

How the ‘Ulama Should Navigate through the TWAIL Movement: an Attasian Perspective

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Abstract

While the Third World Approaches to International Law (TWAIL) scholarship has rapidly developed over the past decade in the international law discourse, there have been some –albeit not very many–Islamic law contributions. Utilizing Al-Attas’s ‘Islamization’, which follows a different school of postcolonialism that gave birth to TWAIL, our research critically analyzes the extent to which Islamic scholarship can work with the TWAIL bandwagon and examines the prospects and challenges in how Islamic scholarship could and should navigate the Islam and international law discourse. We find that the ‘Ulama should navigate carefully in developing Islamic scholarship through the TWAIL movement.

KEYWORDS *Islam, International Law, TWAIL*

Islamic Scholarship: Entering The Discourse?

Third World Approaches to International Law (TWAIL) as a critical international law movement has been providing a constant stream of incisive insights into academia for a few decades now, running strong as



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an anti-mainstream discourse. The TWAIL scholars seem to find similar roots in Edward Said's postcolonialism, identifying colonialism as the cause of the unjust Eurocentric hegemony in various areas of knowledge, which consequently breeds the shared sense of urgency amongst its members to promote the decolonializing of said areas of "Eurocentrised" knowledge. As a result of the movement's proliferation over time, a significantly growing number of international law scholars have participated in such a revolutionary endeavour. The movement has facilitated this phenomenon by providing contemporary scholars with the framework to identify and criticize the colonial origin of contemporary international law and how today's Eurocentrism is a reproduction of that spirit of colonialism.¹

Many streams were quick to jump on this bandwagon. Critical race theorists are sure to join for obvious reasons,² but there are others too. For example, Marxists were very excited to contribute by identifying the capitalist nature of colonialism and neocolonialism and how that affects international law, such as Chimni and Miéville.³ Feminists also have their own perspective on the relation between the colonial construct and patriarchy, with their most noticeable contribution in international law being started by Hilary Charlesworth, Christine Chinkin and Shelley Wright.⁴ One must not forget how queer theory has also jumped on the TWAIL bandwagon.⁵

¹ See *inter alia* Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (New York: Cambridge University Press, 2004); Ram Prakash Anand, *Origin and Development of the Law of the Sea* (Martinus Nijhoff, 1982), 1–7.

² James Thuo Gathii, "Writing Race and Identity in a Global Context: What CRT and TWAIL Can Learn From Each Other," *UCLA Law Review* 67 (2020), <https://www.uclalawreview.org/writing-race-and-identity-in-a-global-context-what-crt-and-twail-can-learn-from-each-other/>.

³ Bhupinder S Chimni, "Customary International Law: A Third World Perspective," *American Journal of International Law* 112, no. 1 (2018): 1–46, <https://doi.org/10.2307/2203269>; China Miéville, "The Commodity-Form Theory of International Law: An Introduction," *Leiden Journal of International Law* 17 (2004): 271, <https://doi.org/10.2307/2203269>.

⁴ Hilary Charlesworth, Christine Chinkin, and Shelley Wright, "Feminist Approaches to International Law," *The American Journal of International Law* 85, no. 4 (1991): 613–45, <https://doi.org/10.2307/2203269>.

⁵ See: Dianne Otto, "'Taking a Break' from 'Normal': Thinking Queer in the Context of International Law," in *Proceedings of the ASIL Annual Meeting*, vol. 101 (Cambridge University Press, 2007), 119–22; Philipp Kastner and Elisabeth Roy Trudel, "Unsettling International Law and Peace-Making: An Encounter with Queer Theory," *Leiden Journal of International Law* 33, no. 4 (2020): 911–30, <https://doi.org/10.1017/S092215652000045X>.

This brings us to Islamic law which, despite having been reduced or extinguished in its application in various nations through European colonialism,⁶ is still formally applied –in various degrees—in dozens of states.⁷ Hence, Islamic law is noted to be among the world's major legal families, together with the civil law and common law systems. Considering how a vast majority of the Islamic world had suffered the brunt of colonialism, one may wonder how Islamic law scholars contribute to the current discourse of international law. After all, the Islamic law scholars (*fuqaha*) –not Muslim states—are the forebearers of the development of Islamic law.

Here, it is important to mention that, especially when one uses a nation-state-centric perspective, it's easy to confuse Islamic contribution and Muslim-majority state contribution. Some authors have suggested that Muslim-majority states have contributed to international law-making to some extent.⁸ On the other hand, other scholars have suggested that contributions of Muslim-majority nations do not necessarily (or even, that they unequivocally don't) represent Islamic teachings.⁹

Therefore, we here quote the Quran partly in Surah Al-Nisa' [4] verse 59: "O you who have believed, obey Allāh and obey the Messenger and *uli al-amri* among you." (emphasis added). The Arabic term *uli al-amri* is usually translated to "leaders" or "authorities". The Scholars differ on what this term means specifically in that verse, some say it refers to rulers (heads of state), others say it refers to the Islamic scholars or the *'ulama*. Others, however, explain that both are correct in their own right: the rulers

⁶ See *inter alia* Ramlah, "Implikasi Pengaruh Politik Hukum Kolonial Belanda Terhadap Badan Peradilan Agama Di Indonesia," *Jurnal Kajian Hukum Islam* 12, no. 1 (2012): 383–406, <https://doi.org/10.30631/alrisalah.v12i02.424>.

⁷ Mohamed Elewa Badar, "Islamic Law (Shari'a) and the Jurisdiction of the International Criminal Court," *Leiden Journal of International Law* 24 (2011): 411–33, <https://doi.org/10.1017/S0922156511000082>.

⁸ See *inter alia* Susan Waltz, "Universal Human Rights: The Contribution of Muslim States," *Human Rights Quarterly* 26, no. 4 (2004): 799–844, <https://doi.org/10.1353/hrq.2004.0059>; Corri Zoli, "Islamic Contributions to International Humanitarian Law: Recalibrating TWAIL Approaches for Existing Contributions and Legacies," *American Journal of International Law* 109 (2015): 271–76, <https://doi.org/10.1017/S2398772300001586>.

⁹ See generally: Shaheen Sardar Ali and Satwant Kaur Heer, "What Is the Measure of 'Universality'? Critical Reflections on 'Islamic' Criminal Law and Muslim State Practice Vis-à-Vis the Rome Statute and the International Criminal Court," in *Islam and International Criminal Law and Justice*, ed. Tallyn Gray (Brussels: Torkel Opsahl, 2018). Also: Fajri Matahati Muhammadin, *Mukadimah Fikih Siyar: Pokok-Pokok Hukum Internasional Islam Kontemporer* (Yogyakarta: Bentala Tamadun Nusantara, 2021), 20.

are *uli al-amr* in terms of administration, while the *'ulama* are *uli al-'amr* in terms of Islamic knowledge.¹⁰ Both are two inseparable elements of governance and life of society in Islam, and the Quran verse above continues with “And if you disagree over anything, refer it to Allāh and the Messenger” indicating the supremacy of Islamic knowledge. Such is the position of the *'ulama* or scholar in Islam.

Nonetheless, there exists a disparity of views and understanding between the Muslims in that department. Some Islamic law scholars appear to be rather oblivious to contemporary international law, writing works of *fiqh al-siyar* (Islamic international law) with very little reference to the potential normative conflicts, such as Ali Ali Mansur and Ahmad Azhar Basyir.¹¹ Others who are more aware of the potential conflicts chose to take a more apologetic route by overlooking these potential conflicts and force-interpret Islamic law to appear more ‘Western-friendly’ – essentially proposing a view of Islam which subjugates itself to the Eurocentric international law. According to Nesrine Badawi, scholars like Sheikh Muhammad Abu Zahrah and Sheikh Wahbah al Zuhayli fall under this category¹² and their views appear to be the view that is widely held in Islamic law scholarship.¹³

¹⁰ Wahbah Al-Zuhayli, *Tafsir Al-Munir*, vol. 3 (Jakarta: Gema Insani Press, 2016), 140–41.

¹¹ Ali Ali Mansur, *Syari'at Islam Dan Hukum Internasional Umum* (Jakarta: Penerbit Bulan Bintang, 1973); Ahmad Azhar Basyir, *Ikhtisar Hukum Internasional Islam* (Yogyakarta: UII Press, 2010). Muhammad Hamidullah appears to incorporate more aspects of contemporary international law into consideration, but not so much on the potential normative conflicts. See: Muhammad Hamidullah, *Muslim Conduct of State* (Lahore: Sh. Muhammad Ashraf, 2011).

¹² See: Nesrine Badawi, “Regulation of Armed Conflict: Critical Comparativism,” *Third World Quarterly* 37, no. 11 (2016): 1990–2009, <https://doi.org/10.1080/01436597.2016.1186491>. Also under the ‘subjugated’ category are some academics who suggest that Islamic law just surrender and follow whatever secular Western international law provides: Ebrahim Afsah, “Contested Universalities of International Law. Islam’s Struggle with Modernity,” *Journal of the History of International Law* 10 (2008): 259–307, <https://doi.org/10.1163/157180508X359855>. However, abandoning Islam is anything but Islamic scholarship and is instead disbelief: Fajri Matahati Muhammadin and Mohd Hisham Mohd Kamal, “The Western Universalism v. Cultural Relativism Debate on Human Rights and Islam: An ‘Aqidah-Based Approach,” *Afkar: Journal of 'Aqidah & Islamic Thought* 21, no. 2 (2019): 175–216, <https://doi.org/10.22452/afkar.vol21no2.6>; Khaled Ramadan Bashir, *Islamic International Law: Historical Foundations and Al-Shaybani's Siyar* (Cheltenham: Edward Elgar Publishing Ltd, 2018), 10. So this should not even count as Islamic scholarship.

¹³ See for example the contributions in: Ghazi bin Muhammad, Ibrahim Kalin, and Mohammad Hashim Kamali, eds., *War and Peace in Islam: The Uses and Abuses of Jihad*

Appearing to join the TWAAIL bandwagon, other Islamic scholars submit that Islamic law should also contribute to the development of international law. These scholars, such as Awn al-Khasawneh and Salim Farrar, submit that Islamic law, too, should be listened to if international law were to be truly international,¹⁴ a view which appears to be echoed by a number of non-Muslim scholars.¹⁵ The general gist of their submission is that Islamic law must be one among the contributors of the development of international law, and this approach appears to be gaining more traction with the passing of time.

Amidst this conceptional hodgepodge of what the Islamic law-international law relationship should look like, there is another group of Islamic law scholars who, while sharing with the others the zeal to resist the Eurocentric understanding of international law, go about doing it in a different way from them. Scholars in this group generally propose a form of 'Islamic universalism', meaning the understanding that Islam provides a better legal regime to solve international problems (as opposed to Islam just 'being heard' as one out of many contributors), as the conceptional basis with which Islam should interact with international law. Their determination of the extent of international law's worthiness to be accepted by Islam, however, comes in different degrees of 'extremity'. Some, like myself (without my present author)¹⁶ and Umar Ahmad

(Cambridge: Islamic Texts Society, 2013). They are very repetitive and apologetic to promote a version of Islam that is just a shade away from being a pacifist religion.

¹⁴ See *inter alia*: Awn S. Al-Khasawneh, "Islam and International Law," in *Islam and International Law: Engaging Self-Centrism from a Plurality of Perspectives*, ed. Marie-Luisa Frick and Andreas Th Müller (Martinus Nijhoff Publishers, 2013), 29–44; Salim Farrar, "The Organisation of Islamic Cooperation: Forever on the Periphery of Public International Law?," *Chinese Journal of International Law* 13, no. 4 (2014): 787–817, <https://doi.org/10.1093/chinesejil/jmu035>. Some with more 'nativist' language and not very Islamic law-specific, such as: Rachminawati, "ASEAN Human Rights Declaration: A New Form of Universalism," *Indonesian J. Int'l L.* 11 (2013): 396–413, <https://scholarhub.ui.ac.id/ijil/vol11/iss3/4/>.

¹⁵ See *inter alia* Julie Fraser, "A Seat at the Table: Islamic Law's Neglected Potential in Universalising International Humanitarian Law," in *Human Rights and International Humanitarian Law: Challenges Ahead*, ed. Norman Weiss and Andreas Zimmermann (Edward Elgar Publishing, 2022); Juliette Rémond Tiedrez, "Time for an Islamic Legal Scholar at the ICC?," *Völkerrechtsblog*, 2020, <https://voelkerrechtsblog.org/time-for-an-islamic-legal-scholar-at-the-icc/>; Julie Fraser, "Exploring Legal Compatibilities and Pursuing Cultural Legitimacy: Islamic Law and the International Criminal Court," in *Intersections of Law and Culture at the International Criminal Court*, ed. Julie Fraser and Brianne McGonigle Leyh (Edward Elgar Publishing, 2020).

¹⁶ Muhammadin, *Mukadimah Fikih Siyar*.

Kasule¹⁷ do not exclude the possibility, or even highly encourage, adopting certain areas of international law, but only insofar as they are so adopted to support the implementation of certain aspects of Islamic law, which in the first place necessitates their ‘Islamization’.¹⁸ Meanwhile, others like Taqi Al-Din Al-Nabhani (Hizbut Tahrir)¹⁹ and Abu Muhammad al-Maqdisi (Al-Qa‘eda)²⁰ appear to be at the furthest extremity by being more isolationist, proposing that there is very little room for interaction between the Islamic and the non-Islamic world besides in matters of war and a very few possible kinds of treaties. This camp appears to be in the minority as far as academia is concerned, and its members are often caricatured as ‘extremists’.²¹

Here we follow the thought of Syed Muhammad Naquib Al-Attas, born in Indonesia and currently a Malaysian citizen, one of the greatest Muslim philosophers of this century. His ideas of Islamic worldview and Islamization of knowledge strongly concern decolonization and how the Muslims generally and Islamic scholarship specifically should navigate free from intellectual colonialism. Approaching decolonialism from different ontologies and epistemologies but in the same world, we find it prudent to see how Al-Attas’s “Islamization” perceives TWAIL and instructs how to navigate through it.

That said, our research intends to first explore the TWAIL movement and where its going, and secondly to determine how convenient it is for Muslims to take part in this TWAIL movement. We proceed third by introducing Al-Attas’s Islamization of knowledge notion and then, fourth, critically examine the challenges and prospects present in the TWAIL movement for the Islamic scholars.

¹⁷ Umar Ahmad Kasule, *Contemporary Muslims and Human Rights Discourse: A Critical Assessment* (Selangor Darul Ehsan: IIUM Press, 2009). Kasule writes specifically on human rights, but his attitude would necessarily be reflected on international law in general.

¹⁸ ‘Islamization’ is a term often misunderstood and hence wildly used too randomly, or means different things to different scholars. We use the term here as coined by Syed Muhammad Naquib Al-Attas, as is explained in a later section.

¹⁹ Taqqi al-Din Al-Nabhani, *Nizham Al-Hukm Fi Al-Islam* (Lebanon: Dar al-Ummah, 2002).

²⁰ Abu Muhammad Al-Maqdisi, *Al-Kawāshif Al-Jaliyyah: Fi Kufr Al-Dawlah Al-Su‘ūdiyyah* (Munrib Al-Tawhid wa Al-Jihad, 1421).

²¹ Prabhakar Singh and Benoit Mayer, eds., *Critical International Law: Postrealism, Postcolonialism, and Transnationalism* (New Delhi: Oxford University Press, 2014), 4.

What Is TWAIl, and Where Is It Going?

The overarching framework of Third World Approaches to International Law (TWAIl), which is composed of many differing views, is broadly united by the principal idea to “expose, reform, or even research those features of the intellectual legal system that help create or maintain the generally unequal, unfair, or unjust global order,”²² and the identification of the main cause of such inequality and injustices in the partiality of the international legal system’s foundations to the privileging of the European worldview and interests.²³ This view presupposes a state of hegemony, with the holder of the hegemony being the Eurocentric values, ideas, and experiences that form the foundations of international law and which still continue to pervade the operation of international law.

This crusade against the Eurocentrist understanding of international law finds its roots in the Foucauldian notion of discourse as “a system of statements by which dominant groups in society constitute the field of truth by imposing specific knowledges, disciplines and values upon dominated groups”,²⁴ which in turn inspires Edward Said’s brand of postcolonialism, which is predicated upon the use of that notion to identify the European culture as a “discourse” that was utilised by the European colonists to effectively manage their colonial undertakings through a complex of imageries and skewed understandings of the orient by the occident (a view that is commonly known in the postcolonialism firmament as “orientalism”).²⁵ This Saidian Orientalist view would later become the framework with which TWAIl scholars identify the cause of the Third World postcolonial states’ impediments to reach equal status to the First World in the cultural and intellectual hegemony which the European former colonial powers imposed upon their former colonies.²⁶

The many different branches of TWAIl attempt to explore that understanding, which is hypothesised as resulting in an exploitative

²² Obiora Chinedu Okafor, “Critical Third World Approaches to International Law (TWAIl): Theory, Methodology, or Both?,” *International Community Law Review* 10, no. 4 (2008): 376, https://brill.com/view/journals/iclr/10/4/article-p371_4.xml.

²³ Makau Mutua, “What Is TWAIl?,” in *Proceedings of the ASIL Annual Meeting*, vol. 94 (Cambridge University Press, 2000), 31–38.

²⁴ Bill Ashcroft, Gareth Griffiths, and Helen Tiffin, *Post-Colonial Studies: The Key Concepts* (Routledge, 2000), 37.

²⁵ Sayyed Rahim Moosavinia, Karlis Racevskis, and Sasan Talebi, “Edward Said and Michel Foucault: Representation of the Notion of Discourse in Colonial Discourse Theory,” *Journal of Research in Applied Linguistics* 10, no. 2 (2019): 184, <https://doi.org/10.22055/rals.2019.14723>.

²⁶ See *supra* note 1.

relationship between the First World and the Third World, and to analyse the role that the international legal order and institutions play in perpetuating such relations. Such is the first dimension of TWAIL, its analytic-descriptive side, which is focused on providing an alternative narrative to the Eurocentrism predominant in international legal scholarship. Alongside it comes TWAIL's normative-activist side, the dimension focused with the effort to alleviate the damages caused by the exploitative regime, with the end goal to facilitate the achievement of true "self-determination" and "self-actualization" of the disenfranchised and disempowered non-European peoples.²⁷

As such, the purposes of TWAIL can be broadly summarised into two: to expose the history of European predation towards non-European states and peoples through Eurocentrism and its buttressing of the framework of international law; and to give agency towards peoples of the Third World, enabling them to elucidate their own ideas of international law in their own words.²⁸ TWAIL seeks to achieve the first goal by way of presenting an alternative view on international law as a legal regime which is developed by way of improvisation to accommodate the "master-slave" relationship Europe sought to impose to the rest of the world through its conceptions of legal doctrines which are reserved solely for First World states, thereby challenging the way that the Mainstream International Law Scholarship effectively legitimises the material divisions which separates the First World and the Third World.²⁹ Meanwhile, to achieve its second goal, the method of "epistemic renewal" is utilised. Through this method, after dislodging the Western assumptions upon which the pedagogy of international law is buttressed, TWAIL attempts to reform the epistemic viewpoints that form the foundations of international legal scholarship.³⁰

The aforementioned methods, which presuppose the ability of international law to be modified in favour of the advancement of non-

²⁷ Mohsen Al Attar, "Reframing the 'Universality' of International Law in a Globalizing World," *McGill Law Journal* 59, no. 1 (2013): 95–139, <https://lawjournal.mcgill.ca/article/reframing-the-universality-of-international-law-in-a-globalizing-world/>.

²⁸ Mohsen Al-Attar, "The Peculiar Double-Consciousness of TWAIL," *Indonesian J. Int'l L.* 19 (2021): 248–50, <https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1575&context=ijil>.

²⁹ Mohsen Al Attar and Vernon Ivan Tava, "TWAIL Pedagogy-Legal Education for Emancipation," *Palestine Yearbook of International Law* 15, no. 7 (2010): 16, <https://lawjournal.mcgill.ca/article/reframing-the-universality-of-international-law-in-a-globalizing-world/>.

³⁰ Al Attar, "Reframing the 'Universality,'" 127.

European peoples, present a theoretical conundrum. If the narrative of T'WAIL claims that the international law, born out of the necessities of Western interest brought about by the colonial encounter is designed with the intention of facilitating the exploitation of the Third World; that the structures, the doctrines, its legal arguments, and its core doctrines are "prejudicial and predatory, or predatory and prejudicial", then surely the logical conclusion of such a premise, combined with the normative mission of the empowerment and the enfranchisement of the peoples of the Third World, would be the total jettison of the field of international law, as any attempt to reform it would mean prostrating to its core doctrines and internal logic.³¹ However, as can be deduced from statements by even the most theoretically intransigent scholars of T'WAIL, such as Antony Anghie that there is room to rework international law to the Third World's benefit,³² it becomes clear that that is not the case. This apparent incongruity, combined with its normative-activist dimension which sought to actively change the *status quo* instead of merely explaining it, challenges T'WAIL to search for an intellectual defence against attacks on its competence as an analytical tool on account of its inherent partiality.

To answer this problem, T'WAIL constructs a defense of its theoretical incongruity by reworking the definition of legal theory itself. It challenges legal academia's formalist and positivist pursuits of impartiality,³³ reasonableness, and balance, by exposing their usage as tools of the perpetuation of the Third World's subjugation. This perpetuation is achieved by preserving the *illusion* of the scientific neutrality of international law by constructing a very narrow framework upon which findings in the field of international law are allowed to be analysed against, and labelling any inquiries that go beyond that limitation as unscientific, thus denoting its restrictive understanding of jurisprudence. General jurisprudence rejects this restrictive approach by *embracing* subjectivity, with the understanding that the sensibilities of the people that law purports to govern must inform the study of law; that what law *ought* to be is taught alongside what law currently *is*. Such an idea is based upon the understanding that law is a tool of social reproduction, constantly

³¹ Mohsen Al-Attar, "T'WAIL: A Paradox within a Paradox," *International Community Law Review* 22 (2020): 166, <https://doi.org/10.1163/18719732-12341426>.

³² Antony Anghie, "LatCrit and T'WAIL," *California Western International Journal Law Journal* 42 (2012): 311, 320, <https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1050&context=cwilj>.

³³ Bhupinder S Chimni, "Third World Approaches to International Law: A Manifesto," *International Law Review* 8 (2006): 15, <https://doi.org/10.1163/187197306779173220>.

changing to suit the needs of the upper classes, and jurisprudence provides an inquiry on the legal aspect of social reproduction. In this sceptical approach towards the commonly accepted conventions of science, in our case the science of jurisprudence, we can find traces of the aforementioned Foucauldian notion of power as discourse, which is the ability to govern statements that are considered acceptable, and subsequently reality itself, through scientific procedures.³⁴

Through its normative-activist side, we can see that TWAIL attempts to bring forward the empowerment of the Third World people by attempting to form an international legal order that opens itself to democratisation, which takes into account their meaningful participation in conjuring up international laws, with the end goal of creating an amalgamation of multiple differing views that exist in the world. Aside from that, to combat the previously discussed illusion of objectivity offered by the orthodox international legal academia's concept of theory which is built upon the pursuit of impartiality and neutrality, the embrace of subjectivity -this time in the lawmaking processes of international law- is also the adopted end of TWAIL. By crafting an international legal order that draws from the various human conceptions of justice, dignity, a good life, and the various normative traditions in cultures all across the world, it is hoped that the multiple needs of the various peoples and cultures from all over the world which international law purports to govern, can be met adequately and appropriately.³⁵ We would be remiss to not mention that this view of all cultures as being equal (cultural relativism), is reminiscent of the recurring staple of the postcolonialist mindset.³⁶ Its subsequent mission to craft a system of international law based on the amalgamation of different cultures and values may therefore be viewed as a manifestation of a strand of Nietzschean (radical) nihilistic understanding of the world, considering that it is based on the assumption (or rather, creed) that no value in this world may be held as being of a superior standing over others, with the end goal being the creation of new values.³⁷

³⁴ Moosavinia, Racevskis, and Talebi, "Edward Said and Michel Foucault: Representation of the Notion of Discourse in Colonial Discourse Theory," 190.

³⁵ Al Attar, "Reframing the 'Universality,'" 134.

³⁶ Chang Nam Fung, "A Polysystemist's Response to Prescriptive Cultural Relativism and Postcolonialism," *Across Languages and Cultures* 18, no. 1 (2017): 140, <https://doi.org/10.1556/084.2017.18.1.6>.

³⁷ L I Guiyan, "Nietzsche's Nihilism," *Frontiers of Philosophy in China* 11, no. 2 (2016): 308–9, <http://www.jstor.org/stable/44157012>. Quoting Nietzsche: "Radical nihilism is the conviction of an absolute untenability of existence when it comes to the highest values

TWAIL'S Advocacy of Islam

The colonial encounter of the 19th and 20th centuries has seen to it that a majority of Asian and African societies were subjected to untold horrors of destruction resulting from the utilisation of their soils as battlegrounds for their struggle against the European colonising states. The racial division that the Europeans imposed upon them as a way to subliminally impart the understanding that they are a race “inferior” to the Europeans have also caused an irreversible damage to those societies in that it paints them as “uncivilised” peoples, which required civilising by the civilised nations of Europe.³⁸ Aside from the foregoing, the industrial revolution in Europe, which, along with its political revolution(s), forms the main impetus for the ramping up of the whole colonial project in the first place, would also necessitate the unbridled exploitation of the natural and human resources of the colonised.³⁹ The colonial project also treats the nations and peoples that they have conquered as those not possessing sovereignty as they do, thereby legitimising any inhumane acts of exploitation upon them by the colonisers.⁴⁰ Forming a rather prominent part of this group of colonised peoples are the Muslims, with the last part of the 18th century (after the end of the Turko-Russian War of 1768-1774) seeing the Ottoman Empire, hitherto the holder of hegemony over most Islamic states in the Near East, and North Africa, gradually cede their influence there to European imperialistic states, mainly France, Britain, and Russia. This loss of influence eventually drove the Central Asian Muslim states to the control of the aforementioned European imperial states, which in some cases led to inhumane displays of terror and persecution and, invariably in the coming decades, the progressive erosion

one recognizes; plus the realization that we lack the least right to posit a beyond or an in-itself of things that might be 'divine' or morality incarnate.”

³⁸ Farish A. Noor and Peter Carey, “Why Race Mattered: Racial Indifference, Racialized Colonial Capitalism, and the Racialized Wars of Nineteenth Century Colonial Southeast Asia,” in *Racial Difference and the Colonial Wars of 19th Century Southeast Asia*, ed. Farish A. Noor and Peter Carey (Amsterdam University Press, 2021), 15.

³⁹ Jacques Pouchepadass, “Colonialism and Environment in India: Comparative Perspective,” *Economic and Political Weekly*, 1995, 2064, <https://www.jstor.org/stable/4403103>.

⁴⁰ Noor and Carey, “Why Race Mattered,” 12.

of the influence of Islamic institutions- and subsequently Islamic values- in those regions.⁴¹

These multitude layers of destruction wrought upon the postcolonial states of Asia and Africa by centuries of colonial practices bred into those states a sense of commonality between them; a sense that their empowerment against the forces that had enacted such destruction upon them may be invigorated by a show of unity between them. History shows that since the end of World War 1, there were several anticolonialist movements, which would gradually gain momentum approaching the 1950s, sprouting from multiple corners of the world, with the majority of them finding their bases in Europe.⁴² The movements in this age, with no existing postcolonial states as of yet, were composed of people hailing from regions which are under colonial government control, and were utilised by them to exchange ideas and spread awareness on how to undermine their respective colonial governments. Moving into the 1920s and 1930s, these movements would gradually gain momentum with the increasing promulgation of communism across the world, seeing that the communists' platform embraced the fight against colonialism and imperialism in their platform.⁴³ With organisations and societies such as the League Against Imperialism (LAI), which, through the years, was spearheaded by prominent communist and socialist thinkers and activists such as Upton Sinclair, Henri Barbusse, and Reginald Francis Orlando Bridgeman. The LAI would later serve as an inspiration for anticolonial activists to establish their own organisations with distinct ideological flair from the communist-based LAI, such as Mochammad Hatta's nationalist-based Perhimpunan Indonesia (PI) and George Padmore's Afrocentric International Trade Union Committee of Negro Workers (ITUCNW).⁴⁴

Walking hand-in-hand with such Marxist, nationalist, and other secular-based movements are religion-based movements, the most prominent among them (when we are talking about Asia and Africa

⁴¹ Arshad Islam, "Pan-Islamic International Cooperation and Anticolonialism: South Asia, Turkey, and Southeast Asia," *Hamdard Islamicus* 44, no. 1 (2021): 10, <https://hamdardislamicus.com.pk/index.php/hi/article/view/193>.

⁴² Fredrik Petersson, "From Versailles to Bandung: The Interwar Origins of Anticolonialism," in *Bandung, Global History, and International Law*, ed. Luis Eslava, Michael Fakhri, and Vasuki Nesiah (Cambridge: Cambridge University Press, 2017), 72.

⁴³ Petersson, "From Versailles," 74.

⁴⁴ Petersson, "From Versailles," 75.

specifically, at least) is Islam.⁴⁵ Movements such as the Salafism movement in the Middle East, which called for the rebuking of European colonial reforms, including the introduction of the separation of the mosque and the state; and Chakib Arslan's Pan-Islamist movement during the post-First World War era which called for anticolonial movements in North Africa and Eastern Asia to find a common ground, proved to be the catalysts to the formation of the resolve of the Muslim peoples residing therein to put up a fight against their colonial overlords.⁴⁶ The religious underpinning of this anticolonial movement energized the Islamic peoples of those regions in carrying on the fight against the Europeans through religious acts such as the usage of the mosque as a dissemination tool for anticolonial teachings and to spread prayers which contain at the same time a cry for action against their imperial overlords.⁴⁷

The Marxist, secular, and Islamic movements coexist together through the course of the colonial era, all the way until the advent of the decolonization movement in the 1940s and 1950s, culminating with the commencement of the Bandung Conference in 1955, which signified the start of an era of empowerment for the nascent postcolonial states and peoples, by affirming their sovereignty and coming up with the resolve to reshape the firmament of international law in to meet their needs. The Conference was made possible by the preexisting network of activism connections and the solidifying of the transnational anticolonialism movements that happened in the preceding decades,⁴⁸ and this solidarity of sorts between the differing movements contributed to an event which became the beginning point of the Non-Alignment Movement (NAM) and the birth point of the spirit of unity between the moral and political strengths of the so-called nations of the Global South.⁴⁹ The conference brings together states with a majority population of multiple faiths, such as Hinduism, Confucianism, and, of course, Islam, the most prominent of them being Turkey, Saudi Arabia, Pakistan, and of course, the host country

⁴⁵ Abdelaziz El Amrani, "Desecularising the Postcolonial Resistance: The Role of Islamic Spirituality in the Framing of Moroccan Anticolonial Thought," *The Journal of North African Studies* 28, no. 5 (2021): 1–2, <https://doi.org/10.1080/13629387.2021.1975272>.

⁴⁶ El Amrani, "Desecularising the Postcolonial," 7–9.

⁴⁷ John P Halstead, "The Changing Character of Moroccan Reformism, 1921–1934," *The Journal of African History* 5, no. 3 (1964): 443, <https://doi.org/10.1017/S0021853700005119>.

⁴⁸ Petersson, "From Versailles," 79.

⁴⁹ Cornelis Lay, "The Bandung Spirit: Nation State and Democracy," *Journal of Indonesian Social Sciences and Humanities* 6, no. 1 (2016): 2, <https://ejournal.brin.go.id/jissh/article/view/8575>.

itself, Indonesia.⁵⁰ The conference thus served as a medium for the values of those religions to be considered in the effort to formulate a more emancipatory form of international law through a “comity of civilizations”.⁵¹

Emerging also from the rubble of colonialism, as an attempt to impart the understanding upon the supposedly *postcolonial* states that their old specter still exists, subsequent to the occurrence of the Bandung Conference, is the Third World Approaches to International Law movement. Although perhaps not officially under that nomenclature, which was not yet introduced at the time, the Conference nonetheless serves as a moment of symbolic birthplace for the movement.⁵² The movement seeks to expose international law -and by extension the international community itself- which the newly postcolonial states had willingly made themselves a part of, as a tool, an instrument that their former masters utilize to retain their hegemonic hold on said postcolonial states.⁵³

The progression of the TWAIL movement in the years following the Bandung Conference has seen it advocate for the advancement of the “peripheralized” Third World perspectives in international law-making. It also has continued the effort to combat new forms of colonialism by assuming a critical stance on issues such as the encroaching neoliberalism agenda in the international economic legal order,⁵⁴ and by attempting, in general, to bring democratisation to the knowledge production in international legal scholarship and to criticize the knowledge structures that propagate the reproduction of domination by the West of the Third World peoples.⁵⁵ Such efforts echo the “Bandung Spirit”, which entails the drive to liberate the world from any kind of colonialism and the

⁵⁰ Amitav Acharya, “Studying the Bandung Conference from a Global IR Perspective,” *Australian Journal of International Affairs* 70, no. 4 (2016): 351, <https://doi.org/10.1080/10357718.2016.1168359>.

⁵¹ Acharya, “Studying the Bandung,” 351.

⁵² Mutua, “What Is TWAIL?,” 31–39.

⁵³ Samera Esmeir, “Bandung: Reflections on the Sea, the World, and Colonialism,” in *Bandung, Global History, and International Law*, ed. Luis Eslava, Michael Fakhri, and Vasuki Nesiah (Cambridge: Cambridge University Press, 2017), 86.

⁵⁴ James Thuo Gathii, “TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography,” *Trade L. & Dev.* 3 (2011): 29, <https://ssrn.com/abstract=1933766>.

⁵⁵ Karin Mickelson, “Taking Stock of TWAIL Histories,” *International Community Law Review* 10, no. 4 (2008): 357–58.

hegemony of one state over another.⁵⁶ Among these “peripheralized” values which TWAIL attempts to bring to the center of the international law firmament, one can also find Islam and its teachings.

An example of TWAIL’s advocacy of Islam can be found, *inter alia*, in the academic inquiry (and subsequent justification) of the relation between Islamic law and International Criminal Law⁵⁷ and the effort to include Islamic law as one of the legal traditions that must be represented through the presence of a jurist belonging to the tradition (*faqih*) in the International Criminal Court (ICC). Its normative-activist side, which calls for the democratisation of such peripheralised values as Islam, helps the cause of Islamic values advocacy in international law by putting into question the legitimacy of international law which does not include the voices of such a major legal tradition in its system.⁵⁸ This advocacy effort to include Islam in the ICC fold has resulted in the decision of the Prosecutor to recruit an Islamic law specialist to the list of special advisors to the Office of the Prosecutor (OTP), Intisar Rabb.⁵⁹

Another way in which TWAIL furthers the Islamic cause vis-à-vis international law is how its critical outlook is “borrowed” to provide a critique of Islamophobia as a way to combat the aversion that exists and is persistent towards Islam in the Western hemisphere.⁶⁰ This line of inquiry is one example of the utilization of TWAIL as a theoretical framework with which the prevailing outlook that the field of international law is built upon, that of the superiority of the Euro-Americans over the other peoples, is impeached in favour of the peripheralised Islamic values.

In light of the foregoing, it is observable how Islam and TWAIL, traversing together through the vestiges of colonialism, walk and work hand-in-hand to achieve purposes that are not necessarily in contrast to

⁵⁶ See the Bandung Spirit Network: “Bandung Spirit,” Bandung Spirit, accessed July 18, 2023, www.bandungspirit.org.

⁵⁷ See Mohamed Elewa Badar, “Is There a Place for Islamic Law Within the Applicable Law of the International Criminal Court?,” in *Islam and International Criminal Law and Justice*, ed. Tallyn Gray (Brussels: Torkel Opsahl, 2018).

⁵⁸ Juliette Tiederz, “Time for an Islamic Legal Scholar at the ICC? : On the International Criminal Court’s Lack of Islamic Law Representation,” *Völkerrechtsblog*, 2020, <https://doi.org/10.17176/20200706-224909-0>.

⁵⁹ “ICC Prosecutor Mr Karim A.A. Khan QC Appoints Seventeen Special Advisers,” International Criminal Court, 2021, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1611>.

⁶⁰ Cyra Akila Choudhury, “Reflections on the Christchurch Massacre: Incorporating a Critique of Islamophobia and TWAIL,” *TWAILR: Reflections-9/2019, Florida International University Legal Studies Research Paper*, no. 19–16 (2019), <https://ssrn.com/abstract=3447911>.

each other's. The similarities in the conditions in which the two found themselves emerging from and the goals which they have- that of the supplantation of the Eurocentric understanding of international law- are what ultimately drive their relationship to be one which is able to be characterised as a fruitful one, with observable results in terms of *realpolitik*, as manifested through the inclusion of Islamic jurist in the list of special advisers to the ICC Prosecutor, or in more academic terms, as manifested in the effort to topple the Islamophobia prevalent in contemporary international discourse. Along these lines, then, can be traced the spheres in which the relationship between Islam and TWAIL is convenient for the advancement of either of their goals.

Al-Attas: Decolonization from What To Where?

Ayub and Ismail Al-'Alam, two promising young Indonesian Islamic scholars and philosophers, drew an interesting comparison between Edward Said and Al-Attas⁶¹ which becomes very important to our research. While both Said and Al-Attas reject Eurocentrism, they had very different attitudes and endgames. Ayub and Ismail pointed out that Said's Foucauldian paradigm would consequently bring him through and towards a nihilist epistemology.⁶² Additionally, Said revolves entirely around Eurocentrism and how the Occident perceives the Orient.⁶³

Al-Attas, whom Ayub and Ismail are third-degree students of, sees Eurocentrism differently. Numerous works of Al-Attas such as (but not limited to) *Islam and Secularism* and *Prolegomena to the Metaphysics of Islam*,⁶⁴ are primarily concerned with worldview and epistemology. Eurocentric biases, to Al-Attas being the superiority complex of the West, is one among many products of the bigger problem of secularism as a

⁶¹ See: Ayub and Ismail Al-'Alam, *Prawacana: Dekolonisasi dalam Perbandingan Epistemologi*, written as forward in: Muhammad Rofiq Muzakkir, *Dekolonisasi: Metodologi Kritis Dalam Studi Humaniora Dan Studi Islam* (Yogyakarta: Bentala Tamadun Nusantara, 2022), xviii–xxvii.

⁶² In: Muzakkir, *Dekolonisasi: Metodologi Kritis Dalam Studi Humaniora Dan Studi Islam*, xix–xxi.

⁶³ Edward W. Said, *Orientalism* (Penguin Books, 2003).

⁶⁴ Syed Muhammad Naquib Al-Attas, *Islam and Secularism* (Kuala Lumpur: ISTAC, 1993); Syed Muhammad Naquib Al-Attas, *Prolegomena to the Metaphysics of Islam: An Exposition of the Fundamental Elements of the Worldview of Islam* (Kuala Lumpur: Institute for the Study of Islamic Thought and Civilizations, 1995).

worldview.⁶⁵ Crucially, unlike Said, Al-Attas does not reject the idea of universalism of truth. He rejects Eurocentrism as part of the bigger problem of the secular worldview by replacing it with what he sees as the only defensible notion of universalism: Islam.⁶⁶

Therefore, these two different approaches of Said and Al-Attas will strongly affect the production of knowledge after Eurocentrism is, for lack of a better term, 'defeated'. Said's postcolonialism will inevitably lead to pluralism of knowledge and truth, created and developed by various 'newly liberated' peoples and localities, neither capable of claiming truth or superiority over the other.⁶⁷ On the other hand, Al-Attas strongly rejects the notion of relativism and emphasizes the universality of true knowledge.⁶⁸ This highly affects how knowledge should be produced and decolonized as per Al-Attas's terms, which will be apparent later in this section.

Crucially, it is important to note that Al-Attas does not only point his finger to the West. While strongly criticizing the West together with its violent means of achieving hegemony and ill-perceived worldview, Al-Attas points his finger to the Muslims as well. He writes that the main problem of the Muslims is ignorance of the true nature of Islam, which is caused by the error, or deficiency, or void of knowledge.⁶⁹ An interesting term he coined is the "Muslim dilemma", where a person could claim to be Muslim but at the same time adopts a Western-secular worldview in her/his mind.⁷⁰ Among the results of this "Muslim dilemma" is the other side of the coin of Western superiority complex, namely, an inferiority complex on part of the Muslims of their own knowledge and traditions in favor of their Western-secular counterpart.

Al-Attas strongly criticizes the secular epistemology—which is central to the Western worldview in their production of knowledge—for *inter alia* only recognizing the anthropocentric source of truth, namely the human (empirical) experience and rational thought. He notes Van Peursen who describes secularization as the freeing of man "...first from religious and

⁶⁵ In: Muzakkir, *Dekolonisasi: Metodologi Kritis Dalam Studi Humaniora Dan Studi Islam*, xxiii.

⁶⁶ Al-Attas, *Islam and Secularism*, 98–103, 114–15, 117, 153–55, etc.

⁶⁷ Muzakkir, *Dekolonisasi: Metodologi Kritis Dalam Studi Humaniora Dan Studi Islam*, xxiv.

⁶⁸ Al-Attas, *Islam and Secularism*, 107, 153–55.

⁶⁹ Syed Muhammad Naquib Al-Attas, *Risalah Untuk Kaum Muslimin* (Kuala Lumpur: ISTAC, 2001), 126.

⁷⁰ Al-Attas, *Islam and Secularism*, 104–5.

then from metaphysical control over his reason and his language."⁷¹ To Al-Attas, this denies man of the most important source of knowledge which is metaphysical in nature: revelation. The Islamic tradition holds that the only source of knowledge is from Allah (God), and there are three causes from which to obtain it: internal and external faculties and senses, reason and intuition, and true reports (testimony) of both scientific and religious.⁷²

It is perhaps not the place for us to dwell too deeply into the nature of each of these causes of knowledge and how to balance these.⁷³ However, it is of paramount importance to emphasize the last cause mentioned above, namely true reports or, in Al-Nasafi's words, *khabar sadiq*. This includes the recognition of divine revelation as not only one of but also the primary cause from which to obtain knowledge. Therefore, the acceptance of Allah as the only deity worthy of worship (i.e. *tawhid*) with His Names and Attributes, including The Alknowing (*Al-'Alim*) and The Absolute Truth (*Al-Haqq*)⁷⁴ are not theological statements for one to merely affirm in their minds. It is precisely this that underlies the Islamic claim of universality which, consequently, would manifest itself in the production of knowledge. Likewise, it would be Islamically counter-intuitive and irrational to both accept the above theological statement but reject knowledge given from Allah to mankind: whether through the

⁷¹ Al-Attas, *Islam and Secularism*, 17. Original quote can be found in: Harvey Cox, *The Secular City: Secularization and Urbanization in Theological Perspective* (New Jersey: Princeton University Press, 2013), 2.

⁷² Syed Muhammad Naquib Al-Attas, *Islam and Philosophie of Science* (Kuala Lumpur: ISTAC, 1989), 21–22. It appears that Al-Attas takes from the classical theologian Al-Nasafi, as the formulation is very similar to the Al-Nasafi's. Also, Al-Attas has published and popularized the relevant manuscript containing this matter written by Al-Nasafi. See: Syed Muhammad Naquib Al-Attas and 'Umar ibn Muḥammad Al-Nasafī, *The Oldest Known Malay Manuscript: A 16th Century Malay Translation of 'Aqā'id of Al-Nasafi* (Kuala Lumpur: Universiti Malaya, 1988).

⁷³ Further details on Islamic epistemology, other than the already mentioned works of Al-Attas, see also: Sa'd al-Dīn Al-Taftāzānī, *Sharḥ 'Aqā'id Al-Nasafiyyah* (Beirut: Dar Iḥya Turath Al-'Arabi, 2014); Carl Sharif El-Tobgui, *Ibn Taymiyya on Reason and Revelation: A Study of Dar' Ta'arud Al-'Aql Wa-l-Naql* (Brill, 2020); Osman Bakar, *Classification of Knowledge in Islam: A Study in Islamic Philosophy of Science* (Cambridge: Islamic Texts Society, 1998); Mulyadhi Kartanegara, *Essentials of Islamic Epistemology: A Philosophical Inquiry into the Foundation of Knowledge* (Bandar Sri Begawan: UBD Press, 2014).

⁷⁴ Islamic teachings have ninety-nine Names and Attributes of Allah, all taken from the Qur'an and statements of Prophet Muhammad ﷺ. See: 'Umar Sulaymān Al-Ashqar, *Sharḥ Ibn Al-Qayyim Li Asmā' Al-Ḥusnā'* (Amman: Dar al-Nafā'is, 2008).

senses and faculties, through the intellect and intuition, or through true reports, all in their right place and manner.

Al-Attas then coined the notion of “Islamization”, which he explained to mean “the liberation of man first from magical, mythological, animistic, national-cultural tradition opposed to Islam, and then from secular control over his reason and his language.”⁷⁵ However, when speaking of production of knowledge in a more ‘operational’ level, Al-Attas appears to see that secularism is what plagues contemporary knowledge as a Western product. Hence, when he coined the term “Islamization of contemporary knowledge”, he defined it as “the deliverance of knowledge from its interpretations based on secular ideology; and from meanings and expressions of the secular”.⁷⁶ It is apparent that these definitions has obvious parallels (as it is a counter) towards the previously mentioned definition of secularization by Van Peursen. He further explains that Islamization would isolate contemporary knowledge from its Western-secular elements and key concepts then infuse it with Islamic elements and key concepts.⁷⁷

It shall be noted that, in Al-Attas’s thought, “Islamization of contemporary knowledge” is (as should be obvious from the wording) only relevant towards contemporary knowledge, which has originated from and therefore is embedded with a Western-secular worldview.⁷⁸ On the other hand, works of classical Islamic scholars discussing how to understand and apply the Qur’an and Sunnah –we refer to as *turath*—do not need “Islamization” as they have originated from and are already fully embedded with an Islamic worldview.⁷⁹

Al-Attas’s thoughts on decolonization, which is truly a notion of Islamization, are meant to trickle down to various other fields of knowledge. For example, in the field of psychology, Malik Badri –a contemporary and peer of Al-Attas—is credited for the “Islamization of psychology”. He pioneered a field of modern Islamic psychology by clearing secular elements of modern psychology and infusing it with

⁷⁵ Al-Attas, *Islam and Secularism*, 44.

⁷⁶ Syed Muhammad Naquib Al-Attas, *The Concept of Knowledge in Islam: A Framework for an Islamic Philosophy of Education* (Kuala Lumpur: The International Institute of Islamic Thought, 1991), 43.

⁷⁷ Al-Attas, *Islam and Secularism*, 162–63.

⁷⁸ Al-Attas, *Islam and Secularism*, 162.

⁷⁹ Khalif Muammar A. Harris, “Pandangan Islam Terhadap Tradisi Dan Kemodenan,” *Jurnal Hadhari* 4, no. 1 (2012): 23–48, <http://journalarticle.ukm.my/5329/>. Adian Husaini and Dinar Dewi Kania, eds., *Filsafat Ilmu: Perspektif Barat Dan Islam* (Jakarta: Gema Insani Press, 2013), 247.

Islamic concepts of the soul, happiness, and many others.⁸⁰ Meanwhile, in the field of finance and economics where many academics have tried to make 'Islamic versions' of the existing dominance of non-Islamic financial and economic systems.⁸¹ Here, Ugi Suharto –Al-Attas's student extends his teacher's thoughts on *ikhtiyar* (good effort towards a good purpose) and applies it to develop theories related to opportunity cost and time value of money.⁸² There are other fields that could be discussed as manifestations of Al-Attas's Islamization of contemporary knowledge, such as history⁸³ and education.⁸⁴

⁸⁰ See: Malik Badri, *Azmah "Alamā" Al-Nafs Al-Muslimin* (Dibunu Lil Tiba'ah wa al-Nashr wa al-Tawzi', 2010); Malik Badri, *Culture and Islamic Adaptation Psychology* (Kuala Lumpur: Humanology, 2018); Malik Badri, "The Islamization of Psychology: Its 'Why', Its 'What', Its 'How' and Its 'Who,'" *International Journal of Islamic Psychology* 3, no. 01 (2020): 22–33; Abdallah Rothman, Alisha Ahmed, and Rania Awaad, "The Contributions and Impact of Malik Badri: Father of Modern Islamic Psychology," *American Journal of Islam and Society* 39, no. 1–2 (2022): 190–213, <https://doi.org/10.35632/ajis.v39i1-2.3142>.

⁸¹ ISRA, *Islamic Financial System: Principles & Operations*, ed. Mezbah Ahmed (Kuala Lumpur: International Shari'ah Research Academy for Islamic Finance (ISRA), 2016); Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics, and Practice* (Cambridge University Press, 2006).

⁸² Ugi Suharto, "Analysis of the Concept of Islamic Choice (Ikhtiyar) on Opportunity Cost and Time Value of Money in Islamic Economics and Finance," *International Journal of Economics, Management and Accounting* 22, no. 2 (2014), <https://doi.org/10.31436/ijema.v22i2.269>. His other works in Islamic economics and finance include: Ugi Suharto, "Riba and Interest in Islamic Finance: Semantic and Terminological Issue," *International Journal of Islamic and Middle Eastern Finance and Management* 11, no. 1 (2018): 131–38, <https://doi.org/10.1108/IMEFM-08-2016-0109>; Ugi Suharto, "Financial Instability Hypothesis (FIH) of Minsky: Contextualizing the Roles of Islamic Commercial and Social Finance," *Journal of Islamic Monetary Economics and Finance* 2, no. 2 (2017): 145–72, <https://mail.jimf-bi.org/JIMF/article/view/648/582>.

⁸³ Syed Muhammad Naquib Al-Attas, *Historical Fact and Fiction* (Kuala Lumpur: UTM Press, 2011); Syed Muhd Khairudin Aljunied, "Rescuing History from the Orientalists: Syed Muhammad Naquib Al-Attas and the History of Islam in the Malay World," *TAFHIM: IKIM Journal of Islam and the Contemporary World* 6 (2013), <https://doi.org/10.56389/tafhim.vol6no1.1>; Abdur Razzaq, "Islamic Civilization of Malay: Historical Polemic and Modern Challenges (The Thought of Syed Naquib Al-Attas)," *Journal of Malay Islamic Studies* 2, no. 2 (2018): 125–32, <https://doi.org/10.19109/jmis.v2i2.3778>.

⁸⁴ Wan Mohd Nor Wan Daud, *The Educational Philosophy and Practice of Syed Muhammad Naquib Al-Attas: An Exposition of the Original Concept of Islamization* (Kuala Lumpur: The International Institute of Islamic Thought and Civilization (ISTAC), 1998); Adian Husaini, *Beginilah Pendidikan Nasional Yang Ideal* (Depok: YPI At-Taqwa, 2022); Farah Ahmed, "An Exploration of Naquib Al-Attas' Theory of Islamic Education as Ta'dīb as

One can observe at least a couple of interesting features common to the fields mentioned above. First, contemporary Western-secular sciences have been developed in those fields, and Muslim scholars influenced by Al-Attas felt the need to Islamize them. Second, classical Muslim scholars have already had works in those fields as reflected in the *turath*, therefore the Al-Attas influenced scholars would highly reference these *turath* in the process of Islamization. For example, Malik Badri translates, comments on, and publishes portions of a manuscript of *Maṣāliḥ al-Abdān wa al-Anfus* (Sustenance for Bodies and Souls) by Abu Zayd Al-Balkhi's (d.934 AD) who introduces behavioral therapy to a notion of psychology not yet secularized by Western positivism.⁸⁵ Ugi Suharto, as a foundation for developing Islamic economics, extensively analyzes *Kitab Al-Amwal* (Book of Wealth) by 'Abu 'Ubayd Al-Qasim (d.838 AD).⁸⁶ Even Al-Attas himself, in Islamic epistemology, comments on and translates a Malay manuscript of *Aqa'id Al-Nasafi* (Al-Nasafi's Creed) by 'Umar ibn Muḥammad Al-Nasafi (d.1442).⁸⁷ It must be noted that these are not the only classical *turath* used by these contemporary Muslim scholars for Islamization; we only give a few examples where these scholars published special books dedicated to appreciating certain pieces of classical *turath*.

That said, an Al-Attasian Islamization of international law would generally follow the same path. First, Islamization is necessary as there is already a developed Eurocentric science of international law. Second, there are various classical *turath* ripe on the subject, such as Al-Sarakhsi's (d.1090 AD) *Sharḥ al-Siyār al-Kabīr* (Commentary of the Greater Book of International Law),⁸⁸ which is a commentary towards the now unfortunately lost manuscript of Al-Shaybani's (d.805 AD) *Siyār al-Kabīr* (Greater Book of International Law).

The logical next step in this process would be to first isolate contemporary international law from its Western-secular elements and to subsequently infuse it with Islamic elements. It will be a challenge to do

an 'Indigenous' Educational Philosophy," *Educational Philosophy and Theory* 50, no. 8 (2018): 786–94, <https://doi.org/10.1163/157180508X359855>.

⁸⁵ Abu Zayd Al-Balkhi, *Abu Zayd Al-Balkhi's Sustenance of the Soul: The Cognitive Behavior Therapy of A Ninth Century Physician*, trans. Malik Badri (International Institute of Islamic Thought, 2020).

⁸⁶ Ugi Suharto, *Kitab Al-Amwal: Abu Ubayd's Concept of Public Finance* (Kuala Lumpur: International Institute of Islamic Thought and Civilization, 2005).

⁸⁷ Al-Attas and Al-Nasafi, *The Oldest Known Malay Manuscript: A 16th Century Malay Translation of 'Aqa'id of Al-Nasafi*.

⁸⁸ Muḥammad ibn Aḥmad ibn Abi Sahl Al-Sarakhsi, *Sharḥ Al-Siyār Al-Kabīr* (Amman: Al-Shirkah al-Sharqiyyah li l-I'lānāt, 1971).

so especially in a TWAIL context by navigating through the challenges it presents.

The Muslim Dilemma: Meeting The Challenges?

The biggest prospect for the Muslims to have its scholarship contribute to the development of international law, as explained earlier, is that there is now a platform gaining academic recognition from which the Islamic scholarship could be heard. The idea of TWAIL is to push the hegemonic Eurocentric knowledges a bit to the corner and let everyone else, including Islamic scholarship, to be heard.

However, this is not without challenges. There are a few aspects of TWAIL, whether analyzing its origins or its practice, that present a challenge for Islamic scholarship to develop and contribute to the development of international law.

A. The Challenge of Inferiority

As briefly touched on earlier, among Al-Attas's concern is the inferiority complex of the Muslims. In his first major work *Islam and Secularism*, which was first published in 1978, a large portion of it was dedicated to explaining what he called "the Muslim Dilemma". There, he wrote:

Large numbers among them do not fully understand the nature of Western culture and civilization whence they draw their inspiration and toward which they stand agape in reverential awe and servile humility portraying the attitude of the inferior.⁸⁹

In that same work, he explained that this "Muslim Dilemma" is caused by: First, "confusion and error in knowledge," leading to, second, the "loss of adab" (also loss of justice), which finally leads to, third, incompetent leaders in the ummah who perpetuate this circle of injustice.⁹⁰ Therefore, perhaps among the results of this dilemma is when Muslim leaders tend to not to even advocate Islamic law in making international

⁸⁹ Al-Attas, *Islam and Secularism*, 126.

⁹⁰ Al-Attas, *Islam and Secularism*, 106.

law⁹¹ or even participate in severe international injustice.⁹² From an Attasian perspective, it begins with confusion and error in knowledge so therefore knowledge is where all solutions start.

Then in 2001, Al-Attas published yet another seminal work *Risalah Untuk Kaum Muslimin* (Message to the Muslims), and this Muslim Dilemma is still at the heart of the problems in which Al-Attas was calling the Muslims to ‘wake up’ from. The main call is for the Muslims to return towards what he calls Islamization and reconnecting with (and, for scholars, to continue to develop) the rich Islamic tradition of scholarship.⁹³

An important question that we wish to ask in this regard: when TWAAIL gives us Muslims the chance to start speaking, what will we tell the world?

Alas, the answer is that Muslims still suffering from an inferiority complex will end up crafting arguments and portrayals of Islamic teachings from an inferior standpoint as if Western approval is their desired end. Observing in a *jus in bello* context, Nesrine Badawi and Zezen Zainal Muttaqin observed that there are Muslim scholars who choose selectively biased and often manipulated sources and interpretations of Islamic teachings. The endgame of this train of thought is for the sake of showing how “Islam is consistent with international law and world peace”, using international law standards—especially a Eurocentric understanding of it—as a yardstick for Islamic teachings.⁹⁴ This is also true in the human rights discourse.⁹⁵ Usually, those who differ are categorically dismissed as ‘radical’ or ‘ultra-conservative’.⁹⁶

⁹¹ See *inter alia*: Ali and Heer, “What Is the Measure of ‘Universality’? Critical Reflections on ‘Islamic’ Criminal Law and Muslim State Practice Vis-à-Vis the Rome Statute and the International Criminal Court”; Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations* (New York: Palgrave Macmillan, 2011), 125; Farrar, “The Organisation of Islamic Cooperation: Forever on the Periphery of Public International Law?”

⁹² See *inter alia* Emirate support for genocide in Sudan: Alex de Waal, “Lineages of Genocide in Sudan,” *Journal of Genocide Research*, 2025, 1–19, <https://doi.org/10.1080/14623528.2025.2495792>.

⁹³ Al-Attas, *Risalah Untuk Kaum Muslimin*.

⁹⁴ Badawi, “Critical Comparativism”; Zezen Zainal Muttaqin, “Restraining Violence in the Classical Islamic Juristic Discourses” (SJD Dissertation, University of California, 2021), 24–46.

⁹⁵ See *inter alia* Fajri Matahati Muhammadin, “The United Nations’ Beirut Declaration and Its 18 Commitments on Faith for Rights’: A Critique From An Islamic Perspective,” *IIUM Law Journal* 28, no. 1 (2020): 73–112, <https://doi.org/10.31436/iiumlj.v28i1.523>.

⁹⁶ See footnote 106 ahead for one such example.

An example of this is one of our own personal experiences in ICRC-sponsored Islam and international humanitarian law events. In one such event held in Indonesia, a tense discussion occurred on the subject of the mutilation of dead enemy soldiers. Nobody disagreed concerning the impermissibility of such an act in a general sense, but an intriguing debate occurred regarding the case of mutilation in retaliation. One of us participating insisted that Islamic law permits mutilation as retaliation when the enemy commits it first, while also stating that refraining from retaliating is better.⁹⁷

The speaker, supported by some other scholars in the event, insisted that the Qur'an in Surah Al-Nahl [16] verse 126 prohibits retaliation for mutilation. This is not true, however, since the verse actually reads "And if you punish⁹⁸ [an enemy, O believers], punish with an equivalent of that with which you were harmed. But if you are patient - it is better for those who are patient." The speaker's opinion also goes against the bulk of Islamic scholarship on the subject.⁹⁹ But, of course, such a position does sound "more humane" and more palatable.

Not only does this reflect precisely the problem of an inferiority complex that Al-Attas is warning about and calling Muslims against, but dishonesty and manipulation are against basic principles of science and academics in general. However, it is undeniable that they do make some people happy and satisfied. Perhaps this is why, as Muttaqin seems to implicitly suggest, such a mentality appears dominant among the works of Muslim scholars on the subject of Islam and laws of war.¹⁰⁰ Many TWAIL (or even non-TWAIL) scholars might be happy when one of their 'members' appears happy to start intellectually engaging. However, one would be reasonably concerned at the irony of a 'member' of a decolonization movement being still shackled under intellectual colonialism.

⁹⁷ Side but important note on this subject, Islamic law does not only classify actions in lawful – unlawful, but also in grades: compulsory, encouraged, allowed, disliked, and prohibited. In the case above on retaliating mutilation, it would be permissible to retaliate but encouraged to refrain from it.

⁹⁸ Aḥmad ibn 'Abd al-Ḥalīm Ibn Taymiyyah, *Majmu' Al-Fatāwa*, vol. 28 (Madīnah: Majma' Mālik Fahd Li Ṭibā'ah Al-Muṣṣhaf Al-Sharīf, 1995), 314.

⁹⁹ See *inter alia*: Ibn Taymiyyah, *Majmu' Al-Fatāwa*, 28:314; Muḥammad Ibn Mufliḥ, *Al-Furu'*, vol. 10 (Beirut: Mu'assasah al-Risalah, 1424), 218; Abū Al-Walīd Al-Bājī Al-Mālikī, *Al-Muntaqa Sharḥ Al-Muwatta'*, vol. 3 (al-Qāhirah: Mathba'ah al-Sa'adah, 1332), 172.

¹⁰⁰ Muttaqin, "Restraining Violence," 24–46.

If this persists, then the TWAIL movement will not help the development and contribution of Islamic scholarship that much. If the actual bulk of scholarship is dismissed, labelled as “radical”, and the actual development of knowledge is done based on the inferior necessity to satisfy the West, then this does not benefit Islamic scholarship. We cannot even begin to think about the content of the actual scholarship to develop and convey before firstly removing a mindset of inferiority which adversely affects basic principles of research such as honesty.

Instead, even from a TWAIL perspective, what may be deemed by some as ugly and uncomfortable truths need to be put on the table as part of the discussion. What to do next is a different question. Muslims, due to the said “Muslim Dilemma”, are indeed facing difficulty in navigating modernity in general. However, Islamization of contemporary knowledge is certainly needed without being held back by inferiority resulting in dishonesty and manipulation to form its contribution in the development of international law scholarship.

B. The Challenge of Nativism

The first challenge is the question of nativism and the possibilities it brings.¹⁰¹ Syed Farid Alatas, Al-Attas’s nephew,¹⁰² observed that nativism results in not only the intent to return to pre-colonial cultures and practices but also an undue hostility towards Western social sciences.¹⁰³ In his critique, Syed Farid points out how, with examples of *inter alia* the Japanese and Indian sociology, nativist essentialism basically ends up merely citing Sadiq Jalal Al-‘Azm, “... Orientalist essentialist ontology ... reversed to favor one specific people of the Orient.”¹⁰⁴ Perhaps among the cases of this is Indonesia’s controversial “*Islam Nusantara*”, proposed by some as a model of Islam infused with and adjusted to Indonesian

¹⁰¹ Ashcroft, Griffiths, and Tiffin, *Post-Colonial Studies: The Key Concepts*, 143.

¹⁰² However, they do not necessarily share similar academic standpoints in crucial issues, such as Islamization of Knowledge. Syed Farid, in context of social sciences, disagrees with it, a point we will touch shortly. See: Syed Farid Alatas, “The Sacralization of the Social Sciences: A Critique of an Emerging Theme in Academic Discourse,” *Archives de Sciences Sociales Des Religions*, 1995, 89–111, https://www.persee.fr/doc/assr_0335-5985_1995_num_91_1_996.

¹⁰³ Syed Farid Alatas, *Alternative Discourses in Asian Social Science: Responses to Eurocentrism* (New Delhi: SAGE Publications, 2006), 108–9.

¹⁰⁴ Alatas, *Alternative Discourses*, 109.

culture.¹⁰⁵ Uniquely primarily placing the so-called “Arabic Islam” as the main villain, they will reject practically any Islamic teaching deemed to be incompatible with the Indonesian cultural traditions (or, more accurately, Javanese culture as its primary cultural component, despite claiming “Indonesia”¹⁰⁶).¹⁰⁷ An interesting term associated and sometimes interchangeable with *Islam Nusantara* is *Pribumisasi Islam* (nativisation of Islam).¹⁰⁸

From an Al-Attas perspective, both “wings” of nativism (essentialism in favor of native knowledges and against Western knowledges) are not acceptable. Even his rejection of Western knowledge, despite his long tirades against Western civilization in numerous works, is not directed against the West *per se*, but rather its secular worldview. If the secular elements of a Western product can be isolated and other elements consistent with an Islamic worldview can be extracted, there is nothing wrong with adopting said Western knowledge.

For example, when discussing laws regulating the conduct of armed conflict, I (without my present co-author) suggested that classical scholarship and primary sources of Islamic law prescribe Muslim fighters to be proportional in waging war, but contemporary scholarship does not elaborate how to do so in the context of modern warfare hence making a gap in ruling. I (without my present co-author) further submit that Islamic scholars can, with minor filtering, use modern International Humanitarian Law detailing the ‘principle of proportionality’ in filling said gap.¹⁰⁹

¹⁰⁵ The notion of “Islam Nusantara” remains controversial even within the same organization that is the forefront of its promotion, i.e. Nahdlatul Ulama. See: Syafiq Hasyim, “‘Islam Nusantara’ and Its Discontents,” *RSIS Commentary*, S. Rajaratnam School of International Studies, Nanyang Technological University 134 (2018), <https://www.rsis.edu.sg/wp-content/uploads/2018/08/CO18134.pdf>; Mark Woodward, “Islam Nusantara: A Semantic and Symbolic Analysis,” *Heritage of Nusantara: International Journal of Religious Literature and Heritage* 6, no. 2 (2017): 181–98, <https://doi.org/10.31291/hn.v6i2.398>.

¹⁰⁶ Woodward, “Islam Nusantara: A Semantic and Symbolic Analysis,” 183.

¹⁰⁷ There is, however, varying strands of interpretation of what Islam Nusantara means. Some of the most nativist strands include: Muhammad Sulton Fatoni, *Buku Pintar Islam Nusantara* (Penerbit Pustaka Iiman, 2017); Ahmad Baso, *Islam Nusantara: Ijtihad Jenius Dan Ijma Ulama Indonesia* (Tangerang Selatan: Pustaka Afid, 2015).

¹⁰⁸ Tri Wahyudi Ramdhan, “Islam Nusantara: Pribumisasi Islam Ala NU,” *Al-Insyiroh* 2, no. 2 (2018): 73–91, <https://doi.org/10.35309/alinsyiroh.v2i1.3333>.

¹⁰⁹ Fajri Matahati Muhammadin, “Fiqh Al-Jihād In The Contemporary World: Addressing the Gaps in the Regulations on the Means and Methods of Warfare” (Ph.D Thesis, International Islamic University of Malaysia, 2020), 71–128,

On the other hand, essentialism in favor of native knowledge would also be seen as incorrect. The aforementioned Al-Attas' definition of "Islamization of contemporary knowledge" seems to only place crosshairs towards secular-produced knowledge. While it is perhaps true that Western-secular knowledge appears to be the biggest common enemy of decolonization movements, one can only guess why indigenous knowledge is not specifically targeted.¹¹⁰ Wan Mohd Nor Wan Daud, often dubbed as Al-Attas's intellectual heir, in his professorial inaugural lecture does appreciatively credits North American and African efforts to decolonize their education by promoting indigenous knowledge alongside its existing Western counterpart¹¹¹ but that is about it.

However, Al-Attas's more general definition of "Islamization" only points to de-secularization after putting his crosshairs at "the liberation of man first from magical, mythological, animistic, national-cultural tradition opposed to Islam"¹¹² While he mentions that the disenchantment of nature is what "... brought about the chaos of secularization which is ravaging the Western world and Christianity in contemporary life",¹¹³ he is not categorically against disenchantment of nature. Rather, Al-Attas is a proponent of "*proper* disenchantment of nature": Islam recognizes the spirituality in all creation in being Signs of God, but does not recognize spirituality assigned by 'unislamic' sources such as "... animistic and magical superstitions and false gods..."¹¹⁴

Meanwhile, very often, indigenous knowledges are full of these "enchantments of nature". As Franke Wilmer wrote, "Indigenous world views also directly address the issue of spirituality, being the reality of spirit that enlivens forms, including not only ... the animated natural world

<https://dx.doi.org/10.2139/ssrn.3690225>. Note how I (without my present co-author) was accused as an "ultra-conservative [Islamic] scholar" by Ibrahim Salama and Michael Wiener, *Reconciling Religion and Human Rights: Faith in Multilateralism* (Edward Elgar Publishing, 2022), 37; Ibrahim Salama and Michael Wiener, "'Faith for Rights' in Armed Conflict: Lessons from Practice," *Journal of Human Rights Practice* 20 (2023): 11, <https://doi.org/10.1093/jhuman/huad015>.

¹¹⁰ Perhaps this is because Al-Attas's major works on Islamization were published before the postmodernists promoted indigenous knowledge in the late 1990s and early 2000s. However, it has been decades since then and Al-Attas is still alive at the time our paper is written.

¹¹¹ Wan Mohd Nor Wan Daud, *Islamization of Contemporary Knowledge and the Role of the University in the Context of De-Westernization and Decolonialization* (Johor Baru: UTM Press, 2013), 8–11.

¹¹² Emphasis added. See: Al-Attas, *Islam and Secularism*, 44.

¹¹³ Al-Attas, *Islam and Secularism*, 32.

¹¹⁴ Italicized word is from the source: Al-Attas, *Islam and Secularism*, 40–41.

(plants and animals) but minerals and the Earth itself'.¹¹⁵ Spirituality would necessarily be manifested in further knowledge products, including legal traditions.¹¹⁶

It is only fair that indigenous knowledges are also put under crosshairs and subject to Islamization. However, it shall be noted that not all cultures are rejected in Islamic scholarship, including –especially—law. In fact, culture and customs are a very important part of Islamic law in formulating legal rulings or judgements, so long as it does not contradict Islamic teachings.¹¹⁷ Therefore, the 'Ulama must certainly be careful when navigating through indigenous knowledge. Quite a number of 'native versions' of Islam end up incorporating pre-Islamic animistic beliefs into their 'versions' and are condoned by their clerics, such as the various Turkic civilizations.¹¹⁸ This too is part of the controversy with Indonesia's Islam Nusantara, as some Western commentators (as agreed upon by some Indonesian Islamic scholars) note that Islam Nusantara is actually strongly founded upon pre-Islamic animistic beliefs.¹¹⁹ It will be very

¹¹⁵ Franke Wilmer, "Narratives of Resistance: Postmodernism and Indigenous World Views," *Race, Gender & Class* 3, no. 2 (1996): 55, <https://www.jstor.org/stable/41674788>.

¹¹⁶ See *inter alia* I Gede A. B. Wiranata, *Hukum Adat Di Indonesia: Perkembangannya Dari Masa Ke Masa* (Bandung: Citra Aditya, 2005), 62–63; Alakh Niranjan Singh and Prabhakar Singh, "What Can International Law Learn from Indian Mythology, Hinduism and History," *JE Asia & Int'l L.* 2 (2009): 239, <https://doi.org/10.14330/jeail.2009.2.1.10>; Prabhakar Singh, "Indian International Law: From a Colonized Apologist to a Subaltern Protagonist," *Leiden Journal of International Law* 23, no. 1 (2010): 79–103, <https://doi.org/10.1017/S0922156509990343>; Adina-Loredana Nistor, Andrew Merrylees, and Barbora Holá, "Spellbound at the International Criminal Court: The Intersection of Spiritualism & International Criminal Law," in *Intersections of Law and Culture at the International Criminal Court*, ed. Julie Frase and Brianne McGonigle Leyh (Edward Elgar Publishing, 2020).

¹¹⁷ Shihāb al-Dīn Aḥmad ibn Idrīs al-Qarāfī Al-Mālikī, *The Criterion for Distinguishing Legal Opinions from Judicial Rulings and the Administrative Acts of Judges and Rulers*, trans. Mohammad H. Fadel (New Haven and London: Yale University Press, 2017), 226–28; Wahbah al-Zuhaylī, *Fiqh Islam Wa Al-Adillatuhu*, vol. 1 (Jakarta: Gema Insani Press, 2011), 17; Abdul Wahab Khallaf, *Ilmu Ushul Fiqih* (Jakarta: PT Rineka Cipta, 2005), 104–6; 'Abd al-Wahhāb Khallāf, *Ilm Uṣūl Al-Fiqh* (Maktabah al-Da'wah, 1956), 89–91.

¹¹⁸ Dávid Somfai Kara, "Conflict between Traditional and Modern Muslim Practices," *Acta Ethnographica Hungarica* 61, no. 2 (2016): 469–81, <https://doi.org/10.1556/022.2016.61.2.13>; R. Charles Weller, 'Pre-Islamic Survivals' in *Muslim Central Asia: Tsarist, Soviet and Post-Soviet Ethnography in World Historical Perspective* (Palgrave Macmillan, 2023), 163–180.

¹¹⁹ Mark Woodward, "Islamicate Civilization and National Islams: Islam Nusantara, West Java and Sundanese Culture," *Heritage of Nusantara: International Journal of Religious Literature and Heritage* 8, no. 1 (2019): 148–87, <https://doi.org/10.31291/hn.v8i1.542>.

difficult to dissect the details of the debates surrounding Islam Nusantara, whether on the general notion itself or its various sub-issues (e.g. adoption of an Islamic version of certain pre-Islamic cultural practices) or even its definition. But the existence of these discourses itself illustrates how complex the debate is and how careful the ‘ulama needs to be.

C. The Challenge of Relativism

It is perhaps important to start this line of analysis with Syed Farid Alatas’s critique of Al-Attas’s Islamization of knowledge. Talking strictly in the context of social sciences, Syed Farid points out that Islamization of knowledge (considering not only Al-Attas, but also Syed Hussein Nasr and Ismail Al-Faruqi’s iterations of the concept) “...falls under the threat of nativism”.¹²⁰ His analysis was simple: nativist thinking can still accept Western (or foreign) knowledge but only selectively so, which Islamization of knowledge also does.¹²¹

Syed Farid’s critique, especially in the context of social sciences, deserves to be dissected in a distinct piece of research. However, as far as the charge of nativism is concerned, Syed Farid’s objection has two crucial elements: Islam is a ‘native’ group, and no ‘native’ should place itself above others. The reduction of Islam to a mere ‘native’ group is incorrect if putting Al-Attas’s concept that Islam represents a universality into consideration. Meanwhile, Syed Farid’s notion of ‘universal’ (when he speaks of ‘universal knowledge’) is that knowledge can be taken from any ‘natives’,¹²² meaning that neither of them is categorically more correct than the other. That said, it can be deduced that Syed Farid’s position is one advocating for relativism.

The idea of relativism is that there are no universal or objective truths, only subjective ones. Among the famous discussions involving relativism is in human rights where some claim that there is no such ‘inherent’ or objective nature (rights) of human beings, except what different cultures would think.¹²³ It is almost like a tug of war between

Woodward himself disagrees with such observation, agreeing with Marshal Hodgson’s position that said animistic practices were actually ‘Islamic’ as they are found among various other non-Indonesian Muslim civilizations as well. A difficult point to defend because these practices were adopted from pre-Islamic times and identified (and defended) by the practitioners themselves as local and traditional.

¹²⁰ Alatas, “The Sacralization,” 102.

¹²¹ Alatas, “The Sacralization,” 95–98.

¹²² Alatas, “The Sacralization,” 100.

¹²³ Ajnesh Prasad, “Cultural Relativism in Human Rights Discourse,” *Peace Review* 19, no. 4 (2007): 590, <https://doi.org/10.1080/10402650701681236>.

universalism and relativism, where many tend to agree at least that there are some universal things and some relative things.¹²⁴

Crucially, this appears to be the direction in which the TWAIL movement is heading: building an international law where all equally participate. After all, this is the primary characteristic of the Saidian postcolonial movement. Animistic-infused Indian influences will meet the anti-capitalist Marxists which will also meet the Feminists and Queer and, crucially, Islam.¹²⁵ This is most certainly how Islamic scholarship is finding a place among the TWAIL discourses in the first place. Prabhakar Singh and Benoit Mayer wrote that international law relies "... on assumptions, habitus, lifeworlds, values, worldviews, and the like, which remain for the most part unquestioned." TWAIL wants to put them all on the table, but this is where one must ask: what do we do with conflicting ones?

As a corollary of their post-colonialistic -and subsequently, nihilistic-underpinnings, which puts as one of their main concerns the zeal to avoid any kind of totalizing political framework,¹²⁶ the TWAIL movement puts a heavy emphasis on the inclusiveness of its adherents' perspectives, that is to say, they will accept into their clique any ideology which has the slightest nexus with the effort to alleviate the effects of the first world's hegemony upon the third world even when they may conflict and be dissonant with each other.¹²⁷ So vehement, at times, is that emphasis that the most radical subjectivists amongst TWAIL theorists are even willing to put to the periphery the problem that it causes to the movement: that they don't have any one coherent political program or programmatic strategy to reach their purported goals.¹²⁸ Some of its proponents have

¹²⁴ See *inter alia*: Helen Quane, "Legal Pluralism and International Human Rights Law: Inherently Incompatible, Mutually Reinforcing or Something in Between?," *Oxford Journal of Legal Studies* 33, no. 4 (2013): 675–702, <https://doi.org/10.1093/ojls/gqt018>; Mashood A Baderin, *International Human Rights and Islamic Law* (Oxford: Oxford University Press, 2003).

¹²⁵ Prabhakar Singh and Benoit Mayer, "Introduction: Thinking International Law Critically - One Attitude, Three Perspectives," in *Critical International Law: Post-Realism, Post Colonialism, and Transnationalism*, ed. Prabhakar Singh and Benoit Mayer (Oxford–New Delhi: Oxford University Press, 2014), 3.

¹²⁶ Obiora Chinedu Okafor, "Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective," *Osgoode Hall LJ* 43 (2005): 176, <https://ssrn.com/abstract=1572430>.

¹²⁷ Rohini Sen, "Concept: Third World Approaches to International Law," in *The Critical Legal Pocketbook*, ed. Illan rua Wall et al. (Oxford: Counterpress, 2021), 89.

¹²⁸ Naz Khatoon Modirzadeh, "[L]et Us All Agree To Die A Little': TWAIL's Unfulfilled Promise," *Harvard International Law Journal (Upcoming)* 65 (2023): 47,

even go so far as to say that the main goal of TWAIL is to unite all voices that are critical/ to the left of international law, notwithstanding their differences and divergences, which at times may be at an epistemic level, so as to bolster its sense of numbers.¹²⁹

There is another problem that such emphasis on inclusivity might bring, however, which is that it might pigeon-hole all its constituent perspectives into something that they are not and breed the assumption of the existence of similarities and compatibilities where they are not, in effect providing a misrepresentation of said perspectives.¹³⁰ It rather obviously risks establishing a trend of discursive purity by emphasizing the presumed shared ideologies that exist between said constituent perspectives, which hitherto has been the point of emphasis of some TWAIL literatures¹³¹ in attempting to maintain its resistant, anti-hegemonic narrative against international law.

The case of Islam might be one to show exactly that. On one hand, Al-Attas's Islamization of knowledge would give room to accept various aspects of non-Islamic knowledge insofar as it does not contradict Islamic teachings. For example, on an axiological level, there is perhaps quite a wide room for Muslims to accept Marxists' comprehensive attacks towards all that is wrong with capitalism and the injustices that it causes.¹³² However, on an ontological level, it is hard to find anything further away from Islam than a Marxist's stance towards religion.¹³³ Yet, at this stage,

<https://journals.law.harvard.edu/ilj/wp-content/uploads/sites/84/HILJ-651-Modirzadeh-1.pdf>.

¹²⁹ See Ntina Tzouvala, "International Law and (the Critique of) Political Economy," *South Atlantic Quarterly* 121, no. 2 (2022): 297, <https://doi.org/10.1215/00382876-9663618>.

¹³⁰ Modirzadeh, "[L]et Us All Agree," 31.

¹³¹ Zoli, "Islamic Contributions to International Humanitarian Law: Recalibrating TWAIL Approaches for Existing Contributions and Legacies," 271..

¹³² Karl Marx, Friedrich Engels, and Robert Weick, *The Communist Manifesto and Das Kapital* (Knickerbocker Classics, 2019). Its international law 'branch': Susan Marks, ed., *International Law on the Left: Re-Examining Marxist Legacies* (Cambridge: Cambridge University Press, 2008).

¹³³ Kenneth Surin, "Marxism and Religion," *Critical Research on Religion* 1, no. 1 (2013): 9–14, <https://doi.org/10.1177/2050303213476107>. Also, strong fatwas against communism's ontology and epistemology include one by the Muslim World League: "Ḥukm Al-Shuyū'īyyat Wa Al-Intimā' Ilayhā," in *Qarārāt Al-Majma' Al-Fiqhī Al-Islāmī Bi Makkah Al-Mukarramah* (1424 H – 1397 H) (Makkah: Rābiṭah 'Ālam al-Islāmī, n.d.), 23–26. Some Islamic scholars criticize all levels, though. See: Ghālib ibn 'Alī 'Awājī, *Al-Madhāhib Al-Fikriyyah Al-Mu'aṣṣirah Wa Dawruhā Fī Al-Mujtama'āt Wa Mawqif Al-Muslim Minhā*, vol. 2 (Jeddah: Maktabah 'Aṣriyyah Al-Dhahabiyyah, 2006), 1062–1322.

perhaps disagreement is common even between two people following the same school of thought.

However, on the other hand, Islam being the decider of objective truth from which others are filtered is not a mere invention of Al-Attas. This is very strongly entrenched in Islamic teachings to its core, as various Qur'anic verses indicate such as Surah Al-Ma'idah (5) verse 44: "And whoever does not judge by what Allāh has revealed - then it is those who are the disbelievers." The 'ulama from various schools have noted the aforementioned verse (and other similar verses) and explained that those who believe that there are other laws or teachings better than (or even equal to) Islamic teachings, they are considered apostates.¹³⁴ Also, it is entrenched within both Islamic theology and legal theory that all Islamic teachings bring *maslahat* (benefits, fulfillment of necessity) for all creation,¹³⁵ although one must not confuse how Islam defines *maslahat* which would then affect how to interpret Islamic teachings to fulfil it.¹³⁶

Nonetheless, some Muslim scholars ended up falling in this trap, with Syed Farid conveniently serving as the first example. These relativist-clad "Islamic" positions can usually be found in human rights discourse, where some Muslim academics or figures argue in favour of exceptionalism.¹³⁷ Such a position merely implies horizontal incompatibility and not the

¹³⁴ See *inter alia*: Muḥammad ibn Ṣāliḥ Al-'Uthaymīn, *Al-Qaul Al-Mufid*, vol. 2 (Dar al-'Aṣhima, 1415), 69; 'Alī Ibn Abī Al-Ḥanafī, *Sharḥ Al-'Aqīdah Al-Ṭahawīyyah*, vol. 2 (Beirut: Mu'assasah al-Risalah, 1997), 446; Haji Abdulmalik Abdulkarim Amrullah, *Tafsir Al-Azhar*, vol. 3 (Singapore: Pustaka Nasional PTE Ltd, n.d.), 1758–60. Also: Muhammadin and Mohd Kamal, "The Western," 181–82.

¹³⁵ See the Qur'an in Surah Anbiya' [21] verse 107. Also: Sa'd bin Nāṣir Al-Shathri, *Sharḥ Al-Manzumah Al-Sa'diyah Fī Al-Qawā'id Al-Fiqhiyyah*, 2nd ed. (Riyadh: Dar Kanuz Ishbiliya, 2005), 51–56.

¹³⁶ See: Adi Setia, "Freeing Maqāṣid and Maṣlaḥah from Surreptitious Utilitarianism," *Islamic Sciences* 14, no. 2 (2016): 127–57; Muḥammad Sa'īd Ramaḍān Al-Būṭī, *Ḍawābiṭ Al-Maṣlahat Fī Al-Sharī'ah Al-Islāmiyyah* (Bayrūt: Mu'assasah al-Risalah, 1973); Tahir Ibn Ashur, *Treatise on Maqasid Al-Shariah*, trans. Mohamed El-Tahir El-Mesawi (London: IIIT, 2006).

¹³⁷ See *inter alia* Rachminawati, "ASEAN Human Rights Declaration: A New Form of Universalism"; Abul Aziz Said, "Human Rights in Islamic Perspectives," in *Human Rights: Cultural and Ideological Perspectives*, ed. Admantia Pollis and Peter Schwab (New York: Praeger, 1979), 86; Bassam Tibi, *Islam and the Cultural Accommodation of Social Change* (Boulder: Westview Press, 1991), 61. Mahathir Mohamad, former Malaysian Prime Minister, has always been a strong proponent of exceptionalism in human rights: Mohd Azizuddin Mohd Sani, "Mahathir Mohamad as a Cultural Relativist: Mahathirism on Human Rights," in *17th Biennial Conference of the Asian Studies Association of Australia*, Melbourne, 2008, 1–3, <https://repo.uum.edu.my/id/eprint/1873>.

superiority of either, demanding only as far as mutual respect between the differences.

The correct path for a Muslim in Al-Attas's terms is that of universalism, holding Islamic teachings as the highest universal truth. What an active engagement with TWAIL means would be two-fold. The first fold, the 'ulama can (selectively) adopt knowledge from other non-Islamic sources to enrich and further develop Islamic scholarship, and reject what violates Islamic teachings. One of the problems of the development of Islamic scholarship in fields heavily intersecting with international law topics is that it is quite often lethargic, merely regurgitating classical scholarship (albeit very strongly) without examining how much the change in international dynamics would affect it.¹³⁸

Other times, there are scholars who do consider the development of global politics but not so much of international law sources and scholarship from which to enrich the development of Islamic international law. This is where 'isolationists' scholars like (on a very extreme side) Al-Nabhani and Al-Maqdisi need to be mentioned. Their works largely center around and are mainly sourced from classical Islamic sources, they do believe in the superiority of Islamic teachings, but the extent of global politics that they consider is merely an identification of enemies who must later be conquered, but meanwhile interaction is limited to what classical scholars have mentioned (e.g. peace treaties, trade).¹³⁹

Also, in the current scholarship, there are certain thematic blind spots that seem to elude discussion. For example, much discussion is being made regarding the relationship between Islamic laws of war and modern IHL but very little discussion about the relationship between criminal responsibility in Islamic law and international criminal law.¹⁴⁰

The second fold, Islamic solutions can be offered to the table as a (or the) solution for various world problems with a mindset of Islamic universalism. Syed Farid's relativist rejection of positioning Islam as the "truth decider" will perhaps be the *prima facie* response of TWAIL scholars as well. The *raison d'être* of postcolonialism and TWAIL in the first place

¹³⁸ Fajri Matahati Muhammadin and Shania Dwini Azzahra, "The Role of Fiqh Al-Siyar in International Law-Making: Escaping the Lethargy," *Al-Jami'ah: Journal of Islamic Studies* 60, no. 2 (2022): 509–46, <https://doi.org/10.14421/ajis.2022.602.509-546>.

¹³⁹ See generally: Al-Nabhani, *Nizham Al-Hukm Fi Al-Islam*; Al-Maqdisi, *Al-Kawāshif*.

¹⁴⁰ Some efforts to fill in this void include: Fajri Matahati Muhammadin and Ahmad Sadzali, "The International Criminal Court and Traditional Islamic Legal Scholarship: Analyzing the War Crimes Against Civilians," in *International Criminal Law-A Counter-Hegemonic Project?*, ed. Florian Jeßberger, Leonie Steinl, and Kalika Mehta (TMC. Asser Press and Springer, 2022).

was as a reaction against universalism. It is therefore the mission of the ‘ulama to convince others to accept Islamic solutions. This is part of the general duty of *da‘wah* (propagation) as part of Islamic teachings, particularly *da‘wah bi al-‘ilm* (propagation through knowledge).¹⁴¹

This Islamic universalism is not to be spread by force as was Eurocentrism in the past. TWAIL provides an intellectual platform for this kind of discourse. As aptly put by Syamsuddin Arif, another student of Al-Attas, there are only two amicable¹⁴² ways that Muslims should engage with non-Muslims: *da‘wah* and debate.¹⁴³

Moving Forward to Where?

Breaking free from the grips of colonialism and Eurocentrism was and is still a hard intellectual battle. In that struggle, the TWAIL movement brings many prospects and challenges to the development of international law. There is still a big homework regarding what to do next and how to really achieve the end goal of it, but the struggle is still on and the scholars are still fighting.¹⁴⁴

Muslims, having a ‘seat’ on the TWAIL bandwagon, has its own unique challenge. Islamic teachings, at least through an Al-Attas perspective, offer a different idea of what that end goal is. It appears important for the ‘Ulama, as the leaders of the Muslims in terms of knowledge, to make sure to take part in the TWAIL movement. In Al-Attas’s terms, to dismantle the “Muslim dilemma,” correcting knowledge with Islamization is the first step to eventually have just leaders. With just leaders, we may just achieve a just world. So much to share and so much to learn.

Nonetheless, considering the potential challenges (inferiority, nativism, and relativism), the ‘Ulama should tread carefully and stay true to their mandate as torchbearers of the Islamic tradition. They will have to convince the ‘train’ to move in their direction, through propagation and critical intellectual engagement. However, if they do not succeed, it is important for the ‘ulama to know how far they can stay until they ‘exit the train’ before it leaves for a destination where Muslims cannot go.

¹⁴¹ Muhammadin and Azzahra, “The Role of Fiqh Al-Siyar,” 528–30.

¹⁴² Arif recognizes the possibility of war, if circumstances forces the Muslims to that direction.

¹⁴³ Syamsuddin Arif, *Islam Dan Diabolisme Intelektual* (Jakarta: Institute for the Study of Islamic Thought and Civilizations, 2017), 104.

¹⁴⁴ Modirzadeh, “[L]et Us All Agree.”

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