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TOWARDS A TRANSNATIONAL CRITICAL RACE THEORY IN EDUCATION: PROPOSING CRITICAL RACE THIRD WORLD APPROACHES TO EDUCATION POLICY

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ABSTRACT

Scholars have applied Critical Race Theory in both domestic and international contexts; however, a theory on the transnational role of race and racism in education policy has not emerged. In this Article, I borrow from the tenets of Critical Race Theory (CRT) and Third World Approaches to International Law (TWAIL) to formulate Critical Race Third World Approaches to Education Policy (TWAEP-Crit). In constructing this theory, I argue that Black Americans are in practice and lived experience treated as third world citizens, even as they reside in the United States. I prove the third world status of Black peoples in the United States by employing an analysis of the United States' response to the International Convention on the Elimination of All Forms of Racial Discrimination. Thus, Black Americans and those who advocate on behalf of and in pursuit of educational equity for Black Americans may benefit greatly from the infusion of the third world approaches to international law. Likewise, Black peoples in other parts of the world and those who advocate for human rights and justice for Black peoples, particularly those in the Global South, stand to gain equally as much from the study of strategies of Black peoples in the United States.

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INTRODUCTION

Critical Race Theory (CRT) has been used in both domestic and international contexts.[1] There is, however, a paucity of research that considers CRT in a transnational context. In this conceptual Article, I argue that there is a need for a Transnational Critical Race Theory approach. Moreover, I argue that the legal field, which introduced the scholarly theorization of Critical Race Theory, has conceptualized a theory that may provide a suitable lens for a Transnational Critical

1. *See, e.g.*, David Gillborn, *Education Policy as an Act of White Supremacy: Whiteness, Critical Race Theory and Education Reform*, 20 J. EDUC. POL'Y 485, 485 (2005); David Gillborn, *Full of Sound and Fury, Signifying Nothing? A Reply to Dave Hill's Race and Class in Britain: A Critique of the Statistical Basis for Critical Race Theory in Britain*, 8 J. CRITICAL EDUC. POL'Y STUD. 79, 79 (2010) (in the international context); Gerardo R. Lopez, *The (Race Neutral) Politics of Education: A Critical Race Theory Perspective*, 39 EDUC. ADMIN. Q. 68, 72 (2003); Janet J. Smith & David O. Stovall, *'Coming Home' to New Homes and New Schools: Critical Race Theory and the New Politics of Containment*, 23 J. EDUC. POL'Y 135, 135 (2008) (in the domestic context).

Race Theory. This theory, Third World Approaches to International Law (TWAIL), is an international version of CRT. I argue that a combination of components and perspectives from CRT and TWAIL produces a formidable framework by which critical scholars seeking a Transnational Critical Race Theory may 1) research the origins and impacts of law and law-like systems on peoples subjected to Third World treatment, 2) analyze data collected in research on how law and law-like systems impact peoples subjected to Third World treatment, and 3) construct research that centers the stories of resistance, coping, and imaginations of peoples who are subject to Third World treatment.

I start my endeavor by first discussing Critical Race Theory and the impact of Critical Race Theory on educational scholarship. Next, I introduce the scholarly approach that international law scholars refer to as TWAIL. I spend considerably more time on TWAIL than on CRT given TWAIL's novelty to educational discourse. I then propose, as succinctly as possible, my articulation of Critical Race Third World Approaches to Education Policy (TWAEP-Crit). Following this articulation, I present evidence of how Black Americans in the United States are similarly situated to other peoples subjected to Third World treatment. I then apply TWAEP-Crit to the United States' refusal to join and enforce international human rights treaties. Finally, I close out the Article with a call to action in the place of a conclusion. This call to action is merely a call to commence the use of this scholarly approach, but I suspect that scholars who endeavor to use this scholarly approach will have additions, alterations, and deletions that I welcome.

I. CRITICAL RACE THEORY IN EDUCATION (CRT)

CRT is a framework for understanding how law and policy negatively impact peoples of color; moreover, CRT is race scholars' answer to Critical Legal Studies, a class-based critical analysis that fails to critique the role that law plays in subjugating Black and Brown peoples.[2] Although Derrick Bell,[3] a forefather of CRT, employed the framework in the context of education law, Gloria Ladson-Billings and William Tate IV are given credit for introducing CRT to education research in the context of curriculum and instruction.[4] CRT is

2. RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION 2–3 (N.Y.U. Press 2001).

3. *See* Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 470 (1976); *see also* Derrick A. Bell, Jr., Brown v. Board of Education *and the Interest Convergence Dilemma*, 97 HARV. L. REV. 518, 518 (1980) [hereinafter Bell, *Interest Convergence Dilemma*].

4. *See* Gloria Ladson-Billings, *Just What is Critical Race Theory and What's It Doing in a Nice Field Like Education?*, 11 QUALITATIVE STUD. EDUC. 7 (1998) [hereinafter

more of an approach rather than a methodology or a theory. Thus, there is no dispute-free set of tenets for CRT or CRT in Education. For example, Richard Delgado and Jean Stefancic articulate that the following themes are most typically found in CRT scholarship: 1) that racism is an indispensable and ever-present factor in society in the United States, 2) that racialized populations in the United States receive only symbolic gains in law and policy and that those symbolic gains are tied to a net benefit for white Americans, 3) that race is socially constructed to aid and abet the oppression of targeted groups, 4) that efforts to essentialize the experiences and identities of racialized peoples must be resisted and replaced with understandings of the intersectionality of oppressed peoples' identities, and 5) that marginalized peoples' voices and stories have been excluded from mainstream understandings of knowledge and sources of knowledge.[5] On the other hand, Maria J. Matsuda, Charles R. Lawrence III, Richard Delgado, and Kimberle Williams Crenshaw suggest six—rather than five—common themes in CRT scholarship: 1) the recognition that racism is endemic to society and that race and racism are permanent fixtures in the United States, 2) a critique of narratives that argue for objectivity, merit, neutrality, and colorblindness, 3) the confronting of ahistoricism and the intentional effort to provide non-dominant narratives as contextualization for contemporary experiences, 4) the acknowledgment of the depth, worth, and independent validity of the experiences and knowledge of peoples subjected to racialized oppression, 5) the explicit acknowledgment that research that considers race is inherent disciplinary, and 6) an effort to work towards identifying, naming, and combating racial and racialized oppression.[6]

When applied to educational research, CRT affords scholars the ability to critically examine the historical and societal impacts of education policies and practices, and to identify, name, and address the inequities arising from historical and contemporary education laws, policies, and practices. CRT is an inter-, multi-, and transdisciplinary approach—that includes law, sociology, history, etc.—to address the role of race and racism in education law, policy, and practice.[7] Gloria

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Ladson-Billings, *What is Critical Race Theory*]; Gloria Ladson-Billings, *The Evolving Role of Critical Race Theory in Educational Scholarship*, 8 RACE, ETHNICITY & EDUC. 115 (2005); Gloria Ladson-Billings, *Critical Race Theory—What it is Not*, *in* HANDBOOK OF CRITICAL RACE THEORY IN EDUCATION, 34, 34 (Marvin Lynn & Adrienne D. Dixson eds., 2006); *see also* William F. Tate IV, *Critical Race Theory and Education: History, Theory, and Implications*, 22 REV. RES. IN EDUC. 195, 195 (1997).

5. DELGADO & STEFANCIC, *supra* note 2, at 5–9.

6. ADRIENNE DIXSON & CELIA ROUSSEAU, CRITICAL RACE THEORY IN EDUCATION: ALL GOD'S CHILDREN GOT A SONG 33 (2005) (citing MARIA J. MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT 6 (1993)).

7. *See* Daniel G. Solórzano & Armida Ornelas, *A Critical Race Analysis of Latina/o*

Ladson-Billings further emphasizes the inherent connection between scholarship in education and law through the use of restorying within the works of Derrick Bell.[8] She also asserts the connection between law and education by highlighting how legislative processes inform restrictions and policies on the social construction of education.[9] Education policy scholars who employ CRT, in the stead of other critical theories, are able to more effectively, 1) work to ground their works in the important context of race and racism, 2) push back against traditional notions of education and educational research, 3) center their research in the lived experiences of Black students, families, and communities, 4) produce research that serves to liberate oppressed peoples, and 5) use interdisciplinary perspectives to understand the multiple manifestations of racial oppression.[10] However, even the use of CRT appears limited because it focuses only on individual, domestic understandings of race and racism and fails to adequately consider transnational understandings, impacts, and similarities of race and racial oppression.[11] For this reason, I seek to advance a more robust, transnational CRT.

II. THIRD WORLD APPROACHES TO INTERNATIONAL LAW (TWAIL)

TWAIL scholarship suggests that international law supports and sustains the oppression of peoples subjected to Third World treatment.[12] There is broad diversity in TWAIL, yet there are general, prevailing themes that solidify this intellectual traditional, a set of worldviews that unify scholars within the field.[13] To this end, TWAIL is more of a scholarly approach than either a methodology or theory.[14] According to TWAIL scholars, international law legitimizes hegemonic structures that ensure domination by First World nations.[15]

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and African American Advanced Placement Enrollment in Public High Schools, 87 HIGH SCH. J. 15, 15 (2004); *see also* Tara J. Yosso, Laurence Parker, Daniel Solórzano & Marvin Lynn, *From Jim Crow to Affirmative Action and Back Again: A Critical Race Discussion of Radicalized Rationales and Access to Higher Education*, 28 REV. RES. IN EDUC. 1, 1–2 (2004).

8. Ladson-Billings, *What is Critical Race Theory*, *supra* note 4, at 7, 12–17, 21.

9. *Id.* at 17.

10. *See* Solórzano & Ornelas, *supra* note 7, at 17.

11. *See* Yosso, Parker, Solórzano & Lynn, *supra* note 7, at 3–4.

12. *See, e.g.*, B. S. Chimni, *Third World Approaches to International Law: A Manifesto*, 8 INT'L COMMUNITY L. REV. 3, 3 (2006) (suggesting that international law undermines the stability and growth of countries considered to be Third World and the peoples who live in those countries).

13. *See* Obiora Chinedu Okafor, *Critical Third World Approaches to International Law (TWAIL): Theory, Methodology or Both*, 10 INT'L COMMUNITY L. REV. 371, 377–78 (2008).

14. *See id.* (debating whether TWAIL is a theory, a methodology, or an approach and ultimately considering whether TWAIL is a school of thought).

15. Chimni, *supra* note 12, at 15.

A key focus area of TWAIL scholarship is linking current international law to the colonial project that commenced at or around the sixteenth century as the transatlantic slave trade.[16] TWAIL scholars also view contemporary international law as taking a deficit view of peoples subjected to Third World treatment.[17] Furthermore, TWAIL scholarship critiques existing human rights paradigms as West-centric and having little nuance to the idiosyncrasies of each individual context of subjugation.[18] The aim of TWAIL scholarship, as a theoretical perspective, is to help scholars put into words, shed light upon, and reify the contradictory and oppressive functions of international law on peoples assigned to receive Third World treatment.[19] TWAIL, however, is not without its critics. TWAIL has been critiqued as being only a critique of dominant ideologies without offering a theory of resistance.[20] I seek, in this Article, to fill this gap in the scholarly literature by combining TWAIL with CRT to put forth a scholarly approach that aids in the development of theories of resistance.

A. The Core of TWAIL

TWAIL scholars suggest that international law is circular in reasoning, for it professes to prevent further victimization of peoples subjected to Third World treatment while relying upon that very logic to support a narrative that peoples subjected to Third World treatment should receive further intervention from the First World.[21] In these interventions, the First World restructures Third World states to resolve any potential further victimizations.[22] However, according to Makau Mutua, hegemonic powers often use a "carrot-and-stick" approach to ensnarl peoples subjected to Third World treatment in certain inescapable policy dilemmas.[23] Furthermore, TWAIL scholars argue that critical approaches must consider how the First World has promoted and failed to prevent violence that international law now seeks to redress.[24] Not shockingly, the subject of many international

16. B. S. Chimni, *The Past, Present, and Future of International Law: A Critical Third World Approach*, 8 MELB. J. INT'L L. 499, 501 (2007).

17. Antony Anghie & B. S. Chimni, *Third World Approaches to International Law and Individual Responsibility in Internal Conflict*, 2 CHINESE J. INT'L L. 77, 86 (2003).

18. Opeoluwa Adetoro Badaru, *Examining the Utility of Third World Approaches to International Law for International Human Rights Law*, 10 INT'L COMMUNITY L. REV. 379, 384 (2008).

19. *Id.*

20. *Id.* at 385–86.

21. Chimni, *supra* note 16, at 502.

22. Makau Mutua, *Savages, Victims, and Saviors*: *The Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201, 203, 238–39 (2001).

23. *Id.* at 239.

24. Anghie & Chimni, *supra* note 17, at 90.

laws is not the atrocities that the European continent and its people have unleashed on the rest of the world.[25] Instead, international law developed only after the Jewish Holocaust, a tragedy that impacted European peoples.[26] Still, the First World has carefully manicured international law to avoid application of human rights to the ways in which the First World has treated marginalized and racialized peoples within their own borders.[27] Because only First World powers get to define stability and peace, the tragic paradox of being on the receiving end of Third World treatment is that we are more likely to suffer in times of purported peace than in times of war.[28]

It is perhaps this tragic paradox that centers one core component of TWAIL. TWAIL scholars argue that the starting point for analyzing the validity of international law, peace, or stability should not be Eurocentrism.[29] Instead, other cultures must be seen as capable of regulating themselves, with or without formalized law.[30] To this end, TWAIL scholarship, in general, views international law, and to some extent, any law made without the input of marginalized peoples, as illegitimate, predatory, and bound to oppress.[31] Moreover, the only legitimate evaluation of international law is in the context of the lived experience of peoples subjected to Third World treatment.[32] Critical TWAIL, the second generation of TWAIL scholarship, suggests that international law, to be of any real liberatory import for peoples subjected to Third World treatment, must be both transformative and emancipative.[33] The use of a Critical TWAIL approach could and should, then, lead to the unveiling and establishment of new—although likely pre-existing—alternatives to current sites of knowledge production in the area of international law and race relations.[34] Ulimately, then, Critical TWAIL seeks to "globalize the sources of critical knowledge and address the material . . . concerns of third world peoples."[35]

B. Defining Third World

There is an emerging transnational capitalist class, and these separate, distinct components of the transnational elite class from

25. *Id.* at 88.
26. *See* Mutua, *supra* note 22, at 212.
27. Anghie & Chimni, *supra* note 17, at 90.
28. *See* Anghie & Chimni, *supra* note 17, at 92; Mutua, *supra* note 22, at 206.
29. Mutua, *supra* note 22, at 207.
30. *Id.*
31. *See* Badaru, *supra* note 18, at 379.
32. Anghie & Chimni, *supra* note 17, at 78.
33. Chimni, *supra* note 16, at 499–500.
34. Badaru, *supra* note 18, at 386.
35. Chimni, *supra* note 12, at 4.

various First World nations are forming a unified international law to promote their agenda.[36] According to B. S. Chimni the question is not whether there will be a global state, rather what remains elusive is the identification of the nature and structure of the global state.[37] The positionality of peoples subjected to Third World treatment via the neoliberal capitalist project serves to bind and unite the Third World.[38] Still, some scholars often attempt to point to "numbers, variations, and differences in the presence of structures and processes" of oppression to suggest that there are no commonalities in the ways that peoples subjected to Third World treatment are oppressed.[39] However, these same scholars miss the fact that similar systems of oppression will inherently have divergent manifestations in different contexts and localities.[40] Race also binds the Third World. Race is and has been an indispensable factor in the defining, constructing, and othering of peoples subjected to Third World treatment by way of the colonial project.[41] Even in a post-colonial world, we have yet to reach a time when decolonization has meant complete liberation for peoples subjected to Third World treatment.[42] The most current version of the colonial project maintains its rejectionist stance towards cross-cultural contamination, discouraging the mixing of cultures and preferring the domination of Eurocentric ideals.[43]

I use the term "Third World" in the same capacity as Karin Mickelson.[44] She uses Third World to identify and name peoples who are removed from power and singled out by hegemomic forces for treatment as either savages or victims (or both).[45] In addition to being distanced from power and singled out for mistreatment, peoples subjected to Third World treatment are also distanced from sovereignty and protection from systemic violence.[46] In this sense, Third World remains a useful term if only to shed light on the way that policies treat differently peoples in oppressed, colonized, and marginalized places and spaces. Third World does not suggest a monolithic lived

36. Balakrishnan Rajagopal, *Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy*, 27 THIRD WORLD Q. 767, 767 (2006); *see also* Chimni, *supra* note 16, at 503–04.

37. Chimni, *supra* note 16, at 510.

38. Javad Babajani Rooni, *The Role of the Third World in International Law*, 9 LIFE SCI. J. 5035, 5035 (2012).

39. *Id.*

40. *See* Chimni, *supra* note 12, at 21.

41. Anghie & Chimni, *supra* note 17, at 85.

42. *See* Karin Mickelson, *Rhetoric and Rage: Third World Voices in International Legal Discourse*, 16 WIS. INT'L L.J. 353, 404 (1998).

43. Mutua, *supra* note 22, at 205.

44. Mickelson, *supra* note 42, at 356–57.

45. *Id.* at 354–57.

46. *See* Chimni, *supra* note 16, at 500; Mickelson, *supra* note 42, at 363.

experience for peoples subjected to Third World treatment. Yet, a diverse and pluralistic set of experiences does not necessarily escape the ability or need for aggregation of similar, even if not identical, experiences.[47] TWAIL scholars have noted the long lasting suffering of peoples subjected to Third World treatment, those for whom poverty and uncertainty are a daily ritual, as well as how peoples subjected to Third World treatment are acutely aware of their and others' oppressive circumstances.[48] I, therefore, name and identify Black Americans as Third World citizens despite our living in the United States because we experience the same removal from power, lack of protection from abuse, and daily uncertainty that similar situated peoples in international contexts endure.[49]

C. Peoples Subjected to Third World Treatment and the Maintenance of Domination

The globalization of economic and human rights policies dehumanizes those it purports to serve.[50] These policies concentrate power and sovereignty in the capitalist, democratic state, all but assuring that peoples subjected to Third World treatment do not have the power, position, or legitimacy to contest policies that serve to subjugate us.[51] For the most part, the neoliberal agenda has displaced the need for violence as a form of maintaining domination.[52] In fact, international law and policy have assured the subjugation of peoples subjected to Third World treatment through the neoliberal capitalist project.[53] International law is organized in a way that lures peoples subjected to Third World treatment through trickery.[54] Indeed, the moment of empowerment through international law is simultaneously the moment of utter subjugation for peoples subjected to Third World treatment.[55]

Similarly, human rights activities on behalf of the Western world have little, if any, history of anti-imperialism.[56] Instead, much of the mission of Western-based or Western-oriented human rights

47. Chimni, *supra* note 12, at 4–5.

48. *See* Anghie & Chimni, *supra* note 17, at 78; *see also* Mickelson, *supra* note 42, at 402.

49. *See generally* CHARLES V. HAMILTON & KWAME TURE, BLACK POWER: POLITICS OF LIBERATION IN AMERICA xix (2011).

50. *See* Chimni, *supra* note 12, at 7–15.

51. *See id.*

52. Anghie & Chimni, *supra* note 17, at 89.

53. *Id.*

54. Chimni, *supra* note 16, at 501.

55. *Id.*

56. Rajagopal, *supra* note 36, at 770.

organizations has been to legitimize European culture and practices.[57] Existing international law creates a false dichotomy of good versus evil, wherein good is European and bad is "other."[58] For instance, there is evidence that international tribunals charged with protecting human rights fail to investigate and actively dismiss the need to consider the actions of First World countries.[59] These tribunals usually state, "that no inquiry [is] useful and that nothing would emerge" from such investigations.[60] Likewise, international nongovernmental organizations fail to focus much, if any, attention on human rights violations in the Western world.[61] In the context of international law, alleged preferences for participation and democracy are quickly shunted in favor of power and subjugation.[62] Relying on notions of savagery, Western powers force political democracy on peoples subjected to Third World treatment, suggesting that political democracy is a silver bullet for the monstrous boogeymen savages that haunt peoples subjected to Third World treatment.[63] First World nations appear to have no problem, on the other hand, intervening into and subverting democratic elections to ensure that the issues of First World nations remain paramount in the Third World despite alleging unwavering support of the democratic state.[64] The end result of these tactics is even more offensive. Despite a discourse of international human rights that prioritizes the systemically disadvantaged, First World nations continue to close their doors to refugees from the very chaos that First World nations had a hand in creating.[65]

In the context of the human rights struggle, the First World has practiced revisionist history.[66] Peoples subjected to Third World treatment are often viewed as savages and are presented as outrageously cruel and unthinkably backwards, effectively dissolving their humanity.[67] On the other hand, some peoples subjected to Third World treatment are viewed as victims, those whose humanity has been compromised and violated by the savages.[68] Not surprisingly, the victim status is dynamic.[69] An oppressive, hegemonic structure can

57. *See* Mutua, *supra* note 22, at 215.
58. *Id.* at 203, 221.
59. *See* Chimni, *supra* note 12, at 12–13.
60. *Id.* at 91.
61. Mutua, *supra* note 22, at 217.
62. Anghie & Chimni, *supra* note 17, at 94–95.
63. Mutua, *supra* note 22, at 205.
64. *See* Chimni, *supra* note 12, at 6; *see also* Chimni, *supra* note 16, at 503.
65. Chimni, *supra* note 16, at 507; *see also* Rajagopal, *supra* note 36, at 775.
66. *See* Mutua, *supra* note 22, at 225; Chimni, *supra* note 16, at 502.
67. Mutua, *supra* note 22, at 223–27.
68. *Id.* at 227–33.
69. *Id.*

move peoples subjected to Third World treatment between savage and victim (and back).[70] Finally, peoples of European descent (Western, civilized societies) are considered saviors.[71] Saviors are those who come to redeem the humanity of those subjected to Third World treatment.[72] In this usage, Western and civilized present as redundant because the existing colonial project views only peoples of Western societies as being capable of civilization.[73] The savior, however, is not particularly a human being.[74] The savior is actually a set of colonial-based norms and practices that are formed from abstractly liberal thought.[75] Contemporary international policy and law rejects, minimizes, or ignores the contributions of pioneering human rights activists from non-Western lineages.[76] These terms have power in the revisionist version of history because the First World tends to overlook the historical and contemporary manifestations of resistance to hegemony.[77] In many cases, the non-European world had previously established practices that were—after colonization—considered recognized principles of international law.[78] Still, TWAIL scholars also consider that the colonial project has influenced, if not dictated, later evolutions of international law.[79] Given the First World's ability to legitimize narratives, it should not be a surprise that human rights campaigns—especially those led by the Western world—shape the prototypical savage as non-European, although some of the most savage human beings have been of European descent.[80] The original mission of human rights movements was to save Europeans.[81] Othered peoples who were the recipients of Third World treatment were not the subjects of human rights protections.[82]

D. Proposing Critical Race Third World Approaches to Education Policy

Education policy is a prime field for TWAIL Scholarship because TWAIL purports to (and for the most part does) combat systemic

70. *Id.* at 277.
71. *Id.* at 233–42.
72. *Id.* at 204, 233–42.
73. Mutua, *supra* note 22, at 233–36.
74. *Id.* at 237–39.
75. *Id.* at 204.
76. *Id.* at 204–05.
77. *See* Rajagopal, *supra* note 36, at 775.
78. *See id.* at 770.
79. Anghie & Chimni, *supra* note 17, at 84.
80. Mutua, *supra* note 22, at 210–11.
81. *Id.*
82. *Id.*

oppression while legitimizing counterhegemonic narratives.[83] However, there is no evidence that TWAIL scholars have taken seriously education policy or the role of educational practices or processes in entrenching oppressive narratives of already marginalized peoples. TWAIL scholarship also acknowledges that studies pertaining to oppression are inherently inter-, multi-, and transdisciplinary.[84] TWAIL scholarship, however, only passively considers the role of race and racism in the marginalization of peoples subjected to Third World treatment.[85] On the other hand, CRT often fails to include the history of the colonial project, which set the stage for much of the oppression of Black peoples in the United States and elsewhere.[86] Activists and scholars at the center of human rights campaigns in the United States and globally stand to learn much from investigating movements towards human rights in a more transnational context.[87] Many of the traditions of TWAIL are aligned with the traditions of Critical Race Theory.[88] For instance, TWAIL's insistence that history is told in a global, rather than West-centric, context is akin to CRT's efforts at battling ahistoricism.[89] Similarly, TWAIL's efforts to center the lived experiences of peoples subjected to Third World treatment is aligned to the CRT tenet of counterstorytelling.[90] TWAIL's rejection of hegemonic universal narratives matches CRT's rejection of essentialism.[91] TWAIL's critique of campaigns for human rights that almost always come with a set of neoliberal, oppressive policies resembles the CRT tenets of critique of liberalism, the permanence of racism, and interest convergence.[92]

The remainder of this Article is dedicated to discussing how current struggles for liberation and human rights in the United States may be analyzed under TWAEP-Crit. In doing so, I consider how the United States' rejection of human rights treaties rejects the needs of Black peoples in the United States and distances Black Americans

83. Okafor, *supra* note 13, at 377.

84. Badaru, *supra* note 18, at 381.

85. *Id.* at 380–81.

86. *See* DIXSON & ROUSSEAU, *supra* note 6, at 33.

87. Sharon K. Hom & Eric K. Yamamoto, *Collective Memory, History, and Social Change*, 47 UCLA L. REV. 1747, 1780 (2000); *see also* Mary Romero, *Crossing the Immigration and Race Border: A Critical Race Theory Approach to Immigration Studies*, 11 CONTEMP. JUST. REV. 23, 27 (2008).

88. *See id.*; *supra* Part II.

89. *See* DIXSON & ROUSSEAU, *supra* note 6, at 33; Chimni, *supra* note 16, at 502, 511–12.

90. *See* Chimni, *supra* note 16, at 500.

91. *See* DIXSON & ROUSSEAU, *supra* note 6, at 33; Okafor, *supra* note 13, at 377.

92. DIXSON & ROUSSEAU, *supra* note 6, at 33; Badaru, *supra* note 18, at 383 (suggesting that international law that advocates for economic justice constantly violates human rights).

from power. I argue that the United States' rejection of human rights treaties serves to treat Black peoples in the United States as Third World citizens. Following this analysis, I apply what I conceive to be a set of practices that are inherent to TWAEP-Crit. In essence, I answer the call of Sharon Hom & Eric Yamamoto in which they articulated, "The relationship between international and domestic rights discourse and its implications for legal and political social justice strategies has also been undertheorized."[93]

I acknowledge the difficulty in arguing that Black Americans may, in fact, be most properly treated as having been assigned to receive Third World treatment. However, I make this claim to support the need for a common response to a global attack on peoples subjected to Third World treatment, even if such responses do not prompt identical, uniform appearances of resistance.[94] I make this argument to suggest that artificial, arbitrary geographic boundaries only encourage fragmentation among peoples subjected to Third World treatment. Fragmentation then leads to a lack of unity and overlooks the fact that a future paradigm towards social justice may, in fact, see a unified, yet diverse structure that allows for an effective defense against the First World's oppressive forces and agendas.[95] I make this claim with the knowledge that differences in local resistance and coping with Third World treatment have troubled attempts at a transnational coalition to battle Third World treatment.[96] I, therefore, use this Article to argue that Black Americans should claim Third World status. I argue this knowing that identification as Third World, especially as a self-proclaimed title, is to choose to stand in a struggle that reimagines the world, not simply reshuffles or redistributes existing resources and power.[97] I argue that Third World is a function of a particular type of treatment from hegemonic power, not as a function of location. I accept that peoples subjected to Third World treatment have long had a voice to which the First World has paid little, if any, attention.[98] I suggest that Black Americans join this chorus of voices, for we have much to learn from this ongoing struggle. I reimagine the term "Third World" to serve as a unifying call to resistance to the colonial project, a call that is comprised of numerous individual and collective practices that undermine and replace a system of systemic disadvantage. In other words, Third World, in

93. Hom & Yamamoto, *supra* note 87, at 1754.
94. *See* Chimni, *supra* note 16, at 503.
95. *See id.* at 508–09.
96. Rajagopal, *supra* note 36, at 767.
97. Mickelson, *supra* note 42, at 360.
98. *See id.*

my usage, serves to globalize an understanding of the myriad ways that peoples subjected to Third World treatment are othered and how they resist on a daily basis.[99]

III. THE UNITED STATES' REJECTION OF INTERNATIONAL HUMAN RIGHTS TREATIES AND THE MARGINALIZATION OF BLACK AMERICANS

Despite the United States' role in fashioning international human rights law, the United States has been at best reticent to apply such international laws and conventions in the context of domestic civil and human rights.[100] The United States has ratified very few human rights treaties without attaching reservations that practically nullify the treaties.[101] In general, the United States refuses, rejects, or hollows any treaties that seek to stymie and/or overcome racial oppression.[102] In addition to rejecting and placing reservations that in practice reject treaties, the United States has come close to placing constitutional limitations on the ability of international civil and human rights treaties to address consistent and persistent racial issues in the United States.[103] It is for these reasons that scholars and advocates arguing for social justice should scrutinize the United States' perfunctory acceptance of and participate in international civil and human rights treaties.[104]

A. Rejection of International Human Rights Treaties and Racial Oppression in the United States

From its early beginnings the federal government of the United States possessed the powers necessary to agree to and ratify international treaties and agreements; moreover, these treaties, once ratified, were self-executing.[105] Thus, international treaties had the effect of domestic legislations upon acceptance and implementation, giving the federal government's broad and expansive powers to address domestic problems through treaty-making that would otherwise be

99. *See* Chimni, *supra* note 12, at 19–22.

100. *See* Oona A. Hathaway, *Treaties' End: The Past, Present, and Future of International Lawmaking in the United States*, 117 YALE L.J. 1236, Table 1 (2008).

101. John C. Yoo, *Globalism and the Constitution: Treaties, Non-Self-Execution, and the Original Understanding,* 99 COLUM. L. REV 1955, 1973–76 (1999).

102. *See id.*

103. Robert Anderson IV, *"Ascertained in a Different Way": The Treaty Power at the Crossroads of Contract, Compact, and Constitution*, 69 GEO. WASH. L. REV. 189, 236–37 (2001).

104. *See id.*

105. Nicholas Quinn Rosenkranz, *Executing the Treaty Power*, 118 HARV. L. REV. 1867, 1876–80 (2005).

unconstitutional.[106] According to Section 2 of Article II of the Constitution of the United States of America, the president has the power to agree to international treaties subject to the approval of two-thirds of the Senate.[107] The preferred treatment of treaties is an apparent breach of federalism, but the signers of the Constitution understood this preferred treatment as a remedy to the potential obstacles of federalism.[108] John C. Yoo argues that international law and domestic law operated in fairly isolated spheres at the signing of the Constitution, but David Golove notes that the United States' engagement in international agreements and treaties has been and often still is wise in both principle and interest.[109] Notably, Yoo and Golove disagree upon the extent of the Treaty Power's authority; yet, neither give proper treatment to a discussion of racial oppression and the limitations and delimitations of the Treaty Power.[110] It is, therefore, reasonable to question the analyses of both scholars since race was and still is one of the most salient issues in the United States. Notwithstanding this objection and disagreeing about the wisdom of the United States' current practices in international law, both Yoo and Golove accept that the Treaty Power can result in the creation of domestic law and policy.[111]

Although the general consensus of international law experts suggests that the Treaty Power can be used to reach domestic issues in manners that would be deemed unconstitutional if undertaken by the legislative branch, the United States has used this power in limited contexts.[112] The federal government of the United States has sought to use this power in the areas of trade, commerce, and environmental protection, but the federal government has opted out of using the Treaty Power to remedy disparate racial outcomes in human rights.[113] John C. Yoo asserts that the Senate has only rejected a significant treaty that the president sought twice over the last century; however, he fails to account for the number of significant human rights treaties that the Senate has ratified with reservations, understandings, and declarations (which are tantamount to

106. David Golove, *The New Confederalism: Treaty Delegations of Legislative, Executive, and Judicial Authority*, 55 STAN. L. REV. 1697, 1699–1700 (2003); Vasan Kesavan, *The Three Tiers of Federal Law*, 100 NW. U.L. REV. 1479, 1481–82 (2006); Julian G. Ku, *The Delegation of Federal Power to International Organizations: New Problems with Old Solutions*, 85 MINN. L. REV. 71, 74 (2000); Rosenkranz, *supra* note 105, at 1869; Yoo, *supra* note 101, at 1958–60.

107. U.S. CONST. art. II, § 2.

108. Yoo, *supra* note 101, at 1969.

109. *See* Yoo, *supra* note 101, at 1967. *But see* Golove, *supra* note 106, at 1747.

110. *See* Golove, *supra* note 106, at 1971; Yoo, *supra* note 101, at 2092–94.

111. *See* Golove, *supra* note 106, at 1699–1700; Yoo, *supra* note 101, at 1958, 1961.

112. Yoo, *supra* note 101, at 1959–61.

113. Hathaway, *supra* note 100, at 1240–41, 1256.

a refusal and rejection of the treaty).[114] The rise of non-self-executing reservations in the United States' ratification of international civil and human rights treaties has limited the ability of some would-be litigants to enforce their rights against the United States in the federal court even when the United States does adopt and ratify international human rights treaties and agreements.[115] Some scholars argue that treaties are and should be enforceable in the courts of the United States, but such theoretical banter does not resolve plaintiffs' inability to pursue justice in courts of law.[116]

The Supreme Court of the United States sanctioned the expansion of the Treaty Power in *Missouri v. Holland*.[117] In *Missouri*, the Court confirmed that the federal legislature automatically obtained powers to implement legislation necessary to effectuate an approved and ratified treaty.[118] Moreover, most international law experts accept that the legislation arising under the Treaty Power may exceed the normal constraints of the Constitution.[119] Somewhat surprisingly, Nicholas Rosenkranz identified a number of instances in which the federal legislature has promulgated and the Supreme Court has approved legislation that has served to limit human rights under the Treaty Power, but he found no instances in which the expansion of human rights has derived from the Treaty Power.[120] He only fantasizes and hypothesizes about examples of the expansion of human rights through the Treaty Power.[121] Still, *Missouri* provides substantial cover for the federal government to pursue and achieve racial justice in the United States.[122] Yet, the record is devoid of such radical approaches to securing racial justice.

The potential of the Treaty Power to address issues of racial inequity in the United States does not stop at the holding of *Missouri*.[123] In fact, the federal government has long used congressional-executive agreements to create treaty-like international agreements.[124] The United States has used the congressional-executive agreement process

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114. John C. Yoo, *Laws as Treaties? The Constitutionality of Congressional Executive Agreements*, 99 MICH. L. REV. 757, 758 (2001).

115. *See* Hathaway, *supra* note 100, at 1318–20.

116. *See* Carlos Manuel Vazquez, *Treaty-Based Rights and Remedies of Individuals*, 92 COLUM. L. REV. 1082, 1083–84 (1992).

117. Missouri v. Holland, 252 U.S. 416, 432, 435 (1920).

118. Rosenkranz, *supra* note 105, at 1869.

119. Golove, *supra* note 106, at 1699–1700; Kesavan, *supra* note 106, at 1507; Rosenkranz, *supra* note 105, at 1934; Yoo, *supra* note 101, at 1961–62.

120. *See generally* Rosenkranz, *supra* note 105.

121. *Id.* at 1897–1903.

122. *Id.* at 1899–1901.

123. Peter J. Spiro, *Treaties, Executive Agreements, and Constitutional Method*, 79 TEX. L. REV. 961, 1005–06 (2001).

124. *Id.* at 963–64, 986–90; Yoo, *supra* note 101, at 758.

to form de facto treaties in the areas of military, arms, and security, as well as trade and commerce.[125] Unfortunately, the federal government has never sought to pursue human rights through this alternative pathway to international and domestic human rights, a sign that the federal government is not interested in the pursuit of human rights in the United States.[126] The federal government argues that the implementation of human rights treaties would regulate private actions and would go beyond the boundaries of the Bill of Rights.[127] The result of the United States' failure and reasoning has been that the United States continues to violate international customs regarding human rights.[128] In contexts outside of human rights, the Senate has often given the president boundless power to make treaties.[129] Perhaps as equally confounding as the lack of human rights agreements through the congressional-executive agreement is the fact that the Supreme Court has considered international standards of decency in some human rights cases.[130] The Supreme Court's willingness to incorporate international perspectives into human rights cases has not, however, encouraged the broader federal government to become more aggressive in its pursuit of domestic civil and human rights.[131]

B. Refusal and Race: The United States' International Policy and Domestic Racism

While it is true that the Supreme Court once attempted to limit and more recently appears to expand the influence of international law on domestic law and policy, this expansion has not recently or in the past been expanded to efforts to eradicate racism in the United States.[132] Moreover, Congress' past actions suggest that the United States commitment to racial equity and equality are without substance. In the 1950s, the United States Senate came within one vote of ratifying a constitutional amendment—the Bricker Amendment—that would have made any treaty that ran counter to the Constitution invalid.[133] Robert Anderson IV credits the failure of the Bricker Amendment, which pursued a states' rights agenda, to both the Supreme Court's holdings that limited the Treaty Power to restraints

125. Spiro, *supra* note 123, at 996–1004.
126. *See id.*
127. Yoo, *supra* note 114, at 827–28.
128. *See id.*
129. Hathaway, *supra* note 100, at 1239–49, 1270–71.
130. Sarah H. Cleveland, *Our International Constitution*, 31 YALE J. OF INT'L L. 1, 67, 71–72, 75, 77, 117 (2006).
131. *See id.* at 83.
132. *See supra* notes 105–31 and accompanying text.
133. Anderson, *supra* note 103, at 195; Hathaway, *supra* note 100, at 1303.

found in the Bill of Rights and expanded the federal government's power through Commerce Clause cases, as well as the executive branches' public promise to exhibit self-restraint when agreeing to treaties and other international agreements that concerned domestic policies and politics.[134] Oona Hathaway is not as forgiving in her analysis of the Bricker Amendment.[135] She asserts that Senator Bricker, of Ohio, was a conservative and adds that he was seeking to give states a right to regulate the president's ability to create any international agreements.[136] Furthermore, Hathaway mentions that Bricker was deeply concerned about how treaties pursuing civil and human rights might impact segregation, which was legal at the time.[137] In addition to Senator Bricker's language, Hathaway cites similar language from Senator Dulles of Virginia and *Time Magazine* to prove her point.[138] Finally, she argues that then-President Eisenhower not only committed himself to self-restraint in regard to seeking international human rights agreements that would impact domestic laws, policies, and practices; but she asserts that Eisenhower appears to have limited all future presidents' human rights agendas.[139] In particular, Hathaway finds that the United States ratified all human rights treaties and "agreements with reservations, understandings, and declarations that rendered them unenforceable."[140] Thus, prominent international law scholars have considered the United States' efforts to stymie human rights treaties and—to different extents—have noted the nation's failure to expand human rights.[141]

The United States' refusal to embrace international policies that would ensure, rather than just assure, minoritized peoples' civil and human rights aligns with the nation's domestic assaults on equity and equality. The Supreme Court of the United States' rulings have served as a major impediment to civil and human rights of its citizens.[142] For example, in *Milliken v. Bradley* (*Milliken I & II)*,[143] the Court issued holdings that both prevented any efforts at meaningful desegregation and politically sabotaged state legislatures that sought to battle segregation independent of the federal effort.[144] Not long

134. Anderson, *supra* note 103, at 195–96.
135. Hathaway, *supra* note 100, at 1302–06.
136. *Id.* at 1302–03.
137. *Id.*
138. *Id.* at 1303.
139. *Id.* at 1303–04.
140. *Id.* at 1304.
141. Anderson, *supra* note 103, at 236–37; Hathaway, *supra* note 100, at 1276, 1302; Yoo, *supra* note 101, at 1974–75.
142. *See infra* notes 143–54 and accompanying text.
143. 433 U.S. 267, 281–82 (1977); 418 U.S. 717, 744–45 (1974).
144. Steven L. Nelson & Alison C. Tyler, *Examining* Pennsylvania Human Relations Commission v. School District of Philadelphia*: Considering How the Supreme Court's*

after the Court's disastrous rulings in *Milliken*, the Court issued a ruling in *Regents of the University of California v. Bakke*.[145] The *Bakke* decision severely limited affirmative action programs by limiting the use of quotas as well as other affirmative action plans in post-secondary admission.[146] In addition to forbidding public higher education institutions from using racial quotas for admission, *Bakke* had the impact of expanding the definition of diversity to include a number of categories that benefited white Americans and allowing white Americans to counter holistic admissions processes with admissions processes that heavily favored purportedly more objective standardized tests.[147] The *Bakke* ruling had and still has implications for racial equity and equality for primary, secondary, and post-secondary education as the arguments in *Bakke* have been used to limit even voluntary uses of race that might be only facially similar to quotas.[148] The United States' attack on domestic policies aimed at racial equity and equality ultimately has recently reached the right to the electoral franchise.[149] In *Shelby County v. Holder*, the Supreme Court gutted the Voting Rights Act of 1965.[150] In doing so, the Court removed Section 5 of the Voting Rights Act, perhaps the United States' most potent and most effective civil rights legislation in modern times.[151] Because nearly all school boards in the United States are elected from relatively small districts, minoritized peoples are often overrepresented on elected school boards; and school boards are generally the first elected offices for racialized minorities in the United States.[152] The Voting Rights Act is, therefore, important to educational equity and justice. In particular, research suggests that popularly elected and politically accountable school boards with equitable representation may result in better academic outcomes and more equitable disciplinary outcomes for Black students than do school boards with less political accountability and less equitable representation.[153] Moreover, minoritized peoples may find themselves

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Waning Support of School Desegregation Affected Desegregation Efforts Based on State Law, 40 SEATTLE U. L. REV. 1051, 1051, 1055 (2017).

145. 438 U.S. 265, 307–09 (1978).

146. *Id.* at 307–09, 320.

147. Steven L. Nelson, *Different Script, Same Caste in the Use of Passive and Active Racism: A Critical Race Theory Analysis of the (Ab)use of "House Rules" in Race-Related Education Cases*, 22 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 297, 313, 314 (2016).

148. *See* Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 722, 747–48 (2007).

149. *See* Shelby Cty v. Holder, 570 U.S. 2, 24 (2013).

150. *Id.*

151. *See id.*

152. *See* FREDERICK HESS, SCHOOL BOARDS AT THE DAWN OF THE 21ST CENTURY: CONDITIONS AND CHALLENGES OF DISTRICT GOVERNANCE 25 (2002).

153. *See* Steven L. Nelson, *Killing Two Achievements with One Stone: The Intersectional Impact of* Shelby County *on the Rights to Vote and Access High Performing Schools*,

with little legal recourse for abusive and discriminatory actions when their elected leaders are unceremoniously removed from power.[154] Indeed, the United States' domestic policy is on par with its rejection of international policies that mandate more than the nebulous equitable opportunity in advocating for equitable outcomes.

C. Intersection of the International Convention on the Elimination of All Forms of Racial Discrimination and Racially Inequitable Educational Outcomes

In 1966 and nearing the pinnacle of federal lawsuits banning legalized segregation, the United States adopted the International Convention on the Elimination of All Forms of Racial Discrimination.[155] The United States did not, however, fully adopt and implement the Convention, choosing instead to attach a number of understandings and reservations to the nation's agreement to join other nations in their pursuit of eliminating all forms of racial discrimination.[156] Instead, the United States adopted only those portions of the Convention that would not conflict with existing constitutional law.[157] The United States' failure to fully adopt the treaty in favor of constitutional law maintained the country's pattern of subjecting human rights

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12 HASTINGS RACE & POVERTY L.J. 225, 265–66 (2016) (finding that charter schools in Florida, which are governed by local school boards, have more accountability and higher academic performance than charter schools in Louisiana, which are governed by private boards that are not always accountable to local school boards); Steven L. Nelson & Jennifer E. Grace, *The Right to Remain Silent in New Orleans: The Role of Non-Politically Accountable School Boards in the School-to-Prison Pipeline*, 40 NOVA L. REV. 447, 483–84 (2016) (finding that schools that remained under the governance of the popularly elected Orleans Parish School Board outperformed schools that were subjected to state takeover); *see also* Steven L. Nelson, *Racial Subjugation By Another Name: Using the Links in the School-to-Prison Pipeline to Reassess State Takeover District Performance*, 9 GEO. J.L. & MOD. CRIT. RACE PERSP. 1, 2, 19 (2017) [hereinafter Nelson, *Racial Subjugation By Another Name*] (finding that there were no instances where the state takeover of public schools, which halts democratic school board elections, resulted in fewer disparate and harsh disciplinary outcomes).

154. Steven L. Nelson & Heather N. Bennett, *Are Black Parents Locked Out of Challenging Disproportionately Low Charter School Board Representation? Assessing the Role of the Federal Courts in Building a House of Cards,* 12 DUKE J. CONST. L. & PUB. POL'Y 153, 195–96 (2016) (arguing that neither the Voting Rights Act nor the Equal Protection Clause can protect Black parents, who are most likely to live in areas where charter schools have proliferated, from having their ability to control the governance of public schools taken away).

155. International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195.

156. Robin H. Gise, *Rethinking* McCleskey v. Kemp*: How U.S. Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination Provides a Remedy for Claims of Racial Disparity in Death Penalty Cases*, 22 FORDHAM INT'L L.J. 2270, 2295–96 (1999).

157. *Id.* at 2295.

treaties and agreements to increased scrutiny and severe limitations while providing other treaties with powers to shift federal-state balances of power.[158] The consequence of the United States' effective rejection of the International Convention on the Elimination of All Forms of Racial Discrimination is that the country continues to produce racially disparate human rights outcomes that are upheld and promoted by the United States' refusal to agree to and pursue equitable human rights outcomes at all costs. Essentially, the United States federal government has and continues to uphold, protect, and promote white supremacy through its actions against accepting and implementing international human rights treaties.

D. Part I, Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination and the United States

The International Convention on the Elimination of All Forms of Racial Discrimination sets forth an international agenda to eradicate both racist intentions and racist outcomes.[159] Although the Convention applies to all forms of racial discrimination, racial discrimination in the provision, access to, and outcomes from education are highlighted in the adopted version of the Convention.[160] The preamble of the Convention sets forth an aggressive agenda to speedily eliminate the vestiges of racial discrimination.[161] For instance, the preamble calls for the elimination of "racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person."[162] The preamble continues, "any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere."[163] Two things are abundantly clear from the language of the preamble. The first is that the purpose of the Convention is to eliminate all manifestations of racial discrimination.[164] Manifestations are the observable outcomes of abstract ideas. Thus, the Convention seeks to eliminate disparate racial outcomes. Second, the Convention does not accept arguments that disparate racial outcomes are the consequence of racialized

158. *Id.* at 2318–19.
159. International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 155, art. 5.
160. *Id.* art. 5(e)(v).
161. *Id.* pmbl.
162. *Id.*
163. *Id.*
164. *Id.*

minorities' biological corruptness.[165] The United States, as a signatory to the Convention, has at first glance committed itself to the noble and global agenda of addressing all forms of racism, but upon further consideration, the United States' list of objections, reservations, and understandings practically restricts the nation's ability to even begin to address the Convention's charge.

Part I, Article 1 of the Convention defines racial discrimination.[166] The Convention's definition of racial discrimination is broad in that it includes policies, both formal and informal, that have the "purpose of effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."[167] The architects of the Convention carefully constructed Article 1 to exclude from the definition of racial discrimination acts that are designed to protect racialized minorities against racial discrimination so long as those measures do not create separate rights for separate racial and/or ethnic groups and are not continued after the protective acts have accomplished their objectives.[168] On its face, the Convention supports affirmative action policies, which the Supreme Court is both determined and destined to outlaw in the United States.[169] Given that affirmative action policies, including quotas, may serve to protect racialized minorities from exclusion in higher education, the Supreme Court, if it honors the supremacy of the Convention, would be in support of affirmative action policies until student demographics are at least closer to racial parity. The Committee on the Elimination of Racial Discrimination (CERD) supports this stance as it chastised the United States' critique of affirmative action policies in a formal letter.[170] In the same letter, CERD called into question the United States' limitations on the use of disparate impact analyses.[171] CERD, on several occasions, took issues with the disproportionate impact that policies had on racialized minorities.[172]

The United States, according to CERD, fails to even identify the forms of racial discrimination that the Convention contemplates.[173]

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165. International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 155, pmbl.

166. *Id.* art. 1(1).

167. *Id.* art. 1(1).

168. *Id.* art. 1(4).

169. *See, e.g.*, Regents of the Univ of Cal. v. Bakke, 438 U.S. 265, 307–09 (1978).

170. *See* U.N. Committee on the Elimination of Racial Discrimination, *Considerations of Reports Submitted by States Parties under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, ¶ 15, CERD/C/USA/CO16 (May 8, 2008).

171. *Id.* ¶ 35.

172. *See id.* ¶¶ 16, 20–22, 27–28.

173. *Id.* ¶¶ 10–11.

The United States restricts the employment of disparate impact analyses to identify civil and human rights complaints.[174] As a result, the United States federal government develops, implements, and promulgates legislation that creates and maintains racially discriminatory outcomes.[175] The United States' focus on issues like the achievement gap has produced a bevy of legislation purportedly aiming to produce more and better outcomes for marginalized, disenfranchised, and oppressed people.[176] Unfortunately, these efforts have only aided and abetted efforts at racism and racial discrimination.[177] For instance, current legislation aimed at improving test scores purports to address the achievement gap, but education policy that seeks only the improvement of standardized test scores has served to further oppress, marginalize, and disenfranchise Black students, parents, and communities in the United States.[178] These policies are problematic in the first instance because any effort to improve educational outcomes must consider the multiplicity of oppressions that Black students, parents, and communities face and have faced since our arrival in the United States.[179] Likewise, education policy that will successfully pursue educational justice, equity, and equality must consider the opportunity gap.[180] It is not enough to center the failures of the educational systems on Black students, parents, and communities by alleging that a broader commitment to educational excellence, assimilation, or other forms of behaviors normed to whiteness will eradicate racism or racially disparate outcomes for Black students. Thus, the implementation of education policies that fail to consider the policies' direct and indirect impacts on the Black community are destined to fail and to replicate and maintain racially discriminatory outcomes.

The United States' efforts to improve educational outcomes, as measured chiefly by state test scores, have done little to improve the academic outcomes for minoritized students.[181] The school reform

174. *Id.* ¶ 35.

175. *See id.* ¶ 34 (critiquing No Child Left Behind, the then-existent iteration of the Elementary and Secondary Schools Act, as having maintained and created racial disparities).

176. *See* Celia Rousseau Anderson & Adrienne D. Dixson, *Down By the Riverside: A CRT Perspective on Education Reform in Two River Cities*, 51 URB. EDUC. 363, 383–84 (2016) (using Critical Race Theory to articulate how the racial politics of education reform that purported to address poor academic outcomes in New Orleans and Memphis ultimately served to set a new politics of education. These new politics of education resulted in the marginalized of Black stakeholders).

177. *Id.* at 384.

178. Tina M. Trujillo, *The Disproportionate Erosion of Local Control: Urban School Boards, High-Stakes Accountability, and Democracy*, 27 EDUC. POL'Y 334, 346, 353 (2013).

179. Gloria Ladson-Billings, *From the Achievement Gap to the Education Debt: Understanding Achievement in U.S. Schools*, 35 EDUC. RESERCHER. 3, 4–5 (2006).

180. H. Richard Milner IV, *Rethinking Achievement Gap Talk in Urban Education*, 48 URB. EDUC. 3, 4–5 (2013).

181. *See* Nelson & Grace, *supra* note 153, at 487–88.

movement, which encompasses a variety of education policies that endeavor to eliminate racially disparate educational outcomes, has fully embraced a series of private-public partnerships that jeopardize the civil and human rights of students of color while providing access to schooling facilities and programs that are uncertain at best.[182] For instance, the ever-expanding charter school and school choice movements have been found to aid in racial segregation,[183] jeopardize students' civil rights,[184] deprive minoritized communities of the electoral franchise and political voice,[185] and contribute to disparate disciplinary outcomes.[186] Education reform policies in the United States are, therefore, violative of Article II of the Convention.

E. Part I, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination and the United States

The International Convention on the Elimination of All Forms of Racial Discrimination seeks to eliminate intentional and unintentional discrimination in all aspects of human life.[187] Part I, Article 5 commands that nations joining the Convention abolish racial discrimination by protecting a wide range of legal, political, cultural, economic, and social rights.[188] Article 5's substantial coverage of human rights suggests that the architects of the Convention recognized the interrelatedness of oppression. For instance, Article 5 requires the countries party to the Convention establish equal access to judicial tribunals, protect the safety and security of peoples of color, protect the political, civil, economic, social, and cultural rights, and regulate discrimination in public accommodations.[189] The United States has failed to meet the mandates of Part I, Article 5 even when

182. *See, e.g.*, *infra* notes 183–86 and accompanying text.

183. Chase M. Billingham & Matthew O. Hunt, *School Racial Composition and Parental Choice: New Evidence on the Preferences of White Parents in the United States*, 89 SOC. EDUC. 99, 101 (2016); Erica Frankenberg, Genevieve Siegel-Hawley & Jia Wang, *Choice Without Equity: Charter School Segregation*, 19 EDUC. POL'Y ANALYSIS ARCHIVES 1, 3 (2011).

184. Erica Frankenberg, Preston C. Green III & Steven L. Nelson, *Fighting "Demographic Destiny": A Legal Analysis of Attempts of the Strategies White Enclaves Might Use to Maintain School Segregation*, 24 GEO. MASON U. C.R. L.J. 39, 59–60 (2013); Janelle T. Scott, *Rosa Parks Moment? School Choice and the Marketization of Civil Rights,* 54 CRITICAL STUD. EDUC. 5, 13–15 (2013).

185. Nelson & Bennett, *supra* note 154, at 199–200.

186. DANIEL J. LOSEN, MICHAEL A. KEITH II, CHERI L. HODSON & TIA E. MARTINEZ, CHARTER SCHOOLS, CIVIL RIGHTS, AND SCHOOL DISCIPLINE: A COMPREHENSIVE REVIEW 11 (2016).

187. International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 155, pmbl.

188. *Id.* art. 5.

189. *Id.*

it purports to act in the pursuit of civil and human rights for Black students, parents, and communities. The manner in which the United States has failed to meet the mandates of Part I, Article 5 are best evidenced by the nation's steadfast commitment to contemporary education reform policies that have contributed to the regression of previously earned civil and human rights and have created new or exacerbated existing barriers to civil and human rights.[190]

Part I, Article 5(c) of the Convention requires that nations that are party to the Convention protect the political participation of racialized minorities.[191] Specifically, the Article 5(c) requires that minoritized populations have access to universal and equal suffrage.[192] State takeovers of public schools and school districts disproportionately impact Black and Brown schools and school districts, replacing locally elected and predominately minority school boards with appointed predominately white policymakers.[193] Minoritized populations are targeted for state censuring and takeover even when their actual performance does not significantly diverge from the achievement of neighboring predominately white school districts.[194] Not surprisingly, predominately minority school boards report feeling targeted for school and school district takeover.[195] State takeovers of public schools result in the displacement, replacement, and shunting of political powers of minoritized populations in the United States.[196] Moreover, constituents of school districts under the governance of locally elected school boards comprised of racialized minorities find little relief in the United States' judicial system after these constituents lose their political power.[197]

Part I, Article 5(e)(v) of the Convention requires nations that are party of the Convention prevent discriminatory access to the right to education and training.[198] State takeover districts typically exacerbate

190. *See* Nelson, *supra* note 153, at 226, 268; *see also* Nelson & Bennett, *supra* note 154, at 156, 199–200 (arguing that education reform practices have contributed to the electoral disenfranchisement of Black peoples).

191. International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 155, art. 5(c).

192. *Id.*

193. Steven L. Nelson, Balancing School Choice and Political Voice: An Analysis of the Legality of Public Charter Schools in New Orleans, Louisiana Under Section 2 of the Voting Rights Act 8–9 (Dec. 2014) (unpublished Ph.D. dissertation, Pennsylvania State Univ.) (on file with Pennsylvania State University).

194. Steven L. Nelson, *Could the State Takeover of Public Schools Create a State-Created Danger? Theorizing at the Intersection of State Takeover Districts, the School-to-Prison Pipeline, and Racial Oppression*, 27 NAT'L BLACK L.J. 1, 20 (2018).

195. *See id.* at 25–26.

196. *Id.*

197. *See* Nelson & Bennett, *supra* note 154, at 176.

198. International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 155, art. 5(e)(v).

the school-to-prison pipeline for Black students.[199] In the context of cities that are disproportionately Black and subjected to state takeover policies, the state takeover of public schools has failed to disrupt the school-to-prison pipeline and in many cases has resulted in greater proportions of Black students entering the school-to-prison pipeline.[200] This finding is not, however, surprising. A long line of literature supports the notion that better descriptive representation (racial representation) on school boards results in better substantive representation (the ability to develop, adopt, and implement policies that benefit Black students, parents, and communities).[201] Since state takeover districts are linked to the displacement and replacement of Black education policymakers in favor of white policymakers who are not directly accountable to Black voters,[202] research indicates that Black students enrolled in state takeover schools and school districts are likely to experience less than excellent academic achievement.[203] Further research suggests that the state takeover of public schools and school districts has not resulted in greater academic achievement for Black students enrolled in schools or school districts subjected to state takeover.[204] Recent studies that find that locally accountable school and school district remediation efforts provide further support for arguments that the state takeover of public schools and school districts are relatively ineffective intervention measures.[205] Students who are behind academically are more

199. Nelson, *supra* note 194, at 31–32; Steven L. Nelson, Monica Lynn Ridgeway, Timberly L. Baker, Cassandra D. Green & Tiffany Campbell, *Continued Disparate Discipline: Theorizing State Takeover Districts' Impact on the Continued Oppression of Black Girls*, URB. EDUC. (forthcoming 2020) [hereinafter Nelson, *Continued Disparate Discipline*]; Nelson, *Racial Subjugation By Another Name*, *supra* note 153, at 6–7.

200. Nelson, *supra* note 194, at 34; Nelson, *Continued Disparate Discipline*, *supra* note 199, at 22.

201. *See* MICHAEL B. BERKMAN & ERIC PLUTZER, TEN THOUSAND DEMOCRACIES: POLITICS AND PUBLIC OPINION IN AMERICA'S SCHOOL DISTRICTS 149 (2009); Kenneth J. Meier et al., *Structural Choices and Representational Biases: The Post-Election Color of Representation*, 49 AM. J. POL. SCI. 758, 766–67 (2005); Kenneth J. Meier & Robert E. England, *Black Representation and Education Policy: Are They Related?* 78 AM. J. POL. SCI. 392, 400–01 (1984); Ted P. Robinson et al., *Black Resources and Black School Board Representation: Does Political Structure Matter?* 66 SOC. SCI. Q. 976, 981 (1985); Joseph Stewart, Jr. et al., *Black Representation in Urban School Districts: From School Board to Office to Classroom*, 42 W. Pol. Q. 287, 300–02 (1989).

202. Nelson, *supra* note 193, at 8–9.

203. *See supra* note 201 and accompanying text (discussing a sample of available research that suggests that descriptive representation is a statistically significant factor for obtaining substantive representation).

204. *See* Nelson & Grace, *supra* note 153, at 487–88 (noting that charter schools are considered a success when analyzing standardized test scores, but those test scores are not indicative of Black students success); Kenneth K. Wong & Francis X. Shen, *Measuring the Effectiveness of City and State Takeover as School Reform Strategy*, 78 PEABODY J. EDUC. 89, 117–18 (2003).

205. RON ZIMMER ET AL., EVALUATION OF THE EFFECTS OF TENNESSEE'S ACHIEVEMENT

likely to receive excessive discipline.[206] Thus, research suggesting that state takeover districts exacerbate student discipline should be expected.[207] Likewise, if students are consistently and persistently removed from the learning environment, it is likely that the United States is violating Part I, Article 5(e)(v), which prohibits intentional and unintentional discriminatory access to education and training.

F. Part I, Articles 2, 4, and 7 of the International Convention on the Elimination of All Forms of Racial Discrimination and the United States

Part I, Articles 2 and 7 function in collaboration to require nations party to the Convention to immediately adopt and enact policies that expunge racism from public and private life.[208] The United States has failed to act on the edicts of Articles 2 and 7. To the contrary, the United States federal government has redoubled its efforts to implement policies with discriminatory impacts on Black peoples.[209] For instance, the United States' insistence on pursuing education reform policies that limit or remove Black peoples' access to the electoral franchise, that place students in jeopardy of excessive disciplinary actions—inclusive of suspensions, expulsions, referrals to law enforcement, and even arrest—for minor offenses, and that ensure that White Americans are placed in authority over Black people is problematic and offends Articles 2 and 7.[210] This is especially the case since the United States is not simply moving slowly or on the other hand, stalling the implementation of policies aimed at expelling racism. The United States is, in fact, implementing and sustaining policies that have the effect of racial discrimination.

Comparably, Part I, Article 4 compels nations that participate in the Convention to prohibit organizations that promote and incite racial discrimination.[211] The United States' infatuation with contemporary education reform policies also violates Article 4; the

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SCHOOL DISTRICT ON STUDENT TEST SCORES 9–10 (2015); Julian Vasquez Heilig, Amy Williams, Linda McSpadden McNeill & Christopher Lee, *Is Choice a Panacea? An Analysis of Black Secondary Student Attrition From KIPP, Other Private Charters and Urban Districts*, 2 BERKLEY REV. EDUC. 153, 156–57 (2011); *see* Nelson & Grace, *supra* note 153, at 487–88.

206. *See* Emily Arcia, *Achievement and Enrollment Status of Suspended Students: Outcomes in a Larger, Multicultural School District*, 38 EDUC. & URB. SOC'Y 359, 367 (2006).

207. *See* Nelson, *supra* note 194, at 31–32.

208. International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 155, arts. 2, 7.

209. *See infra* note 210 and accompanying text.

210. *See, e.g.*, Nelson, *supra* note 153, at 232–33; Nelson, *supra* note 194, at 21–31.

211. International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 155, art. 4.

charterization of schools formally directly run by predominately Black school boards displaces Black political power with disproportionately White political power.[212] In doing this, the United States has embraced a policy that enables charter management organizations and educational management organizations to unceremoniously remove Black leaders from power and displace those pillars of the community with White leaders.[213] More clearly, the United States is displacing elected, predominately Black governing bodies with private organizations with White leadership that often shuns Black leaders.[214] As such, the United States violates Part I, Article 4, which requires nations participating in the Convention to restrict and expel organizations that have racist outcomes.[215]

IV. CONSIDERING CRITICAL RACE PERSPECTIVES ON THE UNITED STATES' FAILURE TO FULLY ADOPT INTERNATIONAL HUMAN RIGHTS TREATIES

White Americans have failed to acknowledge how education policies in the United States and the rejection of human rights treaties serve to subject Black Americans to Third World treatment. As mentioned earlier, the existence and perpetuation of the school-to-prison pipeline has roots in the United States' deeply problematic racial past.[216] It is possible to use a variety of critical race frameworks to analyze the school-to-prison pipeline. Cheryl I. Harris' critique of whiteness as a protected property interest applies to the United States' rejection of the International Convention on the Elimination of All Forms of Racial Discrimination.[217] Specifically, the nation's acceptance of the Convention with stipulations that frustrate the Convention's purposes serves only to maintain the legally protected interest of whiteness.[218] This is done to assure pursuits of equity through the provision of vague opportunities while rejecting the use of explicit requirements for equitable outcomes, which allows White Americans to satisfy international calls for the elimination of all manifestations of racial discrimination while simultaneously assuring that Black Americans do not make measurable damages to white supremacist structures, a nod to Derrick Bell's Interest Convergence

212. Nelson, *supra* note 153, at 232–33.
213. *Id.*; *see* Nelson & Bennett, *supra* note 154, at 199–200.
214. *See* Nelson, *Continued Disparate Discipline*, *supra* note 199, at 56–57.
215. *See* International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 155, art. 4(b).
216. *See* Nelson, *Continued Disparate Discipline*, *supra* note 199, at 10–11.
217. Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1714, 1724 (1993).
218. *See supra* note 198 and accompanying text.

Theory.[219] Indistinguishably, the same white supremacist power structures seek to use color-blind strategies to remedy color-conscious attacks on Black Americans. Color-blind strategies maintain white supremacist structures by disallowing Black Americans to eliminate barriers to equity and to close gaps in access and outcomes that exist only due to the United States' concerted efforts to subjugate Black Americans.[220] Furthermore, color-blind strategies, which focus on not harming White Americans, create civil rights campaigns that focus on protecting the perpetrators and beneficiaries of racial discrimination instead of those impacted by racial discrimination.[221] Thus, the United States has a clear and present reason for rejecting the will of the global majority; in rejecting the will of the global majority, the United States—in practice—reinforces racist policies that aim to maintain, retain, and sustain white supremacy.

The domestic harms that Black Americans endure in the United States are similar to the very Third World treatments that othered peoples in international contexts suffer. When the United States rejects an international human rights treaty, the country dooms Black Americans to continued racial oppression by preventing them from forming global coalitions that could hold the United States accountable for addressing racial oppression. By accepting human rights treaties with severe reservations, the United States often commits to addressing some forms of racial discrimination but allowing other forms to develop, remain, or proliferate. The United States' preference for piecemeal civil and human rights campaigns allows the nation to overlook the mutable and amorphous nature of racial oppression.[222] Ultimately, the United States is able to claim that it has eradicated racism in one area and plans to later address racism in others. Most ironically, the United States is able to serve two masters—under this approach: the nation both appeases international appeals for human rights and preserves racial subjugation of Black Americans.[223] This is the case for school desegregation. Supreme Court edicts requiring the affirmative desegregation of public schools begot legislation aimed at placing Black students in

219. *See* Bell, *Interest Convergence Dilemma*, *supra* note 3, at 523 (suggesting that Black peoples only benefit so long as and to the extent that white people also benefit from policy).

220. EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS 47–49 (3d ed. 2010); *see* Neil Gotanda, *A Critique of "Our Constitution is Color-Blind,"* 44 STAN. L. REV. 1, 2–3 (1991) (arguing a color-blind constitution promotes white racial domination).

221. Alan David Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1052–54, 1067 (1978).

222. *See id.* at 1079–82 (discussing the contradictions in the United States' antidiscrimination law).

223. *See* Bell, *supra* note 3, at 472.

special education and denying Black students and other students who are marginalized access to public education by way of the school-to-prison pipeline.[224] Similarly, education reform policies in the United States purport to pursue racial equity, but, in fact, rollback voting rights for Black people.[225] These outcomes are not unexpected. Michael J. Dumas warns that schools are a site of Black suffering.[226] Dumas' argument is disconcerting because schools are practically the only social institution in which all citizens in the United States are required to engage. Thus, for those with white supremacist agendas seeking to do harm to Black Americans, schools are the place in which all Black people will at some point be present—and the place where Black children, perhaps the most vulnerable subpopulation of Black Americans, are sure to be found.

V. APPLYING CRITICAL RACE THIRD WORLD APPROACHES TO EDUCATION POLICY IN THE CONTEXT OF INTERNATIONAL HUMAN RIGHTS TREATIES

Critical Race Theory is a series of frameworks that help understand the ways in which race and social constructs interact.[227] There are a wide range of loosely connected and defined tenets that comprise Critical Race Theory, but none specifically address the transnational impact of the processes that serve to subjugate Black Americans.[228] At the domestic level, white enclaves—areas of concentrated white populations in an increasingly diverse national population—have used various legal, political, and economic tactics to maintain political power.[229] This Article revealed that the United States and other Western powers are using similar tactics in global law, policy, and political arenas. In the previous section, I provided

224. Alfredo J. Artiles & Stanley C. Trent, *Overrepresentation of Minority Students in Special Education: A Continuing Debate*, 27 J. SPECIAL EDUC. 410, 419–20 (1994); Beth A. Ferri & David J. Connor, *In the Shadow of* Brown*: Special Education and Overrepresentation of Students of Color*, 26 REMEDIAL & SPECIAL EDUC. 92–93 (2005); Beth A. Ferri & David J. Connor, *Tools of Exclusion: Race, Disability, and (Re)segregated Education*, 107 TCHR. C. REC. 453, 453–54 (2005); Christopher A. Mallett, *The School-to-Prison Pipeline: Disproportionate Impact on Vulnerable Children and Adolescents*, 49 EDUC. & URB. SOC'Y 563, 571, 578 (2017); Russell J. Skiba et al., *Achieving Equity in Special Education: History, Status, and Current Challenges*, 74 EXCEPTIONAL CHILD. 264, 281–82 (2008); Torin D. Togut, *The Gestalt of the School-to-Prison Pipeline: The Duality of Overrepresentation of Minorities in Special Education and Racial Disparity in School Discipline on Minorities*, 20 AM. U.J. GENDER SOC. POL'Y & L. 163, 179–80 (2011).

225. Scott, *supra* note 184, at 5; Nelson, *supra* note 153, at 232–33.

226. Michael J. Dumas, *'Losing an Arm': Schooling as a Site of Black Suffering*, 17 RACE, ETHNICITY, & EDUC. 1, 2(2014).

227. Nelson, *Continued Disparate Discipline*, *supra* note 199, at 18.

228. *Id.*

229. *See* Frankenberg, Green & Nelson, *supra* note 184, at 39–40, 60.

various critical race frameworks that might be useful to an analysis of the United States' global (in)action on human rights treaties. None of those frameworks—alone—fully account for the United States' actions that serve to prevent and disrupt global efforts at coalition building. Critical Race Theory's focus on abstract liberalism could possibly fill this void. Abstract liberalism argues that liberalism, while arguing for theoretical equity, fails to find instances in which policies and practices aimed at equity are appropriate.[230] Still, abstract liberalism doesn't account for the United States' chief assumption that it has a less vicious racial past than other nations. Despite a lengthy discussion of TWAIL in this Article, it is clear that TWAIL does not alone address the unique colonial project of the United States. This is especially the case since the United States is simply an extension of the European era of racialized subjugation for peoples subjected to Third World treatment.[231] It is for this reason that I argue for the use of Critical Race Third World Approaches to Education Policy.

As previously stated, I view TWAEP-Crit as a scholarly approach. Thus, TWAEP-Crit is part methodology and part theory. In the context of methodology, I assert that TWAEP-Crit: 1) questions the legitimacy of western research methodologies, 2) explores the desires of peoples subjected to Third World treatment to develop new research methodologies that are not necessarily derived from western thought, 3) reframes concepts of space and place to avoid restrictions that are essential to the continued racialized oppression of peoples subjected to Third World treatment, 4) avoids the objectivity trap in which scholars attempt to avoid any ideological footprint, and 5) centers the experiences of those who are most removed from the effects of the colonial, assimilationist agenda of the First World (i.e., those in educational deserts and those who dropped out of school). In the role of theory, I assert that TWAEP-Crit is first rejectionist in its stance to contemporary law and order regimes. Secondly, TWAEP-Crit explores, values, and centers the many ways in which peoples subjected to Third World treatment have established cultural norms and practices in education that predated the colonial project. Thirdly, TWAEP-Crit embraces the common tenets of CRT and TWAIL in the area of the permanence of oppression, the critique of liberalism, the importance of counternarratives, the existence of interest convergence, and the importance of history in shaping our current context. Fourthly, TWAEP-Crit considers how individual domestic policies and laws serve to disrupt global movements towards a more unified, powerful Third World. Finally, TWAEP-Crit adopts

230. BONILLA-SILVA, *supra* note 220, at 28.
231. Mutua, *supra* note 22, at 213–14.

the evaluative spirit of TWAIL: that the only legitimate evaluation of education policy is through the eyes of those subjected to Third World treatment.

IN THE STEAD OF A CONCLUSION: A CALL TO RESEARCH

As I conclude this Article, I would like to restate my hope for a Transnational Critical Race Theory. This Article sought to bridge the international-domestic divide that isolated uses of TWAIL and CRT create. Indeed, I argued and provided evidence that Black Americans are, in many ways, the recipients of Third World treatment. In that way, neither TWAIL nor CRT are effective at addressing the transnational issues that are produced by the continued colonial project that promotes Eurocentrism. Indeed, I argued that merging the themes of CRT and TWAIL to create TWAEP-Crit may best address the need for a more globalized approach to evaluating education policy and its impact on peoples subjected to Third World treatment. I suspect that TWAEP-Crit may serve to unveil and develop new conceptualizations of the desires and resistance strategies of people who are marginalized at the hands of First World nations' efforts to create more Third World nations, more peoples who are to be subjected to Third World treatment, and Third World enclaves within First World nations. To this end, I call upon researchers in education policy, especially those who interrogate the role of race and racism in the subjugation of peoples subjected to Third World treatment, to conduct various forms of research to bring to light the desires of those whose voices have been systemically ignored.