

Resistance and Change in Form and Content of International Law: A Third World Perspective on Commodity Form Theory of International Law

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ABSTRACT

Can Marxists, especially in the Third World, use international law for progressive social change? Responding to the Soviet Union's context and its jurisprudential challenges in constructing socialism, Pashukanis's seminal work on commodity form theory is nihilistic, assuming the very nature of form of international law as bourgeois with limited possibilities of radical change as its new content. European Marxism, on the other hand, in its context of revolutionary defeat and consequent postmodernist pessimism of cultural Marxism, either relies on Pashukanis's nihilistic position or a pragmatist and realist posture, insisting on staying within the law's bourgeois form and being content with social democracy. As opposed to this, Third World Approaches to International Law (TWAIL) scholars, while exploring the imperialist nature of international law and representing one variant of Third World Marxism, have been more optimistic, wanting to use international law to restrain and shield against powerful Western states, i.e., they believe that the content of Third World resistance can change the form of international law. This article deconstructs this class "content" of international law in the understanding of TWAIL and shows the postcolonial Third World states, and even in the yet to be independent states, were dominated by their dependent local elite, which had compromised by the ex-colonizers and had started blocking radical structural changes in Third World. Soon, the target of imperialism and the Third World elite became radical movements in the Third World, and this struggle of the marginalized shaped international law. Therefore, relying on the radical tradition of Third World Marxism and taking the right of self-determination as an example, this article argues that both the content and form of international law were simultaneously used, subverted, and changed in a dialectical and dynamic way by the resistance of the people of the Third World.

Keywords: Resistance, right of self-determination, Third World Marxism, Western Marxism, Soviet Official Marxism.

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Introduction

Mainstream scholars, from the era of colonialism to the postcolonial phase and the current era of neoliberal globalization, argue for the potential of international law in establishing a global order. Within this positivist framework, countries seek to maximize their interests (Goldsmith and Posner 2005: 225). However, in contrast to this perspective, even within mainstream international law scholarship, there are voices of disappointment, painting a portrait of a "lawless world" (Sands 2006). While critical and Marxist scholars are united in their convictions about the colonial and imperialist nature of international law, they are significantly divided regarding

utilizing international law as a tool for progressive social change. On one end of the spectrum are the nihilists who portray international law as inherently biased towards capitalist structures and bourgeois in form, as pointed out by Pashukanis, which radical content cannot change. On the other end are the pragmatists who accept the bourgeois form of international law and, albeit reluctantly, advocate for continued engagement with international law and stand for “principled opportunism.” Strikingly, both these categories of scholars within Western academia (further details to follow) adhere to the theories of Pashukanis (Salomon 2018).

From the Third World critical and Marxist perspective, even though this thought is on the margins within international law, activists, politicians, and international law scholars have consistently maintained their optimism and hope (Buchanan 2008). These Third World international law scholars, primarily represented by a collective approach known as Third World Approaches to International Law (TWAIL), draw their position from their unique historical context of colonialism, anticolonial struggles, and the contemporary injustices endured by Third World nations under neoliberal globalization. These scholars only superficially engage with Pashukanis and align somewhat with the prevalent pragmatic trend in Western Marxist approaches to international law. In this optimism, TWAIL scholars, as well as European Marxists, carry out a problematic analysis of Third World states, their class nature, and the resistance of the marginalized in international law. By deconstructing the analysis mentioned above of TWAIL and building on the radical tradition of Third World Marxism, this article argues that devoid of comprador erstwhile national bourgeoisie, people of the Third World representing a radical strand of Third World Marxism used, subverted, and changed both the form and content of international law in a dialectical and dynamic way.

Before we proceed, it is pertinent to mention at the outset that anticolonial and postcolonial movements were unfolding concurrently in the Third World during the 1950s to 1970s. Some countries, such as India, China, and Pakistan, had already embarked on their postcolonial nation-building endeavors while African nations struggled for independence. These African nations were beginning to discern the shortcomings and failures of bourgeois nation-building projects and consequent postcolonial confusion. In this context, structuralists and, at the same time, scholars from the Third World tried to theoretically understand the changes occurring in the Third World (Baran 1957; Frank 1967; Habib 1963; Kosambi 1956). The process of this endeavor, which sought to understand the Third World's evolution, can be traced through milestones such as the non-alignment movement, the Bandung Conference, the emergence of the Group of 77 (G77), and the culmination of this struggle was the subsequent New International Economic Order (NIEO). A noteworthy demonstration of the diversity and richness of the literature related to NIEO can be found in the work of Robert W. Cox (1979). However, for this article, and to understand the Third World critically and radically, we need to rely on Fanon, Cabral, and Amin, among many others, as a representation of a radical strand of Third World Marxism.

As far as the term Third World is concerned, it started being used after World War II (WWII) for countries in Africa, Asia, and Latin America under unequal terms of trade in the global market (Langley 1981). After the Cold War, attempts came to abandon this term from a cultural and postmodern perspective (Bhabha 2004; Walker 1986). Third World scholars,

mainly from TWAIL, strongly defended the term, especially for resistance against forced recolonization under neoliberal globalization in a unipolar world after 1990 (Chimni 2006: 3). Rajagopal (1998) finds the Third World as a subject resisting injustice in international law along with subjects like gender and race. Chimni (2006: 17) is also right in defending the state's role, especially the Third World state, against the push of a non-interventionist state by a neoliberal hegemonic agenda. For him, the state is a reality and a viable concept. He confines his analysis to the relationship in struggles among states in new legal regimes emerging under World Trade Organization (WTO), etc. What is the class content of this state and its place in imperialist relations? This aspect is missing in TWAIL and is the key to understanding the change in the form and content of the international law from a Third World perspective.

Marxist Understanding of International Law from Colonialism to Anti-Colonialism

From Marx's early writings, characterized by the perspective of young Marx, to his later, more mature works spanning from 1859 to 1875, one consistent thread in his thought is his skepticism toward the efficacy of law (Amin 2021: 361). Regarding the right of self-determination, the only such case of colonization in the West before Marx was Ireland, and he emphasized that the labor of England should support the labor of Ireland in its liberation. The international form of self-determination then was the Monroe Doctrine of 1823, which advocated this right as a legal right against forced colonization and its mutual recognition among nations through bilateral treaties. It was only against the interference of the European state in the influence of the United States (U.S.) in the Western Hemisphere. It overlooks U.S. expansionism in Latin America and denies the right to self-determination of indigenous people (D'Souza 2013: 62). As opposed to this formal right of self-determination and its merely institutional form in international relations, Lenin brought the class content of self-determination based on the class content of nation-states as the subjects of international law. For Lenin, the class content of the nation-states depends on their internal composition and position in imperialist relations in the imperialist stage of capitalism. This way, Lenin could get past the blank principle and support of formal and institutional forms of self-determination and invite us to look at the content of each struggle and, based on this, come up with a perspective of the working class on self-determination (D'Souza 2013: 64).

Now, we need to take into consideration two more aspects. One new postcolonial nation-state was a coalition of classes experiencing imperialist exploitation, and these nation-states were not a stable category in legal and institutional history, as were dominant European nation-states. The right of self-determination, as pointed out by Bowring (2011: 197), was a continuing right for Lenin and could be invoked by a suppressed nation, even in a sovereign state. One can see how Lenin was principled and persistent in applying his thoughts on nation-state claims within the Czarist empire before and after the revolution. Lenin pointed out the class content of nation-states and their connection with imperialism but was weak on the class content of postcolonial states. Therefore, in the Second Congress of Communist International in 1920, he told the communist parties of colonized countries to support their bourgeoisie in leading the bourgeoisie democratic revolution. A Representative from the Indian delegate, M. N. Roy,

objected to this and asked why not go for a proletarian revolution. Lenin asked in response, where is your proletarian, and where is your proletarian party in India? After discussion, Lenin advised supporting the progressive bourgeoisie like Nehru in colonized countries (Alavi 1997: 114). Despite transcending the formal and institutional law of the right of self-determination and knowing the class content of nation-states and their changed and unstable nature under the imperialist stage of capitalism, Lenin could not synthesize his thoughts on this issue, which the later radical tradition of Third World Marxists developed in their revolutionary practice.

To understand the Soviet Union's stance on the right of self-determination after Lenin and to bring Pashukanis into our discussion, a brief introduction to evolving Soviet jurisprudence is necessary. After the revolution, Soviet Union jurisprudence transitioned from post-revolutionary nihilism to legal realism of New Economic Policy (Ludwikowski 1987: 331-332). It reached an optimism for change in international law based on the unique content of socialist law emerging in the Soviet Union.

According to Hazard (Hazard 1938: 248), for Korovin, another Soviet jurist, form and content of law progress hand in hand, and the Soviet Union has brought a new form to international law. As opposed to this, Pashukanis (1980a: 168) does not find limitless possibilities for change in international law, and for him, the form of international law is bourgeois, and it is to resolve conflicts between capitalist states. In that sense, legal form shapes the legal content because legal form is not an empty sack that can be filled with new content. Pashukanis's position was based on his belief that the basis of law is pure commodity exchange under capitalism to regulate conflicts. That is why actual law is private law, and public law is not a law for him (Pashukanis 1980b: 59). Within this theoretical premise on international law and jurisprudential development, let us look at the role of the Soviet Union in supporting the right to self-determination.

Soviet international law was positivist (Freeman 2010: 713). For Bowring (2008), it was mechanical and recognized customs and treaties but did not recognize the general principles of law. Under Lenin, the Soviet Union did not join the League of Nations, kept non-participation in conflict, rejected assistance from Western powers, and refused repudiation of its loans, characterizing the revolutionary government as a rupture from its past (Grzybowski 1964). However, in the face of rising fascism in the late 1920s and early 1930s, the Soviet Union reluctantly started engaging with international law and institutions. Meanwhile, the political landscape in Europe was evolving under the shadow of fascism, making the maintenance of neutrality increasingly challenging. Consequently, the Soviet Union joined the International Labour Organization (ILO) and the League of Nations in 1934. However, the role of the Soviet Union within the ILO was notably limited and primarily focused on countering propaganda against it (Cox 1977).

International law academics differ on the role of the Soviet Union on the right of self-determination. Some jurists strongly argue for its role in promoting the right of self-determination and liberation movements. The Soviet Union supported 43 movements in 26 countries (Golan 1988: 262-267). As opposed to this, some jurists find the role of the Soviet Union problematic in this regard (Quaye 1991). Based on this, Bowring (2011: 198) finds the overall role of the Soviet Union on the right of self-determination to be a "thoroughly

contradictory indeed schizophrenic role after Lenin's death." Within this context, Pashukanis missed the significance of the right of self-determination and the need to recognize the importance of self-determination in international law (Bowring 2011b: 200). Despite this neglect, Pashukanis (1980: 157) supported the struggle for self-determination of colonized countries. A contemporary European follower of Pashukanis in international law, China Mieville, also undermines the right of self-determination. Based on analysis of international law from the mandate system to the UN charter and the politics of decolonization, he finds "the very law of self-determination operates as imperialism" (Mieville 2005: 260-271). Based on this approach of Soviet jurisprudence, the Soviet Union started engaging with international law and institutions, and this shaped its support for the right of self-determination after WWII.

While the Soviet Union had its context of law in its society and possible interventions in international law and institutions according to its foreign policy, the main struggles for independence and the right of self-determination were being fought between the colonizer West and the colonized Third World, shaping related international law.

International Law, Right of Self-determination, and the Rise of Third World Marxism After WWII

As already pointed out, the U.S. stance on the right of self-determination, from the Monroe doctrine to Woodrow Wilson, was very formal. Hence, when this right came in the United Nations (UN) Charter, European colonial powers resisted it (McCorquodale 2021a: 72). Due to the pressure of colonial powers, Universal Declaration of Human Rights (UDHR) rejected the principles of self-determination (Bowring 2008: 160). By that time, self-determination was only a "principle" that turned into a "right" in 1960 in General Assembly Resolution 1514 (XV) of December 14, 1960, known as the Declaration on the Granting of Independence to Colonial Countries and People. It also came in later conventions in 1968, that is, International Covenants on Civil and Political Rights in 1966. It is important to note that the Soviet Union ratified both conventions in 1973. Initially, the right of self-determination does not apply within states; that is, it should not apply against the territorial integrity of states. In the 1960s, extra-territorial social and political organizations were made equal to sovereign subjects of international law, e.g., The Palestine Liberation Organization (PLO), Southwestern African Peoples Organization (SWAP), African National Congress (ANC), and Pan African Congress (PAC). Now, cession from an existing state is seen as an exercise of the right of self-determination (McCorquodale 2021: 77). What made this change in international law to happen? This question is our quest in this article.

The achievements on the right of self-determination in international law were because of the admission of 17 newly independent states (Wilson 1988: 67-68). Bowring (2008: 163), citing from Tunkin's writing of 1970, claimed that in 1919, as many as 64% of the planet's population was in colonies or semi-colonies, but by 1969, only 1% was in colonies. For Bowring (2011: 197), the right of self-determination is the revolutionary kernel of international law. He considers it central to a materialist understanding of rights; for him, it resulted from anticolonial revolts. For Bowring (2008: 168), what made the demand for self-

determination vitally important were the external litigation and ideological self-empowerment of these movements. By taking the example of the right of self-determination, Bowring (2008: 168) demonstrates a dialectical relation of form and content in international law, “the content of the proposed form often came in sharp conflict with its judicial form, and in this process, the content evolved with new significance, in due course transforming the form as well.” To be noted, for Bowring (2008: 160), the role of the Soviet Union in this support of the self-determination of Third World people was contradictory.

What is the class “content” of this change around the right of self-determination in international law and the Third World as its part? How did this class content of the Third World state not only come in conflict with a dependent bourgeois form of the Third World state as well as its place in imperialist relations, as pointed out by Lenin, but not appropriately synthesized? For this, we need to take help from the salient feature of emerging Third World Marxism at that time, particularly its radical form in the tradition of Fanon and Cabral, among others, to properly comprehend the role of the people of the Third World in changing international law in this decisive phase. At the same time, it is also essential to know why, theoretically, Western Marxism, official Soviet Marxism after Lenin, and even some variants of Third World Marxism, as is the case of TWAIL, cannot properly comprehend and appreciate it. Below is a brief history of Third World Marxism’s evolution in departing from Western and official Soviet Marxism.

Perry Anderson (2016) notably observed that Western Marxism had become structurally disconnected from political practice in the 1920s and 1930s. The defeat of Western Marxism at the hands of fascism and Nazism exacerbated this separation. The lack of organic connections with the working class contributed to a prevailing sense of pessimism and resignation within Western Marxism (Anderson 1979). Gramsci’s (2005) main question in 1930s was why the revolution did not happen in Europe and there are concerns about how Gramsci’s concepts like “passive revolution” are overstretched even in Prison Notebooks and his philosophy is politically disabling (Callinicos 2010: 492). The subsequent defeat of the 1968 movement led to the “postmodern condition” in Europe (Lyotard 1979), and the degeneration of Western Marxism into cultural Marxism.

As opposed to this, Third World Marxism results from anticolonial struggles, which is why it is radical, realist, and optimistic. At the same time, it had to confront failing nation-building projects and consequent postcolonial confusion, unleashing its creativity and indignity. But what was its nature? Was it Eurocentric? One perspective is that Third World Marxism was anti-Western within its postcolonial critique. Therefore, it differed from post-Marxism, “Universal Western Marxism,” and “European Marxism” It was flexible, creative, and postcolonial. It was a syncretic tradition of Marxism. It uses Marxism as popular politics rather than coercive force (Young 2016: 6-7). The Third World was also critical of the influence of the Soviet Union, setting it apart from Orthodox or “official Marxism.” There are many variants of Third World Marxism. It is also called Afro-Marxism, Third World Communism etc because twenty countries across the world had governments adhering to Marxism since WWII (Herbst 1990; Molyneux 1984). Going through continuous practice and theoretical developments it is hard to recognize what remains of Marxism or Leninism in Third World

(Wiles 1990)? What is relevant for our discussion is radical tradition of Third World Marxism eager to break the confines of both imperialism as well as its compromised elite.

Why is this important? It is important to re-imagine the abandoned dream of independence and freedom, if not nation-building, for the large swath of masses in Third World/Global South still living in semi-colonial, instead a new form of colonial subordination through legal regimes under WTO and International Financial Institutions (IFIs), under neoliberal globalization?

Class Origins of the Rise of Radical Tradition of Third World Marxism

After the first phase of bourgeois democratic revolutions in countries like India, and with the support of the Soviet Union, from the Chinese revolution to the Algerian struggle for independence, Marxism in the Third World became more radical because of new phase of anticolonial struggle. Subsequently, it grappled with critical questions related to the construction of socialism and the need for newly independent countries (NICs) to break free from the continuity of the control of metropolitan centers, as described in neocolonialism and dependency theory, as well as from their elites. Fanon (1986)¹ told how the political elite of NICs has a colonial mindset and is internally colonized. Later Ngugi (1998), inspired by Fanon's Marxist writings, revolted against the colonial legacies in Art and literature. To conclude, Fanon and later Ngugi brought the continuity of cultural domination of the West in NICs, which we call postcolonial theory with its variants (Young 2016: 65). To be noted, this continuing cultural dependency of NICs ran in parallel with the continuity of the economic and political hegemony of the West.

It is essential to point out here that this article distances itself from postcolonial theory in its contemporary form inspired by deconstructive postmodern techniques in the tradition of Edward Said and Subaltern Studies, which followed the deconstructive path after 1988 under Spivak. As opposed to this, in this article, we rely on the radical tradition of postcolonial theory initiated by Fanon, which early Subaltern Studies represented inspired by the Naxal Bari movement. The Naxal Bari movement in India was a peasant upsurge in the late 1960s against the failure of the bourgeois-democratic revolution to redistribute land after independence in India under Congress with the support of the Communist Party of India (Chandra 1990).

Subaltern Studies in India, globally acclaimed as an example of postcolonial theory, started its critique of bourgeois nationalism and modernity quite in line and inspired by Naxal movement in India in 1960s-70s (Seth 2006; Seth 1997; Seth 2002). But going through the changes by Spivak and others in 1988, it went into deconstructive textual practices at the expense of revolutionary perspectives. This approach gave rise to pessimistic postmodern/poststructuralist tendencies claiming "retrogressive indigenism and softer versions of Hindutva" (Sarkar 1997). This trend was entirely in line with the decline of the revolutionary movement in India and the influence of pessimistic resignation from politics already present in postmodernism and poststructuralism in the West.

¹ Originally published in French in 1952, translated in English by Chales Lam Markmann in 1967 and current references are from 1986 edition by Pluto Press.

Starting with the concept of history, the radical tradition of Third World Marxism distances itself from “European particularism” in Marx, and it emphasizes colonialism and slavery as well as the different stages of development of its societies (Amin 1988). Fanon (1967: 82) cautioned that whatever Marx said about precapitalist societies should be rethought.² Radical Third World Marxism also avoids linear progression, historical determinism, and evolutionism of vulgar, orthodox, or mechanical Marxism developed in the Soviet Union after Lenin. In that sense, it avoids the historical determinism of “inevitable socialism” and “objective optimism.” This approach toward history gives two essential features to the radical tradition of Third World Marxism about anticolonial struggles and liberation movements inspired by socialism. One, the bourgeoisie democratic phase of revolution in Europe is not necessary in the Third World, and second, an organized proletariat is not the only revolutionary force and an ‘objective condition’ for socialism in colonized and postcolonial societies. The creative use of multifaceted contradictions and varied forms of class alliances of the dominated in Third World societies were the key to revolution and liberation. Based on this, as opposed to the reasons of erstwhile scientific socialism of European and Soviet Official Marxism, for radical Third World Marxism, not “appeals to reason or to respect for human dignity can alter reality,” but “free will,” “sentiments,” revolutionary commitment, and combat initiate a cycle of freedom for the Third World (Fanon 1986: 174).

Since there are multiple class forces and contradictions in Third World, the question remains, who is the revolutionary class or classes in the Third World for the liberation of its people? For Marx, the revolutionary class in Europe was the proletariat. Lenin’s main revolutionary class was also proletariat who had a weak alliance with the peasantry. There was also a small but inevitable phase of the bourgeois-democratic revolution in Lenin’s practical political formations in the 1917 revolution. But there is no authentic bourgeoisie capable of defeating imperialism and feudalism in the Third World. There is no dominant organized proletariat also. For Third World Marxists in their radical tradition, a “colossal mass,” dispossessed rural mass, that is, peasantry and lumpenproletariat are the revolutionary force. For Fanon (1967: 77, 145), peasants can come for revolution. For Cabral, according to analysts, peasants are a physical force but not a revolutionary one (Nzongola-Ntalaja 1984; Vembe and Zegeye 2008). The middle class is essential in this revolutionary class formation but is trusted differently by different theorists. For Cabral (1966: 13-14), they are an effective class and have an important role, but they need to commit suicide as a class and be born as a revolutionary class.

However, one more aspect related to class politics needed creative application of the dialectical method when it comes to revolutionary politics and liberation movements in Third World countries: race. For some contemporary international law scholars, race has been the basis of the development of international law for the last few centuries (Roman 2002: 1530). This point becomes crucial in defining the conflict in “class” or “race” terms for liberation movements. Neither Marx nor Fanon ignores the question of race, but Fanon pays more attention to race than Marx. For him, there is something special about the oppression of Blacks,

² Originally published in 1964, translated by Haakon Chevalier in 1967 and the current references are from the 1967 edition published by the Grover Press.

and therefore, other oppressed groups do not suffer like Blacks. Fanon (1986: 123, 163-173) is clear that exploitation can also wear a Black face. Certain settlers are not exploitative, and Negrophobia is sometimes more in the white working class. This way, Fanon can transcend class and race. However, what is unique about Fanon is his understanding of the psychological effects of racism, its internalization or epidermalization of this racist inferiority leading to internal fights and a behavior of self-annihilation in the colonized. Fanon (1986: xiii) tries to understand the psychological basis of the violence theory of revolution prevalent in almost all the liberation movements at that time. This approach shaped resistance in newly independent states and colonized countries not yet independent, and liberation movements or struggles for the right of self-determination took a new content and form in these societies.

There are two inevitable reasons for this change mentioned above. One reason was colonialism's resilient nature, which blocked even the legal, institutional forms of international law with a new wave of positivist international law after WWII under Bretton Woods Institutions. Second, the bourgeoisie of these newly independent countries started internal colonization and curbing dissent and revolutionary movements of the marginalized with force to the next stage of the people's revolution. This repression left the only way for these movements which was to use extra-legal ways of struggles as content and, at the same time, use legal and institutional forms of international law locally and in global solidarity. This liberation movement approach led to the violent theory of revolution in all newly independent postcolonial societies and yet-to-be-independent countries. This point needs some more clarity.

Marx was clear about the possibility of a non-violent "socialist" revolution in the United Kingdom (UK) and USA as both had passed a necessary temporary step of bourgeoisie nationalism. Instead of this, as already pointed out, nation-state formations in newly independent countries in the age of imperialism were not stable institutional formations. In their so-called nation-building project of newly independent countries like India, the national bourgeoisie was not only dependent but also did internal colonization, forging diverse nationalities, ethnic groups, and cultures into one nation. These tactics led to postcolonial confusion because of failing nation-building projects by the 1960s (Azeem 2024).

Secondly, due to its dependent nature, as pointed out by neocolonialism, dependency theory, and radical tradition of postcolonial theory, it could not fulfill its promises of land redistribution and egalitarian society after independence and was also culturally colonized, as pointed out by Fanon. Therefore, disappointed by the so-called erstwhile national bourgeoisie and its bourgeoisie democratic revolution, working classes and marginalized groups in these countries pushed for the following second stage of socialist revolution as in the case of the Naxalbari movement in India and *the Hashat Nagar* peasant upsurge in Pakistan (Ali 2020). In this scenario, imperialism and the local elite joined hands in inflicting violence against these movements.

Meanwhile, learning from this, in still colonized countries in Africa and elsewhere, Third World Marxist revolutionaries like Fanon advised creative ways to bypass the bourgeoisie democratic phase for liberation movements. They suggested directly entering a peoples' democratic phase to create conditions for building socialism through the marginalized themselves. The resilient colonized forces and compromised local elite left no path for these

liberation movements except the “absolute necessity of violence” in the worlds of Fanon (1963: 36).³ He was clear that settlers have kept alive anger in the colonized with the toxicity of natives’ muscles, which is causing tribal warfare and feuds between sects and quarrels between individuals (Fanon 1963: 52-53). As a psychoanalyst, Fanon pointed out how violence has become a therapy, outlet, cleansing force, a means to decolonize, and a way to mobilize people. He made it very clear that colonialism is a war of force, so no diplomacy, no political genius, and no skill can co-operate with it (Fanon 1967: 97). Above all, for Fanon (1963: 131), violence soon becomes an outlet for creativity and knowledge flow; that is, Fanon’s violence theory of revolution turns into a theory of economic growth. While the revolutionary theory in the Third World and its struggles for the right of self-determination took this form and content, let us see how the Soviet Union and Western Marxists engaged with it.

The Soviet Union and International Law after WWII

In 1939, as tensions escalated in Europe, the Soviet Union entered a peace agreement with Germany. Despite an increase in its participation in international organizations, activities of the Soviet Union were predominantly limited to state-owned and state-driven initiatives, primarily of a technical nature and related to research and culture. Notably, the Soviet Union was not a member of international financial institutions such as the International Monetary Fund (IMF), World Bank (WB), and International Finance Corporation (IFC). Instead, it established its parallel organization of socialist countries known as the Council for Mutual Economic Assistance (COMECON). Furthermore, the Soviet Union formed its military alliance, the Warsaw Treaty Organization, like NATO. However, cooperation among socialist countries was primarily at the governmental level. As per the Soviet Union’s philosophy towards international relations, it always opposed individual initiatives. Overall, Soviet philosophy within international institutions emphasized unanimity and agreement, contrasting with the voting techniques employed by Western countries (Grzybowski 1987).

In the Soviet Union in the 1970s, under complex social and economic realities, there was a need to leave normativism. Thus, pluralistic ideas came into Soviet jurisprudence, bringing back psychological concepts in legal analysis. This change was more about disputes on definitions and did not result in substantial changes in socialist law (Ludwikowski 1987: 335). However, the Soviet Union and socialist countries indirectly supported the right to self-determination of Third World countries. This influence was evident in the support the Soviet Union provided to Third World countries in their quest for independence and in their politics of the postcolonial phase. However, it is essential to recognize that this support was not without its complexities, as it sometimes was to the capitalist classes of Third World countries in their bourgeois-democratic revolutions, seen as an extension of the foreign policy of the Soviet Union. With the limited engagement of the Soviet Union in international law and organizations, let us move on to the influence of Pashukanis in Europe, reflecting its context.

3 Originally published in 1961, translated by Constance Farrington and the reference are from the edition published by Grove Weidenfeld in 1963

Pashukanis in Europe: Reinforcing Revolutionary Pessimism

Marxism was a dominant trend in socio-legal theory in Europe till the 1980s (Monox 2007: 343). Nevertheless, there were concerns about the crisis of Marxist theory taking refuge in nihilism to “imbrication” and constitutive theories of law (Spitzer 1983; Hunt 1992: 116). Pashukanis' (1979) strong emphasis on the persistence of the bourgeois legal form while holding socialist aspirations, as elaborated earlier, appears to mirror the European context where the revolutionary struggle faced defeat in the 1920s. This defeat led to a shift towards social democracy at a structural level, maintaining a superstructure of bourgeois liberalism in law and the state. Consequently, by the late 1970s, there was a growing interest in Pashukanis, particularly in Europe (Pashukanis 1979; Beirne and Sharlet 1979; Kinsey 1978; Mullin 1989).

In the US, the Critical Legal Studies (CLS) movement predominantly launched ruthless critiques of the liberal legal system. However, in a hostile environment against communism in the U.S., it did not intentionally engage with Soviet Marxism. Despite this avoidance, they were sometimes criticized for being “useful idiots” defending the Soviet Union (Seppanen 2021). Though CLS contained many strands of theories in legal thought, such as Gramscian, Althusarian, Foucauldian, and Derridean, from a nihilistic approach towards law and under the influence of rising postmodernism and poststructuralism, CLS broadly diverged into three local trends (Brosnan 1986). One response was the postmodernist tilt of Duncan Kennedy, and the second was the idealist constructivism of Roberto Unger. Later idealist constructivism of David Kennedy in the New Approach of International Law (NAIL) reflected both these trends (Chimni 2017). In these circumstances, interest of the US academics in Pashukanis was there but for the Cold War’s needs and limited theoretical interest (Fuller 1948).

Meanwhile, cultural Marxism takes Marxism away from Marx’s traditional critical political economy in the name of the social and the cultural, and critics call it “Marxism without Marx” (Freeman 2019). Martti Koskenneimi’s account of international law is a typical example of the pessimism of the postmodern approach in the field. He identifies incoherence, contradictions, exaggerated objectives, the slippery nature of every argument, and indeterminacy within international law. His approach involves shifting from one unresolvable debate to another, without taking a definitive stance on any given issue. Theoretically, his ideas belong to critical theory and linguistic philosophy (Kennedy 1998). He uses all the shock power of postmodern theory to destabilize liberalism and, simultaneously, leaves behind all the weakness of the postmodern position from the perspective of practice. He continuously convinces us that “international law is singularly useless” (Koskenneimi 1989: 48).

When Martti Koskenneimi’s pessimism and Pashukanis’ nihilism appeared in China Mievile’s interest in Pashukanis, it received lots of reviews reflecting the overall status of European Marxism and its take on international law. But an exception to this nihilism is the pragmatist and realist approaches in the Marxist writings of Susan Marx (2007) and Robert Knox (2009), and one cannot ignore them as a powerful trend. Knox (2017) also defends Pashukanis for his pragmatic reasons.

Instead, Third World Marxists had minimal interest in Pashukanis and his nihilism. Chimni critiques both Pashukanis and Miéville (2005), who think that the form of international law is bourgeois. Chimni, on the other hand, derives the class basis of international law from its content. For Chimni (2017), Pashukanis needs to properly understand the role of “legal orientalism” in shaping different forms of international law, and hence, he accuses him of Eurocentrism. According to Chimni, Pashukanis considers all international law pure bourgeois law and cannot differentiate between precapitalist customs and new and old law. He also points out how the understanding of law in Pashukanis’ work is based on commodity exchange, which is the circulation of capital and not the production of capital. Finally, for Chimni, Pashukanis’ insistence on taking private law as pure law is problematic because it needs to pay attention to the legal superstructure and legislation (Chimni 2017: 462-466). Therefore, Chimni insists on considering many dimensions of form and content to imagine and adequately comprehend the nature of international law.

Robert Knox (2017) steps forward to defend Pashukanis against what he views as the oversimplified stance of Chimni that content shapes international law. Knox emphasizes that content does not have a direct expression in law and that the capitalist class mediates this process through abstract and impersonal domination. Knox delves into the heart of the matter by discussing how the bourgeois form in international law prevents or restricts the emancipatory potential of law. In contrast, Chimni appears overly optimistic about the potential of Third World content to effect change in international law. Knox needs to improve Chimni's approach. He appreciates Chimni for bringing the distinct historical contexts and incorporating cultural, gender, and race dimensions from the Third World that challenge the Eurocentric Marxist position on international law. Despite this, according to Knox (2017), Chimni's position fails to recognize the deep historical and structural connection between law and imperialism.

This exchange between Knox and Chimni is very illuminating. Knox belongs to the pragmatist and realist position in international law’s European Marxist strand. However, simultaneously, he is cautious and fair about his optimism and the limits of his pragmatist realism (Knox 2009). On the other hand, Chimni places his optimism in the achievements of the Third World in its postcolonial period, which, despite admirable achievements, failed, leaving the Third World recolonized in a unipolar world after 1990. Reversal of the hard-fought gains, led to the people of the Third World becoming victims of Structural Adjustment Programs (SAP), debt burdens, and above all, unilateral coercion, that is, war on terror, etc. Miéville (2004: 301), in his nihilistic and pessimistic approach, aptly responds to this context. For him, in order to change the dynamics of international law, we need not to change the institutions but to eradicate oppressive forms of law. One can ask, the core issue is not what the Third World achieved in international law but it is more important to know why it failed to fully realize the right of self-determination . This article only contends that the Third World's failure to bring about significant change in the international order and international law can be attributed to the compromise of its ruling elite with the ex-colonizers. This compromise prevented the complete realization of their liberation and independence and the achievement of sovereign ends. Moreover, any progress made by the Third World in altering international law was primarily the result of the pressure exerted on its elite by its radical tradition.

Class Content of Third World Resistance and Change in International Law

Dominantly, TWAIL scholars ignore the class content of the state or deal with it tangentially. Anghie and Chimini (2003) criticize and emphasize the class nature of Third World states but do not emphasize or adequately theorize it. International law for Anghie, along with Chimni, is the acceptance and resistance of Third World people to its rules and not the interpretation of its courts and ratification by its states (Anghie and Chimini 2003: 78-79). This position is very correct. But from the writings of TWAIL scholars and its recent analyses, one can see their historical fixation on the Bandung conference and non-aligned movement devoid of changes in Third World Marxist revolutionary theory getting past the disappointing bourgeoisie democratic revolution. In a recent publication, some TWAIL scholars compare the Bandung conference with Westphalia and BRICS as a continuity of Bandung (Vasuki Nesiah, Luis Eslava, Michael Fakhri 2017: 14). This connection of Bandung to BRICS ignores the true essence of Bandung. It is disappointing not to understand the nature of the postcolonial state particularly in the age of neoliberalism. Let us first correct the historical account of Bandung, bringing back the class content of resistance in it. Then, we will pin down the class content of the postcolonial state to reach the actual content of resistance in international law, which can be the basis of radical change in the form of international law.

Samir Amin (2014) points out how Bandung was the product of left-wing radical critique. He denounces it as an idea of nationalist leaders like Nehru and Sukarno (Amin 2014: 71-74). Even in the discussion of Bandung, left-wing activists talked about inequality, oppression, and imperialism, whereas erstwhile “nationalist” leaders were only concerned with economic development and were reluctant and confused about the question of imperialism. Their nation-state-based developmentalism indicated the conference’s support for capitalism; Bandung was a status quo gathering (Greenfield 2005). This gathering undermined the Third World’s ability to fight against imperialism by not coming up with a united front against racism, neo-colonialism, and imperialism (Dirlik 2015: 616). One decade after Bandung, it was evident to resistance movements in the Third World that the issue was not only “colonialism” but the “national bourgeoisie” like Nehru as well (Dirlik 2015: 616).

As pointed out earlier, TWAIL scholars do talk about the movements of Third World people. While defining the role of people in shaping international law, Chimni (2017) categorizes the movements of marginalized groups striving for change in the Third World into two main groups: New Social Movements (NSMs) and Old Social Movements (OSMs). NSMs encompass movements related to peace, environmentalism, LGBT rights, and similar causes. On the other hand, the roots of OSMs are in class-based politics within the Marxist tradition (Chimni 2017). Chimini leans toward OSMs, whereas Rajagopal (2005) seems more inclined to NSMs as dominant actors for change and counter-hegemony in international law. But OSMs of Chimni got coopted with the local elite of the Third World with few exceptions. In contrast, exceptions aside, NSMs of Rajagopal, are movements supported and led by INGOs, which are part of the institutional matrix of neoliberalism (Moyo and Yeros 2007).

There is tension between these two movements in dealing with international issues and related interventions in international law. The real irony of this reliance on NSMs for any

radical change is evident in Samir Amin's political strategy, which went from a politically motivated Third World Forum to the movement-based World Social Forum (WSF). Amin (1977) starts by being involved with the New International Economic Order (NIEO) through the Third World Forum. For Robert W. Cox (1979), Amin's endeavors during the NIEO era exemplify the dilemma faced by Third World scholars in translating their ideas into practical actions while recognizing that these actions may contradict their views. With the advent of neoliberal globalization, Amin pinned his hopes on the WSF. However, he encountered tension with social movements within the WSF. Amin (2008) advocated for a radical agenda for a global united front, whereas social movements favored informal organizational structures and believed in horizontal, non-hierarchical, and flexible networks. Conway, Waterman, and others critiqued Samir Amin from a social movement perspective (Conway 2013; Waterman 2006). The central contention in these debates revolved around whether change should be pursued through state apparatus or outside of it. This article posits that changing the state through the resistance of marginalized groups can, in turn, alter international law. Understanding how this project aimed to materialize within the framework of Third World Marxism is crucial to advancing the discussion on the commodity form theory of international law.

Concluding Remarks: Resistance and Change in International Law under Neoliberal Globalization

Our historical account so far around the struggle of Third World for the right of self-determination shows that resistance of people changes the dialectically connected form and content of international law. This resistance in international law materializes through the state, a Third World state in our case. Therefore, representation of the marginalized and consequent change in class content of the Third World state is the key for anyone interested in progressive social change in the Third World through international law. This question of representation is vital for redistribution and power, locally and globally, when it comes to economic and military aspects of imperialism. How has the class content of the Third World state and its place in imperialist relations changed since the advent of neoliberal globalization in the 1990s?

Already compromised local elite of the Third World during the postcolonial phase, instead of the traditional suggested take-off pattern based on the domestic market, came in direct link with the globalization of manufacturing under neoliberal globalization, which was a departure from Fordism for cost reduction and cheap labor. This phenomenon accelerated the exploitation of the marginalized, remolded center-periphery relations without making them disappear, and created a global capitalist class in the Third World (Katz and Fidler 2018; Harris 2009). This class mainly emerged in semi-peripheries of the Third World, like India, China, Brazil, Saudi Arabia, etc. These intermediate or sub-imperialist countries of the Third World do not act as buffer zones. However, their role is convulsive, and they maintain their remoteness from imperialist centers without sharing their backwardness (Katz and Fidler 2018).

Other than these few sub-imperialist countries, most of the Third World countries in South Asia, like Pakistan and Sri Lanka, as well as in Sub-Saharan Africa, are not only the victims of IFIs but are the ground of new developmental experiments and expansionism of emerging

sub-imperialist countries. Because of neoliberal globalization, inequality among countries is decreasing, whereas inequality within countries has increased. This change in global economic structure has yet to bring change in state structures and class structures in a significant way. Instead, local regimes in the Third World have started working as administrative machines of globalization. All this means that people's resistance has moved not only to the margins of the Third World but also to the margins within Third World countries.

Now, weak Third World states are losing sovereignty. They act upon the advice of IFIs, snatching subsidies from people and leaving no funds for development. Nevertheless, at the same time, all the burden of the consequent unrest of these policies is shifted on the shoulders of the Third World ruling elite, who in turn transfer it to its people without sharing even the crumbs of their continuously increasing pie. Genuine "political" resistance against these policies is declared "terrorism" or communal strife. Suppose these resistances are within the liberal framework of international law. In that case, erstwhile "civil society" or INGOs, as essential actors of current international law, institutions, and regimes, support or even coopt them, depriving them of their genuineness. As opposed to this, if this resistance is within the "religious" or "communal" fold, the same "civil society" INGOs align themselves with the hegemonic imperialist agenda against this resistance. Therefore, those who want to change the "bourgeois form" of international law face a dilemma.

This creates a very pessimistic or opportunistic scenario for those who want to adapt international law for radical change. This context of disappointment makes us recall Pashukanis. However, this pessimism cannot be repelled by the unfounded optimism of TWAIL with hopes on Third World states as Chimni does or putting hopes on all contradictions in the international arena like G-77 and G-20 as counter-hegemonies as is the case with formulations of Rajagopal. Genuine struggles of Third World people are still not only against the imperialist looting and plunder of neoliberal globalization but against their ruling elite as partners and administrative machinery of this process. Resistance is inevitable in this situation and, hence, changes in international law's dialectically connected form and content. In this situation, people of the Third World cannot afford pessimism as they have nothing to lose except chains. Similarly, they cannot leave it to "eclectic Marxism" or "principled opportunism" of European Marxism, still having hopes in a social democratic context. This is the lesson of the radical tradition of Third World Marxism for those who want the full realization of their right to self-determination. Therefore, marginalized of the Third World are to simultaneously use, subvert, and change the form and content of international law in a dialectical and dynamic way.

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