradition of the day and contained all the good principles which would make life more livable for both humans and non-humans. Professor Patrick Olivelle writes “Asoka’s *Dhamma* did not conform to the religious policy of anyone of the existing religions of his time.”⁷¹ He goes on to write

*[w]hat is this Dharma/Dhamma? (Dhamma added), the response is more generic: absence of sin, abundance of good acts (kalyana), compassion (daya), liberal giving (dana), truthfulness, and purity . . . A significant point of Asokan Dharma is that it does not discriminate different groups; it is a universal Dharma applicable to all, regardless of social station, economic status, gender, or nationality.*⁷²

69. H.W. SCHUMANN, THE HISTORICAL BUDDHA: THE TIMES, LIFE AND TEACHINGS OF THE FOUNDER OF BUDDHISM 262 (2004).

70. *Id.* at 130-93.

71. Patrick Olivelle, *Asoka’s Inscriptions as Text and Ideology in REIMAGINING ASOKA: MEMORY AND HISTORY* 157, 171-72(Patrick Olivelle, Janice Leoshko & Himanshu Prabha Ray eds., 2012).

72. *Id.*

Based on the different inscriptions, the aggregate list of virtues contained in the Ashokan Dharma were⁷³:

- (a) Obedience to mother and father, and to elders.
- (b) Kindness to living beings – in a special way, abstention from killing living beings.
- (c) Generosity to friends, relatives, Brahmanas and Sramanas.
- (d) Speaking the truth.
- (e) Spending little and storing little, that is, life not given to extravagance.
- (f) Proper regard to slaves and servants.

Ashoka sending peace emissaries across the known world and to all his neighbours is the first such recorded organised form of peace initiative done in a consistent manner in international relations forming international law (at least regional international law). Ashoka went to the extent of sending his own sons and daughters as peace emissaries like Sanghamitra⁷⁴ who brought the sapling of the “Bodhi tree” (the tree under which Gautam Buddha had attained enlightenment in Bodh Gaya in Bihar) and planted it in Sri Lanka and Mahendra who converted the Sri Lankan emperor to Buddhism and brought Buddhism to Sri Lanka.⁷⁵

Coming closer to our own times, i.e., 16th, 17th and 18th centuries are also replete with developed international law concepts and treaties governing relations *inter se* amongst states of East Indies on the one hand and amongst states of the East Indies and European states on the other. Professor C.H. Alexandrowicz attests to it in the following words:

Though the Europeans had sailed to the East Indies since the end of the fifteenth century equipped with legal titles of a unilateral character and though they had at first intended to discover and to occupy lands, and where necessary, to establish their territorial possessions by conquest, they had in practice to fall back on negotiation and treaty making in preference to resorting to war. In fact they found themselves in the middle of a network of States and inter-State relations based on traditions which were more

73. *Id.*

74. NAYANJOT LAHIRI, ASHOKA IN ANCIENT INDIA 282 (2015).

75. *Id.* at 109.

*ancient than their own and in no way inferior to notions of European civilization.*⁷⁶

A cataloguing of the practices among states of the Global South can be a starting point, which then at a theoretical plane offers a different source of international law. After all, customs are the primary sources of international law and it is mostly these customs which find their way in treaties. Therefore, the customs and customary practices of the Global South need to be acknowledged and identified as such – as sources of international law to make a more representative world. Such a world would be able to both articulate as well as resolve the grave problems of human rights abuses, state aggression, terrorism, poverty, climate change and the like.

Additions could be made from all the classical scholars whether of Sanskrit, Pali, Prakrit or Persian vintage in the sub-continental context; or any such folk or spiritual tradition or a tradition untouched by colonial contact and coming from the Global South. Then there are hosts of eclectic, divergent, revolutionary, mystical, metaphysical, resolutely orthodox, and conservative and other traditions which worked simultaneously which would again add a rich understanding of how all these ideas shaped and made what a marvelous mix of ideas forming the global south. And then use these ideas in enriching the whole understanding of international law and also developing an alternative worldview based on an alternative modernity which is far more just than what Europe, with its fetishism for powerful nation-states (an intoxicating political idea which has engulfed the present-day world and is taken to be an *ipso facto norm*), has bequeathed us in the recent past.

Once this theoretical construction is created and alternative historical roots of international law is explored, which is also part of the common heritage of mankind, it would ameliorate the epistemic violence done to the Global South (even though most of the times it might lead to the same or similar results), and would lead to greater acceptability and the ‘universally’ desired success of international law and international law norms.

76. C.H. ALEXANDROWICZ, AN INTRODUCTION TO THE HISTORY OF THE LAW OF NATIONS IN THE EAST INDIES (16TH, 17TH, AND 18TH CENTURIES) 224 (1967).

Bibliography

- Akeel Bilgrami, *Gandhi, The Philosopher*, 38 *ECON. & POL. WKLY.* 4159 (2003).
- AMARTYA SEN, *IDENTITY AND VIOLENCE: THE ILLUSION OF DESTINY* (2006).
- AMARTYA SEN, *THE ARGUMENTATIVE INDIAN: WRITINGS ON INDIAN HISTORY, CULTURE AND IDENTITY* (1st ed. 2005).
- ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (1st ed. 2005).
- ARTHUR SCHOPENHAUER, *SCHOPENHAUER: THE WORLD AS WILL AND REPRESENTATION, VOLUME I* (Christopher Janaway ed., Judith Norman & Alistair Welchman trans., 1st ed. 2010).
- Ashis Nandy, *An Anti-Secularist Manifesto*, 22 *INDIA INT'L CTR. Q.* 35 (Spring 1995).
- ASHIS NANDY, *INTIMATE ENEMY: LOSS AND RECOVERY OF SELF UNDER COLONIALISM* (2d ed. 2009).
- ASHIS NANDY, *REGIMES OF NARCISSISM, REGIMES OF DESPAIR* (1st ed. 2013).
- BARTOLOME DE LAS CASAS, *A SHORT ACCOUNT OF THE DESTRUCTION OF THE INDIES* (1st ed. 1992).
- BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* (rev. ed. 2016).
- B.S. Chimni, *Retrieving "Other" Visions of the Future: Sri Aurobindo and the Ideal of Human Unity*, in *SITUATING SRI AUROBINDO: A READER* 130 (Peter Heehs ed., 2013).
- C. G. JUNG, *MEMORIES, DREAMS, REFLECTIONS* (Aniela Jaffe ed., Clara Winston & Richard Winston trans., reissue ed. 1989).
- C.H. ALEXANDROWICZ, *AN INTRODUCTION TO THE HISTORY OF THE LAW OF NATIONS IN THE EAST INDIES (16TH, 17TH, AND 18TH CENTURIES)* (1967).
- DRUK-GI CHA-THRIMS-CHEN-MO [CONSTITUTION] (Bhutan).
- EDWARD W. SAID, *ORIENTALISM* (2001).
- G. W. F. HEGEL, *THE PHILOSOPHY OF HISTORY* (2004).
- GEORGE GHEVERGHESE JOSEPH, *THE CREST OF THE PEACOCK: NON-EUROPEAN ROOTS OF MATHEMATICS* (3d ed. 2010).
- H.W. SCHUMANN, *THE HISTORICAL BUDDHA: THE TIMES, LIFE AND TEACHINGS OF THE FOUNDER OF BUDDHISM* (2004).
- HOWARD ZINN, *A PEOPLE'S HISTORY OF UNITED STATES* (reissue ed. 2016).

- IMMANUEL KANT, PERPETUAL PEACE: A PHILOSOPHICAL SKETCH (1795), <http://sites.harvard.edu/fs/docs/icb.topic248058.files/March%2017%20readings/Kant%20Perpetual%20Peace%20section%20II.pdf>.
- JACQUES DERRIDA, THE EAR OF THE OTHER: OTOBIOGRAPHY, TRANSFERENCE, TRANSLATION (Christie McDonald ed., Peggy Kamuf & Avital Ronell trans., 1988).
- JOHN M. HOBSON, THE EASTERN ORIGINS OF WESTERN CIVILIZATION (2004).
- KARL MARX, DISPATCHES FOR THE NEW YORK TRIBUNE: SELECTED JOURNALISM OF KARL MARX (2007).
- KIRBY DICK & AMY ZIERING KOFMAN, DERRIDA: SCREENPLAY AND ESSAYS ON THE FILM (1st ed. 2005).
- Kim Woo Jo, *Korea*, in RABINDRANATH TAGORE: ONE HUNDRED YEARS OF GLOBAL RECEPTION 25 (Martin Kämpchen & Imre Bangha eds., 2014).
- Martha C. Nussbaum, *Patriotism and Cosmopolitanism*, in FOR LOVE OF COUNTRY? 3 (1996).
- Martti Koskenniemi, *Histories of International Law: Dealing with Eurocentrism*, in RECHTSGESCHICHTE 152 (2011).
- MARTTI KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960 (1st ed. 2001).
- MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON (1991).
- MICHEL FOUCAULT, THE ORDER OF THINGS: AN ARCHAEOLOGY OF HUMAN SCIENCES (reissue ed. 1994).
- NAYANJOT LAHIRI, ASHOKA IN ANCIENT INDIA (2015).
- PARTHA CHATTERJEE, NATIONALIST THOUGHT AND THE COLONIAL WORLD: A DERIVATIVE DISCOURSE (2d ed. 1993).
- Patrick Olivelle, *Asoka's Inscriptions as Text and Ideology*, in REIMAGINING ASOKA: MEMORY AND HISTORY 157 (Patrick Olivelle, Janice Leoshko & Himanshu Prabha Ray eds., 2012).
- PEN. CODE (1860) (India).
- PYARELAL, MAHATMA GANDHI: THE LAST PHASE: VOLUME II (1958).
- School of Criticism and Theory, *Alternative Modernities?: A View from the South*, CORNELL U. (Aug. 8, 2013), <http://www.cornell.edu/video/alternative-modernities-a-view-from-the-south>.
- SISIR KUMAR DAS, THE ENGLISH WRITINGS OF RABINDRANATH TAGORE VOLUME TWO: PLAYS, STORIES, ESSAYS (reprt. ed. 2012).
- SonytoBratsoni, *Jacques Derrida on Religion 1/2*, YOUTUBE (June 4, 2012), <https://www.youtube.com/watch?v=gyOWAcplab8>.

- SonytoBratsoni, *Jacques Derrida on Religion 2/2*, YOUTUBE (June 7, 2012), <https://www.youtube.com/watch?v=X4v7kh-f7Yc>.
- Subhoranjan Dasgupta, *Tagore's Critique of Nationalism*, in TAGORE: AT HOME IN THE WORLD 97 (Sanjukta Dasgupta & Chinmoy Guha eds., 1st ed. 2013).
- Sudipta Kaviraj, *On the Structure of Nationalist Discourse*, in THE IMAGINARY INSTITUTION OF INDIA: POLITICS AND IDEAS 85 (2010).
- SURESH SHARMA & TRIDIP SUHRUD, M K GANDHI'S HIND SWARAJ: A CRITICAL EDITION (2010).
- The Selected Works of Mahatma Gandhi: Vol-5: Voice of Truth*, GANDHI SEVAGRAM ASHRAM, <http://www.gandhiashramsevagram.org/voice-of-truth/gandhiji-on-nationalism-and-internationalism.php> (last visited March 9, 2017).
- UNITED NATIONS, STATUTE OF THE INTERNATIONAL COURT OF JUSTICE (1946).
- W. Michael Reisman, *The View from the New Haven School of International Law*, 86 AM. SOC. INT'L L. PROC. 118 (1992).
- WALTER HAUSER & KAILASH CHANDRA JHA, CULTURE, VERNACULAR POLITICS, AND THE PEASANTS: INDIA, 1889-1950: AN EDITED TRANSLATION OF SWAMI SAHAJANAND'S MEMOIR (2015).