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HENRY J. RICHARDSON III: THE FATHER OF BLACK TRADITIONS OF INTERNATIONAL LAW

James T. Gathii *

I. INTRODUCTION

Without any doubt, Professor Henry J. Richardson III is the father of Black traditions of international law. Before he came along, the voices, perspectives, and concerns of Blacks in particular, and other subordinated groups around the globe in general, were missing in international legal scholarship as well as in the leading societies of the discipline. Through his important academic writings, the mentorship he has provided to so many of us, and his support of critical approaches to international law (including Critical Race Theory, Third World Approaches to International Law, (TWAAIL), Critical-Race Feminism, feminist international law as well as LatCrit and BlackCrit theories),¹ Henry J. Richardson III has given credibility and authority to the study of international law from the perspective of the Black tradition of international law. In addition, we should not forget his critical institutional interventions, particularly within the American Society of International Law (ASIL), to make them more inclusive of the concerns of Black people everywhere and of other subordinated groups in their journal pages and publications, their governing bodies, and their meetings.

This essay reflects on the roles that Henry J. Richardson has played in inaugurating the study and thinking of international law from the perspective of the Black tradition. This Black tradition in international law has sought to establish the history of subordinated groups within international law and its current consequences. As Professor Henry J. Richardson III's scholarship over several decades so authoritatively demonstrates, this history of international law has to be acknowledged as a central, rather than a peripheral, part of international legal doctrine and practice.²

For Henry J. Richardson III, (also referred to as Hank by his friends and peers), African heritage peoples share a legacy of Black and oriental primitivism at the hands of Euro-White policies that justified excesses such as the Trans-Atlantic

* Wing-Tat Lee Chair of International Law, Loyola University Chicago School of Law. I acknowledge the research assistance of Smith Otieno in preparing this paper. Thanks too to Antony Anghie for his comments. All errors are mine.

1. See e.g., Ruth Gordon, *Foreword: Critical Race Theory and International Law: Convergence and Divergence*, 45 VILL. L. REV. 827, 827 n.1 (2000); Makau Mutua, *Critical Race Theory and International Law: The View of an Insider-Outsider*, 45 VILL. L. REV. 841, 841–45 (2000).

2. E-mail from Henry J. Richardson, III, Professor of Law, Temple Univ. Beasley Sch. of Law, to Jeremy Levitt, Professor of Law, Fla. A&M Sch. of L. (Apr. 15, 2015, 8:04 P.M) (on file with author). This e-mail was sent to Jeremy Levitt, who asked Hank, Makau Mutua, Ben Davis, and James Gathii about the thoughts they had about the Black Lives Matter movement in a global context.

Slave Trade and brutalities of peoples of African descent.³ Hank argues another source of the lack of foundational equality for Blacks and people of color is the brutal legacy of colonialism and its continued effects today through the violent extraction of mineral wealth.⁴ Notably, this has occurred in the Third World by multinational corporations “and accommodating groups of government factions,” as well as by

white mercenaries, from European and apartheid armies, more so under contract rather than state sovereignty, operating under the same assumptions of superiority of firepower and military tactics over surrounding opposing Africans and having those assumptions shared among their employers to give them protection, cover and money to continue to kill larger numbers of Africans.⁵

In short, Hank has masterfully articulated a theory of Black international law that incisively demonstrates the commonalities among oppressed peoples of the global community. While other critical theorists of international law have emphasized the presumed civilization divides and fissures that defined the violent origins of international law in the encounter between the West and the rest, Hank has emphasized the erasure of the similarities and shared plight of black peoples, particularly the surging economic inequality and violence that they face.⁶ In so doing, he is able to effortlessly link the Black Lives Matter movement and its protests against racial discrimination and police brutality with the killings of minority communities in the oil rich Niger Delta as well as millions of civilians in oil-related military conflicts in the Middle East.⁷

In an essay in the *Black Law Journal* in 1977, Hank argued that “international legal problems and doctrines—affecting the lives of black people, as well as others—cannot be left solely to others to define.”⁸ For Hank, therefore, blackness, and more generally race, is a central structure in the foundation of international law. Hank has excelled like no other international legal scholar in so ably chronicling how international law is deeply implicated in a legacy of the Trans-Atlantic Slave Trade, colonialism, post-colonial wars for self-determination, and fights to maintain control over access to resources of Third World nations by First World nations.⁹ Thus for Hank, the disintegration of formal colonial rule in the process of

3. See generally HENRY J. RICHARDSON, *THE ORIGINS OF AFRICAN-AMERICAN INTERESTS IN INTERNATIONAL LAW* (2008).

4. E-mail, *supra* note 2.

5. *Id.*

6. Other scholars have followed in this tradition. See Hope Lewis, *Reflections on “BlackCrit Theory”: Human Rights*, 45 *VILL. L. REV.* 1075, 1076 (2000) (“[R]acism itself is international and domestic, global and local [and Critical Race Theory] must adopt a dynamic understanding of racism in its particular cultural and historical contexts.”); Mutua, *supra* note 1, at 852 (“[T]he conditions of subordination in the United States are part and parcel of the global structure of dehumanization.”).

7. E-mail, *supra* note 2.

8. Henry J. Richardson, III, *Introduction: Afro-America and International Law*, 5 *BLACK L.J.* 204, 204 (1977).

9. Therefore, I would argue that it is no surprise that the only casebook in international law that has in its introductory chapter a reference to this legacy is authored by a colleague of Hank at

decolonization was a central twentieth century moment for international law. In this sense, his scholarship is a rich tapestry that contextualizes and historicizes critical moments in international law by talking back to and engaging with powerful institutional discourses in our discipline when they justified colonialism, war, and other forms of oppression against Black and oppressed masses. His scholarship is not of the narrowly instrumental variety intended to serve powerful institutions or interests of the neutral non-normative character; rather, it has exposed the long histories of Black peoples' oppression sustained by the structural violence of war and economic marginalization, and underwritten by the military, political, and economic dominance of elites in Europe, North America, and even of elites of black communities.

Yet, Hank also saw the potential for mobilizing international law, whether customary or treaty law particularly relating to human rights law, as providing "minimum global protection," including in the United States (U.S.). For example, he discusses strategically using the self-executing doctrine so that human rights could add on to those in American law.¹⁰ Hank's concern of ending Black racial oppression is not therefore restricted to distant places like South Africa—rather, he sees the "commonality of racial oppression" particularly among all African heritage peoples.¹¹ His call that "Black people in America . . . [must] perceive the global community through their own eyes, and . . . [must] develop international legal strategies to simultaneously do what is right by their overseas kin while importing new international resources at law through legislative and judicial decisions to get more equity"¹² truly marks him as the father of Black international law.

Nothing confirms Hank's important contributions of the otherwise invisible engagements of black peoples with international law than his masterpiece: *The Origins of African-American Interests in International Law*.¹³ In this book, Hank reaches back to the earliest claims African-Americans made in international law.¹⁴ In so doing, he connects current and previous engagements of African heritage peoples, laying the foundation of how anti-slavery campaigns laid claims of freedom using international law and, in the process, inspiring contemporary struggles.

II. SELF-DETERMINATION

Hank has devoted a large part of his scholarly and activist life campaigning for self-determination and, in particular, engaging U.S. foreign policy makers when they failed to live up to this fundamental principle of international law. Take

Temple. See generally JEFFREY L. DUNOFF ET AL., INTERNATIONAL LAW, NORMS, ACTORS, PROCESS: A PROBLEM ORIENTED APPROACH (4th ed. 2015).

10. See generally Richardson, *supra* note 8.

11. *Id.* at 207.

12. *Id.*

13. RICHARDSON, *supra* note 3.

14. See generally *id.*

for example his unparalleled campaign to end apartheid in South Africa. He not only advocated for the “one person, one vote” principle “of democracy and international law,” but also criticized the U.S. government for supporting that principle in the Aquino revolution in the Philippines but not in South Africa.¹⁵ Hank also challenged the inconsistency of the U.S. government calling into question the legitimacy of the Nicaraguan government while pursuing a policy of constructive engagement with South Africa that legitimized apartheid.¹⁶

Hank was clear: apartheid, as a system that was predicated on the superiority of White over Black people, was a violation of the Charter of the United Nations' (U.N.) commitment to equality and self-determination, as well as international legal commitments of non-discrimination.¹⁷ For him, all U.N. members, including the U.S., had a “positive duty” to act to end apartheid¹⁸ and to take steps, including imposition of economic sanctions, to end it,¹⁹ because, for Hank, the human rights issues raised by apartheid ought to have been treated as a “hard” rather than a “soft” issue in U.S. foreign policy.²⁰ For Hank, the goals of international legal order were not merely to promote the interests of powerful states as abstract actors, but rather it was to achieve “world peace and an equitable distribution of the world's resources.”²¹ In this sense, Hank has long and persistently argued that international law cannot be separated from “value questions and ideology,” in part because the Black experience is “frequently against the status quo.”²² Hank was not shy in questioning unequal treaties and the reification of consent as a basis for international legal rules.²³

Hank was particularly critical of the Bantustan policy of the apartheid South

15. Henry J. Richardson, III, *Permissible Measures and Obligations for Outside States and Internal Peoples Toward Minority Rule in South Africa*, 80 AM. SOC'Y INT'L L. PROC. 308, 309 (1986).

16. Amy Young et al., *Does the Law of Human Rights Guide – Or Rationalize – U.S. Foreign Policy?*, 79 AM. SOC'Y INT'L L. PROC. 18, 33 (1985).

17. See Richardson, *supra* note 15, at 315 (noting that every member of the U.N. has condemned apartheid).

18. *Id.* at 309.

19. *Id.* at 312.

20. Young et al., *supra* note 16, at 33.

21. Thomas M. Frank et al., *International Law Teaching: Can the Profession Tell It Like It Is?*, 66 AM. SOC'Y INT'L L. PROC. 129, 136 (1972).

22. A.A. Fatouros, *Radical Perceptions of International Law and Practice*, 66 AM. SOC'Y INT'L L. PROC. 162, 168 (1972). As Hank argued:

for the foreseeable future law based upon the strength of weak nations could be no worse than the present system of law based upon the strength of the strong. Selective national sovereignty decisions are being made right now in the executive offices of strong countries, as to which Third World countries should be supported and which should immediately or eventually be overthrown. These decisions are currently hidden behind concepts of deference, such as “rules of the game” and the “facts of life relative to power.” A radical perception would focus on these decisions and move them to a level of more public discourse so that outside international standards could be imposed on them, rather than allowing them to remain locked behind national security barriers.

Id. at 176.

23. *Id.* at 167, 170.

African government.²⁴ He argued that this policy was in violation of the U.N. Charter because it denied Black South Africans the right to self-determination.²⁵ To the extent that the agreement between South Africa and Transkei transferred sovereign authority to Transkei, he showed how it was inconsistent with Articles 51 and 52 of the Vienna Convention on the Law of Treaties because the agreement was entered into through coercion of Africans living in Transkei.²⁶ Hank argued that apartheid systematically discriminated against Black South Africans in violation of many resolutions and declarations by the U.N. General Assembly.²⁷ For Hank, it was clear that international law had evolved to prohibit colonialism and, in effect, the establishment of Bantustans by South Africa.²⁸ The apartheid situation in South Africa could, therefore, not be shielded from inquiry under international law.

Hank advocated for sustained international pressure in South Africa to end apartheid and grant the Black majority in South Africa their right to self-determination.²⁹ After all, for pursuing what was an odious policy condemned both nationally and internationally, including by the U.N. General Assembly, the Pretoria Government had lost legitimacy and the mandate to govern South Africa.³⁰ Hank became a leading voice calling on the U.S. government to withdraw the recognition of the South African apartheid government.³¹ He frequently exposed the misdeeds of the apartheid regime within South Africa, but also against other African states.³² According to Hank, the apartheid regime was culpable for aggression in Namibia and sponsoring armed groups to rise up against neighboring governments like in Mozambique.³³

24. See Henry J. Richardson, III, *Self-determination, International Law and the South African Bantustan Policy*, 17 COLUM. J. TRANSNAT'L L. 185, 186 (1978) ("This Article concludes that the granting of 'independence' to Bantustan territories . . . violate international law."). The Bantustan policy was "[a]n integral element of the South African apartheid policy" that called for "the permanent repatriation of most members of various government-designated African tribal groups to ten territorial areas around the country, designated as the respective 'homelands' of each group." *Id.* at 185.

25. *Id.* at 186.

26. *Id.* at 217. See Vienna Convention on the Law of Treaties arts. 51, 52, *adopted* May 22, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980) (stating that a state's expression to be bound by a treaty is without legal effect and a treaty is void when a state's consent is procured by coercion).

27. See Richardson, *supra* note 24, at 193 ("The multitude of resolutions and declarations by the General Assembly condemning both South African apartheid-related strategies and apartheid *per se*, as well as similar statements by the Security Council, are authoritative under the [U.N.] Charter.").

28. *Id.* at 204.

29. Henry J. Richardson, III, *The Obligation to Withdraw Recognition from Pretoria as the Government of South Africa*, 1 TEMP. INT'L & COMP. L.J. 153, 155 (1987).

30. *Id.* at 157.

31. See generally *id.*

32. See *id.* at 158 (discussing the South African government's aggression toward Mozambique and Namibia).

33. *Id.*

To build a better case for the plight of Black people in South Africa, Hank argued that the situation in Black South Africa could be compared to the civil rights movement in the U.S.³⁴ According to him, in both cases the policies rested on the assumption of inferiority of Black people and the psychological and economic needs of the white race for blacks to remain in a subservient position.³⁵ Hank argued that struggles by Blacks in both South Africa and the U.S. yielded some successes.³⁶ However, he was careful to note that these successes did not often disturb institutional racism and racial disparities along the black/white racial axis.³⁷ Yet, for Hank, law was central to bringing apartheid and racism to an end.³⁸ He showed how anti-racism was a major impetus for the U.N. to adopt multilateral human rights treaties,³⁹ the most significant of these being the International Convention on the Elimination of All Forms of Discrimination, which came into force in 1968.⁴⁰ Notwithstanding these developments, he notes that an awareness spread both in Black South Africa and among African-Americans that political freedoms without economic power does not yield much, and tilting the global economic balance was required to ensure that Blacks also play an active role in economic development and that they enjoyed its successes.⁴¹

With regard to economic conditions of black people, Hank argued that these had to be addressed alongside guaranteeing civil liberties.⁴² He traced the skewed distribution of resources between Blacks and Whites, both in Africa and the U.S., on historic events that resulted in the expropriation of Blacks and the continuity of this dispossession in the form of corporate wrongs and excessive profits.⁴³ Hank argued that among the Blacks in the U.S., economic resource reallocation was a necessary agenda item for legal reform.⁴⁴ For African countries, Hank argued that remedying the economic challenges was consistent with nationalizing property formerly held by Western corporations.⁴⁵ Hank noted that this skewed distribution of resources was particularly evident in the inner cities of Los Angeles, which he

34. Henry J. Richardson, III, *Speculations on the Relevance of International Law to the Needs of Black Southern Africa*, 1 UFAHAMU J. AFR. STUD. 22, 23 (1970).

35. *Id.* at 24.

36. *See id.* at 24–25 (noting that Black people in both the U.S. and South Africa have used the legislative process to advance their position, eventually resulting in a fundamental change in social policy toward Black people).

37. *See id.* at 25 (“in both instances, this domination is maintained primarily through heavy institutional influence on or control of economic instrumentalities, coupled with naked coercive force still applied with some restraint.”).

38. *Id.*

39. *Id.*

40. International Convention on the Elimination of All Forms of Discrimination, *opened for signature* Mar. 7, 1966, S. TREATY DOC. NO. 95–18, 660 U.N.T.S. 195 (entered into force Mar. 12, 1969).

41. Richardson, *supra* note 34, at 29.

42. Henry J. Richardson, III, *Between Law and Justice: Professor Bittker's Case for Black Reparations*, 50 IND. L.J. 517, 520 (1975).

43. *Id.*

44. *Id.*

45. *Id.*

argued reflected the distinction between the First and Third Worlds.⁴⁶ Hank attributed the unevenness in the manner resources are distributed to Black communities both in South Africa and the inner cities in the U.S. to the history of racism in both countries.⁴⁷ He also observed that the U.S. played a major role in suppressing these grievances from being addressed at international platforms like the U.N.⁴⁸ He accordingly advocated for the bringing of issues facing Blacks in the U.S. into the international spotlight to enable international scrutiny of the actions and also to ensure that such violations could become justiciable under international law.⁴⁹

Hank was also at the forefront of shaping the agenda for the independence of Namibia from the South African apartheid government. Hank highlighted the international law violations that South Africa committed while continuing its illegal occupation of Namibia.⁵⁰ He argued that the Namibian liberation movement called the South West African Peoples Organization, which represented the majority African population in Namibia, had a legal right to participate in any negotiations leading to independence.⁵¹ Hank compared the plight of these liberation movements to those of poor black peoples in the U.S. who were systemically denied equal opportunity to participate in making decisions that essentially have implications for their futures.⁵² According to Hank, the liberation groups deserved to be given a voice in negotiations to ensure that their opinions played a role in shaping international law and to build a case for the granting of standing to such bodies whenever they presented their grievances before international bodies.⁵³

Hank's vast scholarly work and advocacy extended to the challenges faced by the young, independent Malawi, whose continued economic reliance on White expatriates and the South African government were, as he saw it, inconsistent with the ideals liberation movements in Africa.⁵⁴ Hank's argument in this case rested on the belief that total liberation of the African people in Malawi and elsewhere guaranteed of the gains of independence, including access to opportunities ensuring economic progress.⁵⁵ Hank argued that it was imperative for Malawi to make some strategic partnerships in the short term with countries like South Africa

46. Henry J. Richardson, III, *The International Implications of the Los Angeles Riots*, 70 DENV. U. L. REV. 213, 215 (1992).

47. *See id.* at 219 (illustrating the history of deeply entrenched racism in U.S. and South Africa).

48. *Id.*

49. *Id.* at 224.

50. Henry J. Richardson, III, *Constitutive Questions in the Negotiations for Namibian Independence*, 78 AM. J. INT'L L. 76, 78 (1984).

51. *Id.* at 117.

52. *Id.*

53. *Id.*

54. Henry J. Richardson, III, *Malawi: Between Black and White Africa*, 15 AFR. REP. 18, 20 (1970).

55. *Id.*

for the economic interests of Malawi and its people, but he also stressed the importance of long-term economic strategy building by Malawi to ensure the wellbeing of its people.⁵⁶

III. HANK'S CONCEPTION OF THE BLACK INTERNATIONAL TRADITION

Hank was instrumental in highlighting the place of Black scholars, especially Black law professors. According to him, the place of Black law professors is critical in shaping the nature of legal education to reflect the aspirations and experiences of Blacks "as they are . . . in the best position to systematically understand and communicate the conjunctions and disjunctions between law and the black Experience . . ." in which they live.⁵⁷ Hank believes that Black peoples should write their history in their own words. He exemplified this best with his masterpiece, *The Origins of African American Interests in International Law*.⁵⁸ According to Hank, "whoever controls the writing and interpretation of the history of African-Americans or any other people has considerable power over [] the welfare of those people in the larger communities where they must live. . . ."⁵⁹ Black scholars could, therefore, claim the place of Africans by writing on international law and voicing the concerns of Blacks in various parts of the world.

Of importance, according to Hank, is the role to be played by Black law scholars in gearing the legal process towards the elimination of racism and colonialism.⁶⁰ This elimination, he argued, ought to be achieved through, among others means, Black-oriented litigation, which in the past led to notable successes such as desegregation and the introduction of affirmative action programs to address the historical disadvantages of blacks in the U.S.⁶¹ Along these lines, Hank cautioned against the overreliance on legal history written by many Anglo-European scholars, which he argued tend to scrub clean stories and facts of racial oppression, which in turn denies people of color accurate knowledge of their own past.⁶² Black scholars and lawyers are therefore obliged to write and practice the law based on their lived experiences.

Hank also observed that African scholars have an important role to play in ensuring that African voices in international law are heard and that they also play a role in shaping international law. Hank argued that the training of international lawyers in Sub-Saharan Africa ought to have a two-fold policy importance: first, to train local experts who will be able to handle problems arising between African

56. *Id.* at 21.

57. Henry J. Richardson, III, *Black Law Professors and the Integrity of American Legal Education*, BLACK L.J. 495, 496 (1975).

58. RICHARDSON, *supra* note 3.

59. Henry J. Richardson, III, *Excluding Race Strategies from International Legal History: The Self-Executing Treaty Doctrine and the Southern Africa Tripartite Agreement*, 45 VILL. L. REV. 1091, 1092 (2000).

60. See Richardson, *supra* note 57, at 502 (pointing to the need for Black scholars to assist in reframing legal response to racism and its elimination).

61. *Id.* at 504-05.

62. Richardson, *supra* note 59, at 1094-95.

states and the outside world, and second, to build capacity within Africa to enable lawyers to be able to deal with legal issues arising among African states.⁶³ According to Hank, the training of African lawyers in international law would be of much importance in ensuring that lawyers who could uphold their countries' interest were produced and also critical in bringing out African perspectives on international law.⁶⁴

Hank argues these efforts to "internationalize" the African lawyer have paid off in numerous cases in the past.⁶⁵ Notable examples of where these efforts have been rewarding include the quest to eliminate apartheid; amendments to the Geneva Conventions in a manner that advantaged the liberation movements; and mobilization strategies to achieve international economic equalization.⁶⁶ In particular Hank noted how the amendments to the Geneva Conventions were instrumental in according legal protection to groups such as the Union for the Total Independence of Angola, a liberation movement in Angola, and the African National Congress in South Africa.⁶⁷ Hank also advocated for increased cooperation between African-American lawyers and lawyers in Africa, which he argued was imperative to ensure a greater push for the African agenda both in Africa and internationally.⁶⁸

Hank argued that Black scholars and lawyers broadened the scope of traditional civil rights concerns to include analogous struggles of other Black peoples.⁶⁹ For example, Hank argued that W.E.B. Du Bois' advocacy extended beyond African-Americans to include those of African descent outside the U.S.⁷⁰ Hank also highlighted the scholarship of scholars like Professor Goler Teal Butcher, whose works he argued paved the way for many other Black scholars of international law and who also advocated for the inclusion of Blacks in ASIL's agenda and work.⁷¹ Like Hank, Professor Goler was instrumental in shaping American policy towards the apartheid regime in South Africa and was at the forefront opposing the oppressive regime in South Africa.⁷² As I note more fully in the next part of this essay, Hank and other Black scholars advocated that ASIL divest its investments in companies doing business with the apartheid government

63. Henry J. Richardson, III, *Reflections on Education in International Law in Africa*, 4 J. INT'L L. & POL'Y 199, 199 (1974).

64. *Id.* at 202.

65. *Id.* at 213.

66. *Id.* at 213–14.

67. Henry J. Richardson III, *Recent Struggles for Democracy Under Protocols I and II to the Geneva Conventions*, 6 TEMP. INT'L & COMP. L.J. 13, 17–19 (1992).

68. Richardson, *supra* note 63, at 219.

69. See Henry J. Richardson, III, *African Americans and International Law: For Professor Goler Teal Butcher, With Appreciation*, 37 HOW. L.J. 217, 221 (1994) (indicating that lawyers of color faced educational and institutional challenges).

70. *Id.* at 218–19.

71. *Id.* at 224.

72. *Id.* at 225–26.

in South Africa.⁷³ Through such writings and advocacy, Hank, together with Judge Gabrielle Kirk McDonald, Professor Adrien Wing, and Professor Jeremy Levitt, have led the way in pushing for the agenda of Blacks and training the next generation of lawyers who would champion civil rights and equal opportunity for disadvantaged groups both in the U.S. and elsewhere in the arena of international law.

Another way in which Hank connected the threads of Black resistance to global oppression was by highlighting the contribution of Black people like Reverend Leon Sullivan, who, in 1971, became the first Black member of the board of directors of General Motors, but was unable to persuade the company to cease doing business with the apartheid regime in South Africa.⁷⁴ Reverend Sullivan later developed the very widely adopted Sullivan Principles, a code of conduct for U.S. multinationals doing business in apartheid South Africa.⁷⁵ Hank argued that such initiatives, which he refers to as African-American interests in national governance, were important because they resulted in civil society organizations pressuring the multinationals to comply with these principles, and the activities of multinationals could now be subjected to human rights scrutiny.⁷⁶ For Hank, this approach was a key nonviolent method to bring an end to apartheid.⁷⁷ Such a strategy, Hank argued, was reminiscent of what a majority of nationalists in South Africa, like Nelson Mandela, wanted, and what Dr. Martin Luther King Jr. had advocated for during the civil rights movement era in the U.S.⁷⁸ Like Reverend Sullivan, Dr. King, according to Hank, was not only an African-American civil rights leader, but also part of the Black international tradition that advocated for ending racial injustices around the world and, in turn, shaping international law.⁷⁹ Hank particularly notes Dr. King's conversation with then Vice-President Richard Nixon during Ghana's independence celebrations, where Dr. King equated the struggles leading to Ghana's independence to what Blacks in the U.S. were advocating for, thus likening the civil rights movement in the U.S. to the struggle for independence by African states.⁸⁰

Hank traces the Black (African-American) international tradition to the early seventeenth century, the revolts in Haiti, and the early Black rebellions against

73. See Henry J. Richardson, III, *Divestment of the Stock Portfolio of the Society*, 81 AM. J. INT'L L. 774 (1987) (discussing merits and justifications of ASIL's divestment from South Africa).

74. Henry J. Richardson, III, *Reverend Leon Sullivan's Principles, Race, and International Law: A Comment*, 15 TEMP. INT'L & COMP. L.J. 55, 57 (2001).

75. *Id.* at 57–60.

76. *Id.* at 59.

77. *Id.* at 61–62.

78. *Id.* at 63, 71.

79. *Id.* at 57, 70; see Henry J. Richardson, III, *Dr. Martin Luther King, Jr. as an International Human Rights Leader*, 52 VILL. L. REV. 471, 472–76 (placing Dr. King's work in context of the Black International Tradition).

80. Henry J. Richardson, III, *From Birmingham's Jail to Beyond the Riverside Church: Martin Luther King's Global Authority*, 59 HOW. L.J. 169, 170–71 (2015).

slavery and the plantation system in the U.S.⁸¹ These resistance and freedom initiatives took a more global outlook in the nineteenth century with the growing understanding by Blacks in the U.S. of the subjugation and struggles of Africans by European colonial powers; hence, a symbiotic relationship emerged between the civil rights movement in the U.S. and decolonization initiatives in Africa.⁸² Thus, Hank argued that the Black international tradition informed the initiatives of advocates like Thurgood Marshall, who assisted Kenya with legal counsel during the negotiations that led to the drafting of its Constitution,⁸³ and also gave birth to political initiatives by Afro-Brazilians to address racial discrimination.⁸⁴ The fruits of this tradition became apparent in the course of the negotiations leading to the adoption of the U.N. Charter, where African Americans looked forward to the adoption of the Charter because of its provisions on human rights and the quest for abolition of colonialism.⁸⁵ Another important group that Hank argues has been instrumental in shaping international law is the Third World Approaches to International Law (TWAIL) network.⁸⁶ According to Hank, this group has been instrumental in correcting the distorted view of international law that has been propounded by Anglo-American groups.⁸⁷

Hank highlights other attempts by African-Americans to shape international law on various platforms, including through Congress.⁸⁸ Hank also wrote about the concerns of African-Americans during the Gulf Crisis and observed how African-Americans used this crisis to solidify their place as a voice in international law.⁸⁹ Of particular importance, according to Hank, was the fact that African-Americans advanced the discourse of the right to self-determination of oppressed groups, and compared the situation in the Gulf with the struggles of African-Americans in the U.S. and Africans on the African continent.⁹⁰ Hank also notes that such opportunities presented an important platform for the emergence of a common African-American voice in international law matters.⁹¹ By voicing their concerns on such matters, Hank notes that African-Americans elevated their place in shaping American foreign policy and national security decisions, and this was

81. Henry J. Richardson, III, *Two Treaties, and Global Influences of the American Civil Rights Movement, Through the Black International Tradition*, 18 VA. J. SOC. POL'Y & L. 59, 62–63 (2010).

82. *Id.* at 63–65.

83. *Id.* at 66.

84. *Id.* at 67.

85. *Id.* at 74–77.

86. See Henry J. Richardson, III, *Mitchell Lecture, October 27, 2010*, 17 BUFF. HUM. RTS. L. REV. 1, 12 (2011) (listing TWAIL as one of the new approaches to critical jurisprudence that has risen in the last three decades).

87. *Id.*

88. Henry J. Richardson, III, *Gulf Crisis and African-American Interests under International Law*, 87 AM. J. INT'L L. 42, 43 (1993).

89. *Id.* at 44.

90. *Id.* at 45–46, 55, 68.

91. *Id.* at 50–51.

useful for their own struggles in the U.S. and those of Africans living under subjugation in other parts of the world, including in South Africa.⁹²

Hank also examined African-American attitudes towards U.S. military interventions in various parts of the world, especially in the Gulf, and noted that a majority of African-Americans were hesitant to sympathize with U.S. intervention in the Gulf because it drew “contradictions between American foreign policy objectives and the actual policies affecting African-Americans in the United States.”⁹³ This group drew inspiration from Dr. King’s teachings of non-violence and also argued that such wars led to the diversion of resources from programs that were critical to the Black community and had other negative implications on Blacks who had participated in the wars.⁹⁴ Hank also highlighted the fact that the Gulf War was used by the U.S. government as an excuse to cover up for racial disadvantages by arguing that there were insufficient resources to cater for the needs of Black communities and in effect denying Blacks national resources.⁹⁵ The fact that a disproportionate number of Blacks compared to Whites served in the armed forces, and therefore bore the worst consequences of war, was not lost on Hank.⁹⁶

It is clear that Hank has played, and continues to play, a critical role in shaping the place of Black peoples in the course of international law, and also in highlighting their concerns globally. Hank, together with others, has demystified the role of Black peoples worldwide in shaping international law on various platforms. Hank points to the fact that this journey has not been easy and that blacks have had to overcome some insurmountable barriers along the way. Hank particularly notes early initiatives by Blacks like Dr. King, who were shunned by Whites and other Blacks in the National Association for the Advancement of Colored Peoples (NAACP) and told to stick to traditional civil rights issues that faced Black peoples.⁹⁷ It was the resilience and persistence of this group of Black scholars and activists that cleared the way for more assertive black voices on international law—voices that have been critical in the civil rights movement in the U.S. and the decolonization process in Africa.

IV. HANK’S INSTITUTIONAL INTERVENTIONS IN THE AMERICAN SOCIETY OF INTERNATIONAL LAW AND BEYOND

Hank has lived the ideals and commitments of his scholarship exemplified by his activism. He has been a leader in promoting inclusion of minorities, including

92. *Id.*

93. *Id.* at 52.

94. *Id.* at 53.

95. *Id.* at 54.

96. See Isabel Wilkerson, *War in the Gulf: The Troops; Blacks Wary of Their Big Roles as Troops*, N.Y. TIMES (Jan. 25, 1991), <http://www.nytimes.com/1991/01/25/us/war-in-the-gulf-the-troops-Blacks-wary-of-their-big-role-as-troops.html> (showing African-American soldiers account for nearly 25% of American troops in Gulf, despite the entire African-American population only being 12% of U.S. population).

97. Richardson, *supra* note 69, at 218.

Blacks and women, in international law societies. For example, he was an instrumental part of the Special Project of ASIL and the Procedural Aspects of International Law Group in the 1980s that sought to address the underrepresentation and non-inclusion of women and minorities in those two societies.⁹⁸ In the 1980s, Hank was also centrally involved in the campaign for divesting ASIL's investment portfolio of all corporations with direct investments in South Africa.⁹⁹ While Hank recognized that economic impact of the divestment was insufficient to dent apartheid, he emphasized that its importance lay in ASIL taking a principled stance to no longer invest in companies that were profiting under conditions which denied the Black majority in South Africa basic justice through increasing massive repression of the anti-apartheid movement.¹⁰⁰ Although ASIL was not among the first American institutions to divest from South Africa, Hank argued if it failed to do so, as some in ASIL wanted, ASIL would "have abdicated leadership on a question going directly to the authority and moral integrity of international law."¹⁰¹

In my own time as a member of the ASIL, Hank has led an extraordinary number of initiatives that have transformed it. In 1999, Hank wrote a letter to the Co-Editors in Chief of ASIL, who had just published a Symposium on Method in International Law.¹⁰² Hank wrote:

I was sadly disappointed that critical race theory/Latino critical legal theory (CRT/LCT) was omitted totally from that discussion, even to the absence of a single footnote. That omission crucially distorts the symposium by ignoring the emergence in the last two decades of new approaches to international law, based on determinations by people of color that in order to erase embedded systematic discrimination they must become jurisprudential producers and not merely remain jurisprudential consumers.¹⁰³

Hank regretted that the journal's editors had given no consideration to the perspectives of people of color, and in so doing, had precluded the discussion of how current approaches to international law such as positivism were implicated in discriminating against peoples of color.¹⁰⁴ He also regretted that the journal, as a leader in international legal scholarship, had decided not to discuss or even mention approaches to international law that reflected the concerns of marginalized peoples.¹⁰⁵

It was in large part because of Hank's intervention that when ASIL published

98. Henry J. Richardson, III, *Women and Minorities in International Law*, 81 AM. SOC'Y INT'L L. PROC. 519, 519 (1987).

99. Richardson, *supra* note 73, at 774.

100. *Id.* at 745.

101. *Id.* at 746.-

102. See generally Steven R. Ratner & Anne-Marie Slaughter, Symposium, *Method in International Law*, 93 AM. J. INT'L L. 291 (1999).

103. Henry J. Richardson, III, *Letter to the Editor*, 94 AM. J. INT'L L. 99, 99 (2000).

104. *Id.*

105. *Id.*

a book on Method in International Law, a contribution from Bhupinder Chimni and Antony Anghie was sought.¹⁰⁶ Hank and his colleagues did not rest in their efforts to democratize decision-making in the American Journal of International Law (AJIL). In the first part of this decade, an important discussion emerged in ASIL about the lack of diversity of scholarly approaches on the board of the AJIL, and in its membership. In fact, for a long time, AJIL's board was dominated by a small cadre of editors from a select number of schools, primarily from the East Coast, and who also had experience working in the U.S. government. This discussion resulted in the appointment of the ever first African-American on the Board of the AJIL in its over 100-year history.¹⁰⁷ That individual was Henry J. Richardson III.¹⁰⁸ As a member of the Board, Hank has worked to broaden its reach and scope. For example, he was instrumental in AJIL Unbound's two issues on Third World Approaches to International Law.¹⁰⁹ Hank is a member of the now not-so-new interest group, Blacks in International Law (BASIL), founded following a call for such a group by Judge Kirk McDonald.¹¹⁰ It has an as objective "to affirm, fortify, and evolve the long-standing tradition of Black international lawyers, jurists, and academics in the United States."¹¹¹ In the 2016 Annual Meeting, ASIL recognized these important contributions that Hank has made by awarding him the ASIL Honorary Award, which is given to an individual who has rendered distinguished contributions or service in the field of international law.¹¹²

106. See generally Antony Anghie & B.S. Chimni, *Third World Approaches to International Law and Individual Responsibility in Internal Conflicts*, 2 CHINESE J. INT'L L. 77 (2003). Bhupinder Chimni is an internationally renowned legal scholar and a founding member of the Third World Approaches to International Law Network (TWAIL). His areas of expertise include international law, international trade law, and international refugee law. *Bhupinder Singh Chimni, Professor from New Delhi*, <http://www.checkdirector.co.uk/director/bhupinder-chimni/> (last visited Mar. 8, 2017). Antony Anghie is a Professor at University of Utah and a founding member of the Third World Approaches to International Law Network (TWAIL), renowned for his expertise in international law, terrorism, human rights, and development issues. *Antony Anghie, The University of Utah Faculty Activity Report*, https://faculty.utah.edu/u0027950-ANTONY_T_ANGHIE/biography/index.html (last visited Mar. 8, 2017).

107. See *Blacks of the American Society of International Law*, AM. SOC. INT'L L., <https://www.asil.org/Blacks-american-society-international-law> (last visited Mar. 8, 2017) (indicating that Henry Richardson, James Gathii, and Natalie Reid were the first Blacks to serve on AJIL board).

108. *Id.*

109. See generally James T. Gathii & Henry J. Richardson, III, *Introduction to Symposium on TWAIL Perspectives on ICL, IHL, and Intervention*, 109 AM. J. INT'L L. UNBOUND 252 (2016); James Thuo Gathii & Henry J. Richardson, III & Karen Knop, *Introduction to Symposium on Theorizing TWAIL Activism*, 110 AM. J. INT'L L. UNBOUND 18 (2016).

110. *Blacks of the American Society of International Law*, AM. SOC. INT'L L., <https://www.asil.org/Blacks-american-society-international-law> (last visited Mar. 10, 2017).

111. *Id.*

112. *Awards and Honors*, AM. SOC. INT'L L., <https://www.asil.org/about/awards-and-honors> (last visited Mar. 10, 2017).

V. CONCLUSION

This essay has argued and demonstrated that Hank is quintessentially the father of Black traditions of international law. His scholarship not only spans the immediate post-decolonization moment for many African states to the present, but also displays the interconnected histories of peoples of Black descent in the U.S., Africa, and the rest of the Western Hemisphere, including Haiti.¹¹³ In my view, no other scholar has as sharply focused on the black experience in international law as Hank has. He has both the historical vantage point to see the continuities in the Black experience around the world and a powerful ethical imperative for justice, equality, and accountability.

Hank's scholarship does not hide behind the finer details of international legal doctrine or the often overstated formality of international legal rules. Rather, his primary concerns are the normative commitments embodied in international law and how they can and should be mobilized to address the plight of marginalized peoples everywhere, whatever the current source of their oppression may lie—whether it be colonialism, apartheid, occupation, economic policies, or even legal rules or their applications. He shines the spotlight on how the Black experience, underwritten by racism and economic disempowerment, could nevertheless be addressed by the egalitarian promises of international law.

In this respect, Hank is certainly one of the most preeminent thinkers and scholars of international law. That it took more than a century for ASIL, the leading society of international law in the U.S., to elect an African-American to the Board of Editors of its flagship journal reflects the silences of international law in addressing the Black experiences that Hank has so powerfully written about. The fact that Hank became the first African-American editor elected to the board of AJIL is a fitting honor recognizing the significance of his contributions. His election to the editorial board of that journal symbolizes the opening of an additional aperture for the continued struggles to recognize, acknowledge, and include the perspectives of blacks and other under-represented groups in and within international law and its leading societies, as well as in the pages of its journals and publications.

113. See generally Richardson, *supra* note 3.

