

In conversation with Anthony Anghie

Professor Antony Anghie will receive an Honorary Doctor of Laws (LLD) from the University of Kent on Tuesday 16 July. To mark the occasion, Professor Anghie was interviewed through a series of emails by recent KLS graduate George Hill. What ensued was an illuminating email dialogue on the international legal order, the 'Third World Approaches to International Law' (TWAIL) movement and the university. This is the full transcript of their exchange.

George Hill: Your early life exposed you to some of the many conflicting faces of (post)colonialism. To what extent did your experience as a Sri Lankan student at Monash University, coming from a state that had felt the full force of Portuguese, Dutch and then British occupation, to Australia, a nation with an equally complex relationship with the colonial dynamic, sculpt your personal and academic identity? Was your experience of the 'dynamic of difference' initially a personal one?

Antony Anghie: I suppose all scholarship is to some extent autobiographical. Growing up in Sri Lanka, I did not really think much about issues of colonialism. Sri Lanka became a Republic in 1972, but the relationship with the British was generally affable, and certainly that was reflected in many traditions begun by the British that were enthusiastically embraced by Sri Lankans; and then of course there is the Sri Lankan obsession with the most imperial of games, cricket (an obsession I share, by the way). In fact, Colin Cowdrey, the wonderful Kent and England player, was one of my heroes. But I did have a vague sense that I was from this thing, 'The Third World'. I was also conscious of the fact that I was part of a very privileged elite in Sri Lanka. It was only in Australia, at university, a student of some outstanding and generous teachers at Monash such as Herb Feith, David Goldsworthy and Christopher Weeramantry that I began to systematically explore some of the basic questions that had puzzled me as a boy in Sri Lanka. Why are some countries rich and other countries poor? Why were some people rich and others poor?

The question about the 'dynamic of difference' is a very perceptive one-and in fact I can see in retrospect how it applies perfectly to my attempts to fit into Australia! But it is not an idea I consciously held at the time.

G: You maintain that the TWAIL movement continues a tradition inherited from TWAIL 1 scholars and practitioners. Which moments, experiences and influences were particularly formative to your early engagements with TWAIL?

A: It was my great good fortune that Professor Christopher Weeramantry (always 'Professor' to me) was a teacher and mentor to me from the very beginning of my law school days. Reading his work and taking his classes was a very real way of engaging with and understanding what we might now call the TWAIL tradition. He was a professor at Monash, and he was completely assured and accomplished in everything he did and taught, a master of both the common and civil law traditions. His achievements and status gave me enormous inspiration in pursuing the 'Third World' tradition and seeing it as a valid and important project and not some interesting but irrelevant diversion. So it became urgent and important to read scholars such as Bedjaoui and Anand even though this was in the 1980s, when the 'Third World' vision was collapsing, and academia was very often dismissive of what it had attempted to do with the NIEO and Non-Aligned movement. Fortunately again, I also had very encouraging teachers in my study of Politics, Herb Feith who taught a course called 'Rich World, Poor World', where I could study Fanon, dependency theory, development policy, post-colonial theory with someone who was a champion of the Third World cause. Herb and David Goldsworthy, another superb teacher, gave me all the encouragement and support I needed.

Later I spent several years as Prof's research assistant, working on the Nauru case, and that gave me a very clear idea of how the history of international law had impacted a small country far from the

centres of European power. Examining the very concrete legal issues and disputes that emerged from that experience enabled me to connect the elements of what could be narrowly defined as a series of 'legal disputes' with this larger history of the relationship between imperialism and international law. And then of course, Prof's decisions-his many dissenting opinions-many years later, as a Judge on the ICJ, showed how a TWAIL Judge, if I could use such a clumsy term, addressed some of the major issues of our time, the rights of war and peace, environmental damage, nuclear war. Both in relation to Nauru and his work on the ICJ, it was extraordinary to be able to see at first hand how Prof approached these issues and to be able to discuss them with him later.

G: What did you regard as the guiding purpose or aim of your early scholarship? How has this changed, if at all, over time?

A: My earliest published work was on human rights and minority protection. After that I wrote on the Nauru Case in 1993, and that was really when I sketched out the essence of my ideas of the relationship between imperialism and international law. The major claims I make in my book-on the centrality of imperialism to international law, the dynamic of difference-are all in that article. The challenge I had was to sketch out a history of international law that made imperialism central to the story, a TWAIL history of international law if you will, a history that was credible and scholarly. I finished my SJD thesis in 1995, and several senior scholars including Martti Koskenniemi, who encouraged me to get in contact with Cambridge UP, were good enough to say it was an important work that should be published as soon as possible. Another friend, Annelise Riles, looked at the thesis and gave me very astute advice-she said that, given the novelty of the argument and the challenge it presented to the conventional progress story of international law that the whole profession had invested in, I needed to make my arguments, if not completely convincing, then at least persuasive and compelling. I knew she was right, and if I failed, the TWAIL history of international law argument would be discredited and dismissed as another implausible and failed exercise in third world whining and complaint. So suddenly, instead of enriching and consolidating the TWAIL tradition, I realized I could cause it immense damage while also failing my TWAIL II colleagues at a stage when TWAIL II was still emerging. I then felt enormous pressure because I was not writing just for myself anymore. Fortuitously, as it turns out, CUP rejected my manuscript. So I published a series of articles-this enabled me to really focus on particular period and add depth and detail to the argument-and those articles then led to publishing *Imperialism, Sovereignty and the Making of International Law*, almost ten years after finishing my thesis.

Nowadays, I feel that my scholarship is in a sense more varied. I've tried to connect TWAIL with other disciplines such as history and international relations, and to introduce TWAIL to different audiences. I've also tried to elaborate on TWAIL history and how it might illuminate various aspects of international law.

The pressures I feel now are far more mundane-the usual over-commitment, and the anxiety and exasperation and sense of inadequacy and embarrassment over missed deadlines. Sometimes, but only sometimes, I miss the intensity, the sheer difficulty I struggled with in that earlier work, which generated a correspondingly intense satisfaction when I felt I was making progress, seeing something new and different. But I feel reassured by the fact that TWAIL II-or is it III-is now in the safe hands of a brilliant generation of younger scholars!

G: I am intrigued by the fact that you are able to trace TWAIL back to your attempts to mentally tackle difference and inequality as a child. It seems to me that TWAIL seeks to provide a forum within legal academia for confronting these human and instinctive reactions to the third-world and postcolonial condition. Do you feel that TWAIL has successfully bridged the gap between these fundamental concerns and the sometimes intimidating and often Eurocentric world of legal academia?

A: Has TWAIL been able to bridge the gap....well, it's difficult to know. It is certainly an ambition of TWAIL to provide people, especially from the developing world, with a vocabulary, a set of analytic

tools that would enable them to explore their own condition, their concerns, about inequality and the aftermath of formal Empire, for instance; and the further step is to see such an exploration as a legitimate academic and professional pursuit as opposed to some erratic and unsound 'political' approach that would disqualify you from being regarded as a proper 'professional', impartial, objective international lawyer-the sort who could be trusted to argue a case before the ICJ.

In terms of the gap you refer to, I should add that I myself have been very fortunate. I have already mentioned the importance to me of Prof Weeramantry at Monash. And then I had, Professor David Kennedy at Harvard as my SJD supervisor and David too gave me all the freedom and encouragement I could possibly want. I'm not sure how to assess the overall situation. I have been told by some students that their teachers or supervisors had discouraged them from reading TWAIL work! So if this is the case, there is a problem. But I would like to think that TWAIL is now more mainstream and that it is heartening that many international lawyers seem to increasingly accept that there is something to be said for the TWAIL position. Furthermore, many of the 'TWAIL concerns' about issues of power and inequality are becoming 'global' concerns-witness the current debate about the relationship between human rights and neo-liberalism. Of course, these debates take new forms, but TWAIL writers such as Upendra Baxi, Balakrishnan Rajagopal and James Gathii had a lot to say about this broad topic many years ago. Karin Mickelson has been writing incisively about the environment for many years. My colleague M.S.Sornarajah developed over the last two decades a critique of investment law that has now become pretty much the conventional position. His views were often dismissed but he has now been proven right in so many important respects. We still have a great deal to learn from these scholars. What all this suggests is that now, it is TWAIL that is 'universal', that what were perceived as the narrow concerns of the third world are now seen as 'global concerns' even by the orthodoxy.

G: Questions of inclusivity are a hot topic in many UK Universities, not least at Kent Law School, where the Decolonise the Curriculum programme has enjoyed resounding success, organising a conference in March and presenting its manifesto to the House of Commons just last week. Beyond the sometimes-esoteric scope of legal discourse, what do movements such as TWAIL, decolonise the curriculum etc, offer to the university as an environment? Do Universities have a responsibility to deconstruct remnants of the colonial legacy?

A: In a way I think my previous response covers the question about 'decolonization'. I have recently encountered versions of this debate in Colombia (thanks to Luis), South Africa, and various parts of Asia, and in each place the same broad theme has a different and complex resonance. To me it is fairly simple. Surely as scholars and as Universities, we have the mission of expanding knowledge and learning? I think it was Salman Rushdie who said something like: 'So much British history took place overseas'-and that overseas history needs to be understood. People are often unaware about their own histories-but for different reasons.

In international law we see another version of this, an unawareness of the colonial dimensions of many great figures in the discipline. We revere Grotius, but it is only relatively recently that the Eastern Grotius, the Grotius who was the dedicated servant of the Dutch East India company, is being studied. What I find very encouraging and touching when I travel in Europe is that the younger generation of students are now very aware of this problem and are eager to explore these new/old histories from different perspectives. And of course, apart from the colonial encounter, there is the issue of engaging with other societies and Empires and the ways in which they thought about order and justice and society. That's the sort of Eurocentrism that Prof Weeramantry was trying to combat.

I encounter a different form of Eurocentrism in Asia. I've just been involved in workshops in Cambodia and Sri Lanka. And what I find striking-but not really surprising-is that they study with dedication the traditional Eurocentric version of international law. This is after all what the textbooks present. As a consequence, however, they and their students could feel completely removed from and alien to the subject as that version usually presents their own country -if mentioned at all-as one of the many

backward and uncivilized that in due course were colonized and civilized and then granted the gift of statehood. Given this beginning, the initial premise of subordination and inferiority, it is hardly surprising that Asians feel 'ambivalent' about international law. In this context then, decolonization strangely enough means acquainting Asian scholars with their own history. Now of course these scholars know their own history, but the difficulty is in connecting that history with the Eurocentric history of international law, which is still largely the official version. I hope TWAIL provides scholars in this predicament with a way of connecting their own history with international law in a plausible and illuminating way. So in Sri Lanka what we discussed was how we could study the Kandyan Convention of 1815-by which Britain acquired sovereignty over Sri Lanka-together with the Peace of Westphalia (which of course everyone knew something about). We might then think of international law in a different way.

So this broad theme of 'decolonization' means different things in different places and I don't think I understand everything that's happening in Britain. But I return to my original point that Universities should be expanding knowledge. And whether we like it or not, some version of the 'decolonization' movement is found in different parts of the world. This trend is compounded by the power shifts we are experiencing, the shift to Asia among other things, and it seems unlikely that universities could wish all this away and isolate themselves from these trends even if they wanted to do so. How does one ignore the *Chagos Case*? A 'comparative' approach of what we might broadly term the 'decolonization issue' may be useful.

G: I am sure that I will not be alone amongst law students in taking hope from the nostalgia that you feel for the more intense and difficult early stages of your academic career. In your view, how do the challenges that you faced differ from those that TWAIL III scholars will encounter?

A: It is the task of each generation to define its own mission (I feel I'm quoting someone here but can't remember whom-Fanon?) and so the challenges facing TWAIL 3 and 4 will change correspondingly and it is difficult to predict what these will be. Empire will take new forms and we urgently need to understand these new forms. At the same time, it is likely that some questions are general enough to endure: how does power work? How does resistance work? What concerns me are the demands placed on younger scholars, who, it seems to me, are expected to be endlessly productive and topical and original and profound all at the same time. Perhaps I'm being old fashioned and personal here, but I needed the peace and quiet and time to think that the University of Utah so generously provided me at the beginning of my academic career. All this gave me the chance to put in my best effort. I could focus on intellectual rather than institutional challenges. Those conditions are difficult to find now anywhere. However, what also got me through the most difficult times were kind colleagues and the TWAIL community-so I hope that some version of that community will be there for all of you.

G: Finally, should we still believe in international law? If so, why?

A: I think we should believe in the idea of international law for both pragmatic and normative reasons. The historical record is very mixed to say the least. But equally, history suggests that any sort of society does create for itself some sort of law; and the question is the role we can play in making that law better or worse. As I have argued elsewhere, some form of international law is always going to be in operation-and that is the case even in these dark times. And I think it is dangerous to withdraw from the debates about what that law is and should be'.