

**FANFARE FOR THE COMMON MAN:
AN APPRECIATION OF PROFESSOR HENRY
RICHARDSON'S SCHOLARSHIP**

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In 1942, Eugene Goossens, conductor of the Cincinnati Symphony Orchestra, asked a number of artists to compose fanfares, which Goossens thought would boost national morale and assist the war effort.¹ In response, Aaron Copeland produced what would soon become one of the nation's most beloved anthems, although he had difficulty selecting a title for it.² He considered *Fanfare for Four Freedoms*, *Fanfare for the Spirit of Democracy*, and *Fanfare for a Solemn Ceremony*.³ Eventually, Copeland settled on

Fanfare for the Common Man.⁴

Fanfare opens with a solemn percussion, which gives way to a powerful unison trumpet voice suggesting the bravery and dignity of the individual. The melody soon soars upwards towards the highest register, as if suggesting a mythical world, perhaps one that is more aspirational than realistically attainable. Like much of Copeland's best work, *Fanfare* is often thought to embody a uniquely American spirit.

To properly appreciate *Fanfare*, however, it is necessary to know something about Henry. Not, for the moment, Henry Richardson, whose work I will discuss below, and not another Henry, but—astonishingly—two other Henrys. To understand the meaning and significance of Copeland's composition, it is necessary to recall the now-nearly forgotten figure of Henry Wallace, who served as Vice President under Franklin D. Roosevelt,⁵ and Henry Luce, the influential founder of Time, Inc. and publisher of *Time*, *Life*, *Fortune*, and other popular

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1. A fuller version of the story behind *Fanfare* can be found in ELIZABETH B. CRIST, *MUSIC FOR THE COMMON MAN: AARON COPELAND DURING THE DEPRESSION AND WAR 180–83* (2005).

2. *Id.*

3. *Id.*

4. *Id.*

5. For useful discussions of Wallace's life and times, see generally THOMAS A. DEVINE, *HENRY WALLACE'S 1948 PRESIDENTIAL CAMPAIGN AND THE FUTURE OF POSTWAR LIBERALISM* (2013); JOHN. C. CULVER & JOHN HYDE, *AMERICAN DREAMER: A LIFE OF HENRY A. WALLACE* (2000); CURTIS DANIEL MACDOUGALL, *GIDEON'S ARMY* (1965).

magazines.⁶

Fanfare for the Common Man is commonly understood to embody World War II era patriotic values, and in subsequent years, politicians have repeatedly attempted to associate themselves with its inspirational power and energy. In fact, however, the politics that inform *Fanfare* are quite different than most who invoke this work appreciate. Copeland's composition was inspired by a dramatic 1942 speech by Wallace that proclaimed the "Century of the Common Man."⁷ Wallace, in turn, was responding to a famous essay by Luce, entitled "The American Century" and originally published in *Life Magazine*.⁸

Even prior to the United States' entry into World War II, Luce called upon Americans to "accept wholeheartedly our duty and our opportunity as the most powerful and vital nation in the world and in consequence to exert upon the world the full impact of our influence, for such purposes as we see fit and by such means as we see fit."⁹ Wallace flatly rejected Luce's chauvinistic nationalism and offered an alternative vision, declaring that "[s]ome have spoken of the 'American Century.' I say that the century on which we are entering—the century which will come out of this war – can and must be the century of the common man."¹⁰

Wallace's speech addressed several of the themes that mark his long political career, prominently including the denunciation of militarism and warnings of the consequences of concentrated economic power.¹¹ Thus, Wallace proclaimed that following the war, "[t]here must be neither military nor economic imperialism . . . [i]nternational cartels that serve American greed and the German will to power must go . . ."¹² Critiquing Luce's notion of American exceptionalism, Wallace declared that "there can be no privileged peoples. We ourselves in the United States are no more a master race than the Nazis."¹³ He concluded that "[t]he people's revolution is on the march . . ."¹⁴

As these passages suggest, Wallace developed trenchant critiques of the excesses of capitalism and of the militarism that he associated with U.S. foreign policy. Wallace repeatedly advanced these, and related, critiques in the name of

6. For more on Luce and his times, see generally ALAN BRINKLEY, *HENRY LUCE AND HIS AMERICAN CENTURY* (2010); ROBERT EDWARD HERZSTEIN, *HENRY R. LUCE: A POLITICAL PORTRAIT OF THE MAN WHO CREATED THE AMERICAN CENTURY* (1994).

7. See *Henry Wallace - Century of the Common Man (1942)*, YOUTUBE (Oct. 4, 2013), <https://www.youtube.com/watch?v=OBWula5GyAc>. to hear the speech, delivered in the Grand Ballroom of the Commodore Hotel in New York City on May 8, 1942, in its entirety. See Henry A. Wallace, *The Price of Free World Victory* ("The Century of the Common Man"), Address Before the Free World Association (May 8, 1942), in *PREFACES TO PEACE 369–75* (1943) for the written version.

8. Henry R. Luce, *The American Century*, LIFE MAGAZINE, Feb. 17, 1941, reprinted in 23 *DIPLOMATIC HIST.* 159 (1999).

9. *Id.* at 165.

10. Wallace, *supra* note 7.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

“the common man.” For example, in his July 1948 acceptance speech of the Progressive Party’s nomination for President, Wallace declared his commitment to “using the power of our democracy to control rigorously the power of huge corporate monopolies and international big business,” and stated that he was “committed to using the power and prestige of the United States to help the peoples of the world, not their exploiters and rulers.”¹⁵

Another prominent theme in Wallace’s thought was racial justice, in which he was well ahead of his time. He fervently embraced the cause of civil rights. At the 1944 Democratic convention he declared that “there must be no inferior races” and that “the poll tax must go.”¹⁶ In 1948, while running for President on the Progressive Party ticket, Wallace campaigned throughout the South with a multiracial staff, and declined to speak in segregated settings.¹⁷ He declared that “our greatest weaknesses as a progressive democracy are racial segregation, racial discrimination, racial prejudice, and racial fear”¹⁸

In short, Copeland’s *Fanfare* is inspired not by a conventional patriotism, but by a counter-politics, a politics of radical critique, focused on international affairs, the concentration of corporate wealth, and racial injustice. Subversively, Copeland brought this politics into the staid, elite world of classical music.¹⁹ By the time Copeland wrote, classical music had become the preserve of educated and wealthy classes, marketed to and consumed by an upscale, niche market.²⁰ Part of Copeland’s genius consisted precisely in bringing a powerful paean to the common man to a social milieu and setting that does not often consider the dignity, let alone the nobility, of the common man.

Having explored the background of Copeland’s *Fanfare for the Common Man*, let us now turn to *our* Henry, Temple Law University Beasley School of Law

15. Progressive Party Candidate for President of the United States Acceptance Speech, Phila., Pa., July, 24, 1948.

16. SUSAN DUNN, ROOSEVELT’S PURGE: HOW FDR FOUGHT TO CHANGE THE DEMOCRATIC PARTY 241 (2010). These statements contributed to Roosevelt’s replacement of Wallace with Harry S. Truman on the 1944 Democratic ticket. *Id.*; THOMAS FLEMING, THE NEW DEALERS’ WAR 410–14 (2007).

17. DEVINE, *supra* note 5, at 233–68.

18. Henry A. Wallace, *Violence and Hope and the South*, NEW REPUBLIC, Dec. 8, 1947, at 14.

19. The elitism of classical music has spawned a large body of literature. See JULIAN JOHNSON, WHO NEEDS CLASSICAL MUSIC?: CULTURAL CHOICE AND MUSICAL VALUE (2002) (arguing that classical music has greater value than other music); see also Donald Vroon, *Elitism*, in CLASSICAL MUSIC IN A CHANGING CULTURE: ESSAYS FROM THE AMERICAN RECORD GUIDE 1 (2014) (arguing that classical music is not for everyone and should not be mass-marketed).

20. To be sure, the understanding of classical music as an elite art form is neither natural nor inevitable, but rather the product of a concerted effort at a particular time to construct a tradition of classical music. See James Parakilas, *Classical Music as Popular Music*, 3 J. MUSICOLOGY 1, 4 (1984) (“The repertory of Western ‘classical music,’ however, was formed under the spell of nineteenth century European ideas of history: the archeological idea of history as reconstruction, the evolutionary idea of history as a process of perpetual change, the progressive idea of history as the formation of the present”).

Professor Henry J. Richardson, III. Our Henry works in a quite different idiom, legal scholarship, than Copeland did, and writes for a quite different intellectual milieu and setting. Yet, like classical music, international law is often understood as an elite undertaking and often associated with elite communities and values. International law's history is a history of emperors and kings, diplomats and princes. Its geography is one of grand European capitals: Vienna, Berlin, Paris, and Geneva, supplemented in recent decades by New York, Brussels, and Washington, D.C. International law's conceptual frameworks and vocabularies are abstract: *jus gentium*; the law of war and the law of peace; sovereignty and the state. At times, international law's idiom soars to the majestic, invoking human rights, universal values, and global justice. This tradition's architecture, consisting of grand palaces and ornate courtrooms, is no less imposing than its progressive humanitarian ambitions.

Henry Richardson's work occurs both within and in opposition to this elite world. It is not possible to summarize Henry's scholarly contributions in this short essay. He has written—perceptively and forcefully—across a dazzling variety of substantive fields. These include the law of war, failed states, human rights, the right to food, the Gulf War, and international organizations, to name just a few, and he has made important and substantial contributions in each. He addresses several of the themes that informed Henry Wallace's celebrated speech, including a rejection of U.S. exceptionalism, a concern about the excesses of laissez-faire capitalism and the concentration of power in a small number of multinational corporations, and an unshakeable commitment to racial justice. More importantly, across each of the substantive domains he addresses, Henry Richardson's writings implicitly reject the conceptualization of international law as an elite project, rendering the whole of his oeuvre more than the sum of its parts.

Indeed, over the years and taken as a whole, Henry's writings present an alternative vision of international law. In his talented hands, international law is conceptualized as a project which, to borrow a phrase coined in a quite different context, is and should be, “of the people, by the people, and for the people.”²¹ In this emphasis on the people—on the common men and women who help make, interpret, apply, enforce, and shape international law—Henry not only recovers nearly-forgotten individuals and events but also provides us with an alternative ontology of the international legal order.

This conceptual and jurisprudential move is not always fully theorized in his work, and perhaps for this reason is not always sufficiently appreciated by others.²²

21. The allusion, of course, is to the Gettysburg Address. See President Abraham Lincoln, The Gettysburg Address (Nov. 19, 1863), in *THIS FIERY TRIAL: THE SPEECHES AND WRITINGS OF ABRAHAM LINCOLN* 184 (William E. Gienapp ed., 2002) ([The American government is a] “government of the people, by the people, [and] for the people”).

22. Henry's emphasis on the common man is mentioned in passing in D.A. Jeremy Telman, *The African-American Interest in Higher Law in the Supreme Court: Justices Marshall and Thomas*, 31 *TEMP. INT'L & COMP. L.J.* (May, 2017) and Ziyad Motala, *International Law and Human Empowerment: Moving Beyond a Paradigm of Subordination*, 31 *TEMP. INT'L & COMP. L.J.* (May, 2017). The idea that every person's actions implicate international legal issues is provocatively developed in Karen E. Bravo, *Interrogating Everyperson's Role in Today's*

In this short essay, I'd like to highlight just a few examples of Henry's foregrounding of non-elites and everyday people, and then offer just a few thoughts on why this is such a potentially powerful and liberating idea as a jurisprudential, doctrinal, and political matter.

I. THE TURN TO HISTORICAL NARRATIVE

The first notable—and related—methodological moves in Henry's work are a turn to history and a turn to narrative.²³ Both moves are popular in contemporary international legal scholarship. But Henry's engagement with history is not that of professional or legal historians focused on questions of method and historiography,²⁴ and his focus on narrative is not that of international law scholars interested in literature and language theory.²⁵

Most approaches to international legal history fall into one of two camps. One strand of writing on international legal history is “realist” in that it focuses on state power, the strategies of inter-state geopolitics, and the primacy of power over law. A second, and competing strand, might be labeled “idealist;” it highlights specific legal thinkers and practitioners, and conceptualizes history through the lens of great principles and doctrines.²⁶ Henry adopts neither of these standard perspectives and instead proceeds in a more accessible, but no less sophisticated, manner to present historical narratives to remind some (and teach others) of an underappreciated and undertheorized way that international law has operated in the past, and how it works today.

To undertake this form of international legal history, Henry uses several strategies. One involves the recasting of familiar events or individuals. Consider, for example, his writings on Dr. Martin Luther King, Jr., whom Henry met while growing up in Indianapolis.²⁷ There is no shortage of writing on Dr. King in legal

Slaveries, 31 TEMP. INT'L & COMP. L.J. (May, 2017).

23. Professor Richardson's turn to history is ably discussed in Rafael A. Porrata-Doria, Jr., *The Lawyer as Historian: Professor Henry Richardson and The Origins of African-American Interests in International Law.*, 31 TEMP. INT'L & COMP. L.J. (May, 2017).

24. Martti Koskenniemi, *Histories of International Law: Significance and Problems for a Critical View*, 27 TEMP. INT'L & COMP. L.J. 215 (2013); Samuel Moyn, *Substance, Scale, and Salience: The Recent Historiography of Human Rights*, 8 ANN. REV. L. & SOC. SCI. 123 (2012).

25. INGO VENZKE, *HOW INTERPRETATION MAKES INTERNATIONAL LAW: ON SEMANTIC CHANGE AND NORMATIVE TWISTS* (2012). That said, some of Henry's work has affinities with the work of Derrick Bell and others who “us[e] fictional narrative to clarify deeper truths behind contemporary...[legal] issues.” Henry J. Richardson, III, *Mitchell Lecture*, 17 BUFF. HUM. RTS. J. 1, 8 (2011).

26. For more on these two approaches, see Koskenniemi, *supra* note 24, at 217–18, (indicating idealist historians' interest in principals such as freedom and equality of the state and realist historians' interest in imperial empires).

27. See Henry J. Richardson, III, *From Birmingham's Jail to Beyond the Riverside Church: Martin Luther King's Global Authority*, 59 HOW. L.J. 169 (2015)[hereinafter Richardson, *Birmingham's Jail*] (analyzing Martin Luther King Jr.'s works such as *Letter from Birmingham City Jail*); see also Henry J. Richardson, III, *Dr. Martin Luther King, Jr. as an International Human Rights Leader*, 52 VILL. L. REV. 471 (2007) [hereinafter, Richardson, *Human Rights*

journals,²⁸ and much of this scholarship understandably focuses on King's critical leadership role in the struggle for civil rights in the U.S. Henry acknowledges this role, but insists that we can properly understand Dr. King only if we expand the "American-centric vision of King's aims and actions that dominates our current narrative," to include his "global consciousness and commitments."²⁹ Thus, for example, Henry reminds us that King traveled to West Africa to attend Ghana's independence ceremony. In Accra, he met with Vice President Richard M. Nixon and invited him to visit Alabama "where we are seeking the same kind of freedom the Gold Coast is celebrating."³⁰ From this time forward, Henry writes, "King linked the African decolonization movement to the U.S. Civil Rights Movement, in finding identical goals of defeating racism, of doing it with non-violence, and with consistent, demanding struggle against white and European racial domination."³¹ Thus, Henry claims, virtually from the beginning of his career, "King saw the international struggle in Africa as *both* inspirational to the American civil rights struggle, and as part of the *same* global struggle against racism and for black freedom."³²

Henry uses this insight regarding King's global commitments to re-read and re-interpret King's most prominent works, including *Letter from Birmingham Jail*.³³ Through a close textual analysis, Henry concludes that King's *Letter from Birmingham Jail*

is not a missive whose aims and doctrine are confined to the American civil rights narrative, though in the first instance King through it aims to shape that narrative. Rather, this letter must be interpreted as grounded in the intersections between the global human rights narrative certifying the universal right to racial justice of black Americans in unity with that of other peoples of color in the world community, and the American civil rights narrative.³⁴

Henry similarly devotes substantial attention to King's famous Riverside Church speech.³⁵ The speech was, famously, a brave critique of the Vietnam War.

Leader] (discussing Martin Luther King Jr.'s role as an international human rights leader on issues such as Apartheid). Henry's analysis of Dr. King is analyzed in more detail in Jeremy Levitt, *Beyond Borders: Martin Luther King, Jr., Africa and Pan Africanism*, 31 TEMP. INT'L & COMP. L.J. (May, 2017).

28. A search in Westlaw's "Law Reviews & Journals" database on the term "Martin Luther King" returns no less than 6,972 hits.

29. Richardson, *Birmingham's Jail*, *supra* note 27, at 170.

30. *See id.* at 171 (quoting 4 MARTIN LUTHER KING, JR., THE PAPERS OF MARTIN LUTHER KING JR.: SYMBOL OF THE MOVEMENT JANUARY 1957-DECEMBER 1958, at 8 (Carson et al. eds., 2000)).

31. *Id.* at 172.

32. *Id.*

33. Martin Luther King, Jr., *Letter from Birmingham Jail*, in *WHY WE CAN'T WAIT* 83 (Beacon Press 2010) (1963).

34. Richardson, *Birmingham's Jail*, *supra* note 27, at 178.

35. *See id.* at 186-92 (examining Dr. King's 1967 speech at Riverside Church and the surrounding events); *see also* Richardson, *Human Rights Leader*, *supra* note 27 (analyzing the Riverside Church speech).

Again, however, Henry goes well beyond a surface reading of this text, and shows how King intertwined domestic and international policy; linked justice at home with a rejection of oppression abroad; and embraced the necessity of realizing all forms of international human rights, both political and economic. In short, in Henry's talented hands, King's anti-war speech is reinterpreted as a broader approach to international relations that opposes prevailing balance of power analyses and embraces the international rule of law and justice.³⁶

Another example of Henry's ability to take familiar, even iconic, figures or events and recast them within the idiom of international law is found in his paper on the global reaction to, and international law implications of, the 1992 Los Angeles riots (L.A. riots).³⁷ Henry shows how this ostensibly local incident implicates large international legal issues, such as the relations between core states and peripheries, the obstacles to economic development, and the distributional consequences of then-emerging patterns of globalization. In his treatment of both King and the L.A. riots, we see one of Henry's favorite conceptual moves: the excavation and analysis of the international legal implications of ostensibly domestic figures and events.

Notably, however, Henry's turn to history is not simply a project of reconstruction. It is also essentially a project of retrieval. That is, Henry's writings retrieve incidents which, and people who, at one time were well-known, but less so today—not to mention others which were never known, much less forgotten. To mention just one example, Henry tells a marvelous story about George Washington Williams, perhaps the first African-American international lawyer in the United States.³⁸ In the late 1800s, Williams was sent to the Belgian Congo to survey possible railroad investment property. In the course of his travels, Williams witnessed the shocking oppression of the Congolese by Belgian colonial rulers.³⁹ In 1890, Williams released an open letter accusing Belgium of violating international law through the systematic mistreatment of Congolese.⁴⁰ Williams

36. Richardson, III, *Human Rights Leader*, *supra* note 27, at 475–77. Elsewhere, Henry characterizes the speech as “outlin[ing] nothing less than an alternative approach to the entirety of international relations.” HENRY J. RICHARDSON, III, *THE ORIGINS OF AFRICAN AMERICAN INTERESTS IN INTERNATIONAL LAW* xiii (2008).

37. Henry J. Richardson, III, *The International Implications of the Los Angeles Riots*, 70 *DENV. L. REV.* 213 (1993).

38. Williams is discussed in 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 (2010); Henry J. Richardson, III, *African Americans and International Law: For Professor Goler Teal Butcher, With Appreciation*, 37 *HOW. L.J.* 217 (1994) [hereinafter, *African Americans and International Law*].

39. See WATSON INST. FOR INT'L STUD., *COLONIALISM IN THE CONGO: CONQUEST, CONFLICT, AND COMMERCE* 16–17 (2005), <http://projects.ecfs.org/eastwest/Readings/CongoSim.pdf> (explaining one instance where Williams witnessed officers make a wager of £5 that they could shoot a Congolese native from a long distance).

40. For the full text of the letter, see *George Washington William's Open Letter to King Leopold on the Congo, 1890*, BLACKPAST.ORG, <http://www.blackpast.org/george-washington-williams-open-letter-king-leopold-congo-1890> (last visited Apr. 7, 2017).

also wrote an open letter to U.S. President William Henry Harrison in an effort to gain international support for censuring Belgium.⁴¹ These “letters,” which in fact were superbly crafted legal briefs, caused an international uproar. Unfortunately, Williams was not able to continue these efforts, as he would soon die from combat wounds obtained while fighting in the Civil War. Nonetheless, Henry presents Williams’s career as “a model of international legal action promoting justice for peoples of color.”⁴² Henry’s reclaiming of Williams’s role is hardly unique; his writings are full of fascinating anecdotes and stories of other figures who marched across the international law stage at one time or another. In Henry’s telling, international law is not simply about diplomats and kings, but also the story of ordinary and everyday people who, at times, do extraordinary things.

The final, and perhaps most prominent, move in Henry’s turn to history that I wish to highlight is his attention to marginalized communities. Indeed, two of Henry’s best-known works are centrally concerned with foregrounding communities that are typically marginalized in international legal scholarship, as well as other scholarly traditions. In particular, *THE ORIGINS OF AFRICAN-AMERICAN INTERESTS IN INTERNATIONAL LAW*⁴³ and *Gulf Crisis and African-American Interests under International Law*⁴⁴ are both centrally concerned with illuminating and analyzing what Henry labels the “Black Internationalist Tradition.”

As *ORIGINS OF AFRICAN AMERICAN INTERESTS* is capably analyzed elsewhere, my discussion will be brief.⁴⁵ The book’s central claim is that, from 1619, when the first Africans were landed at Jamestown, Virginia, Blacks have had a vital stake in – and have consistently advanced claims under – international law. Henry details Black claims to “outside law” and international law by examining statements made by those associated with slave revolts, maroon movements, and communities throughout the Americas. In more than 500 dense and dazzling pages, this volume describes the story of African-Americans as *participants* in the international legal process, and details what Henry elsewhere calls a “jurisprudence of appeal.”⁴⁶

Henry’s classic *Gulf Crisis and African American Interests* paper provides another example of how he foregrounds the Black international tradition.⁴⁷ Published shortly after the conclusion of the first Gulf War, this article describes two traditions in African-American foreign policy and international law circles. One tradition holds that African-American commitment to and excellence in

41. For the full text of the letter, see GEORGE WASHINGTON WILLIAMS, REPORT UPON THE CONGO-STATE AND COUNTRY TO THE PRESIDENT OF THE REPUBLIC OF THE UNITED STATES OF AMERICA (1890), <https://archive.org/details/reportuponcongos00williala>.

42. Richardson, *African Americans and International Law*, *supra* note 38, at 219–20.

43. RICHARDSON, III, *ORIGINS*, *supra* note 36.

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

45. Porrata-Doria, *supra* note 23; Ruth Gordon, *Book Review*, 104 AM. J. INT’L L. 313 (2010).

46. Richardson, III, *supra* note 36, at 79.

47. *Id.*

military service confirms Blacks' stakes in the U.S. and promotes enforcement of their legal rights. It views "the right and duty of black sacrifice abroad with support of official U.S. policy and interpretations of international law as [creating a] kind of estoppel against official denial of policies favorable to black empowerment."⁴⁸ A second position is rooted in W.E.B. Du Bois' observation that racial issues in the U.S. cannot be resolved "without consultation and cooperation with the whole civilized world."⁴⁹ Under this view, "empowerment of African-Americans will be effectuated only through international strategies for the liberation of all similarly situated peoples and that such strategies, in conjunction with domestic efforts, will create resources to change U.S. domestic policies."⁵⁰ In detailing the tensions between these two positions, the paper bristles with references to various individuals and events associated with one or the other tradition, ranging from Marcus Garvey, Paul Robeson, and Du Bois to Ralph Bunche, U.N. Ambassador Andrew Young, Secretary Colin Powell, and the Reverend Jesse Jackson. More importantly for current purposes, however, is that this article illustrates Henry's ability to educate his readers about communities and traditions that are often not included in mainstream international law scholarship.

II. INTERNATIONAL LAW AND THE "COMMON MAN"

By now it should be clear that throughout Henry's writings one can find not only an emphasis on the marginalized and dispossessed, but specifically and repeatedly the larger jurisprudential claim that non-elites are and should be recognized as full participants in the international legal process. Thus, for example, ORIGINS can usefully be seen as an extended examination of the following question:

[W]hy sovereign and other elite groups were the beneficiaries of evolved international principles of standing, legal personality, and other preferred status of participation in legal decision making, and not other groups, entities and peoples who were the intense and continuing focus of the concerns and objectives of these elites We must equally ask, what demands, claims, and interests did these subordinated peoples and groups have and make in this historical struggle to evolve international legal principles, even as colonial elites were being careful to deny the formal access to legal arenas?⁵¹

Similarly, in a later contribution that revisits these themes, Henry is explicit in rejecting the claim that "no actions or communications by subordinated national groups can or should be understood by scholars, officials, or observers as representations of a jurisprudence of international law without the explicit consent

48. *Id.* at 63.

49. *Id.* at 62 (quoting W.E.B. Du Bois, *Peace and Foreign Relations*, CRISIS, Nov. 1923, at 9).

50. Richardson, III, *supra* note 44, at 63.

51. RICHARDSON, III, ORIGINS, *supra* note 36, at 22–23.

of that sovereign national government.”⁵²

In calling attention to Henry’s foregrounding of the common man and marginalized groups, as opposed to elites and elite groups, I do not wish to simplify the sophisticated jurisprudence that lies behind and informs Henry’s analysis. In many writings, Henry associates himself with the New Haven School,⁵³ and he adopts the New Haven School’s teaching that “[i]nternational law rests on international community expectations about authoritative decision making.”⁵⁴ But Henry’s jurisprudential commitments and his emphasis on historical narrative are entirely consistent. Henry emphasizes, in ways that some adherents of the New Haven School do not, that the community expectations at the heart of international law “flow from a wide variety of actors and participants; they are not restricted to those of national governmental officials.”⁵⁵

Nor do I wish to suggest that Henry is utopian or unrealistic about the value of participation by individuals from marginalized or non-elite groups. Sometimes this participation is extremely positive, as exemplified by Dr. King’s Riverside Church speech.⁵⁶ Other times, Henry adopts a more ambivalent posture. Consider, for example, his nuanced treatment of Reverend Leon Sullivan and his advocacy for the Sullivan Principles. Henry is clear that Reverend Sullivan’s “work affected the public perception and interpretation of important issues of international law,” and thus falls within the alternative ontology of the international legal process that informs Henry’s work.⁵⁷ Henry is candid that, at times, he was skeptical of and opposed to the Sullivan Principles, on the grounds that they were “insufficient against the massive challenge of international racism.”⁵⁸ At the same time, he recognizes that the Sullivan Principles “brought new resources to the construct of race fights by its rightful academic and public visibility as a working dynamic about authority in the international community.”⁵⁹ Generalizing from this example, it seems that Henry views participation by non-elites as essential, but not necessarily as an unalloyed good.⁶⁰

52. Richardson, III, *Mitchell Lecture*, *supra* note 25, at 35.

53. See e.g., RICHARDSON, III, *ORIGINS*, *supra* note 36, at xx–xxi.

54. Richardson, III, *supra* note 36, at 55. In other writings, he has urged recognition and use of other theoretical traditions. See Henry J. Richardson, III, *Correspondence*, 94 AM. J. INT’L L. 99 (2000) (protesting that Critical Race Theory and Third World Approaches to International Law perspectives were not included in a Symposium on international legal method).

55. Richardson, III, *supra* note 36, at 55.

56. King wrote Letter from a Birmingham Jail to Fellow Clergymen on April 16, 1963. Martin Luther, King, *Letter from a Birmingham Jail*, THE KING CENTER PENNSYLVANIA, (April 16, 1962) <http://www.thekingcenter.org/archive/document/letter-birmingham-city-jail-0>. <http://www.thekingcenter.org/archive/document/letter-birmingham-city-jail-0>.

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

58. *Id.* at 56.

59. *Id.*

60. See Henry J. Richardson, III, “Failed States,” *Self-Determination, and Preventive Diplomacy: Colonialist Nostalgia and Democratic Expectations*, 10 TEMP. INT’L & COMP. L.J. 1 (1996) [hereinafter *Failed States*] (criticizing the efforts of some scholars and policy-makers to advance the concept of “failed states”).

Henry's primary focus is on non-elite African-American participation in international legal processes. Repeatedly, he invokes W.E.B. Du Bois' oft-cited claim that the central problem of the 20th Century is that of the color line.⁶¹ In Henry's use, the term refers "not only to patterns of dominance and discrimination among Northern and Southern Tier national states, but equally to such discrimination against peoples and individuals of color *within* those states, as the latter domestic policies are undoubtedly linked to the former international policies."⁶² At the same time as he insists on the importance of addressing racial oppression, Henry is equally insistent that in doing so we do not reinscribe the mistake of privileging elite actors. In his words, "the process of working out Afro-America's interests under international law has not been and will not entirely be the domain of elites."⁶³

Notwithstanding the focus on African Americans, Henry recognizes that his core claim about the participation of non-elites in international legal processes is broadly generalizable. Hence, he writes that "African-American claims regarding international law's authority, *in conjunction with those of other similarly situated peoples*, must be considered essential to inquiries about what international law is and the goals it should serve."⁶⁴

In either a broad or narrow articulation, however, the claim is a powerful challenge not only to conventional Westphalian conceptions of the sovereign state,⁶⁵ but also to more modern conceptualizations of international law.⁶⁶ In particular, Henry's writings challenge conventional views of the state-society relationship with respect to international law, which treat governmental statements and actions on the implied premise that they represent both the nation and the state.

Accepting Henry's jurisprudential vision would have profound political and doctrinal implications. For example, in his Gulf War article, Henry argues for what he calls the "de-ghettoization" of African-American international law claims.⁶⁷ That is, the international law claims of Black Americans should not be limited to

61. *Id.* at 9 ("[T]he major problem of both the present and coming century is that of the 'color line,' an African-American concept arising earlier in the century which carries considerably deeper meaning than pigmentary description."); see also Richardson, III, *African Americans and International Law*, *supra* note 38, at 218 ("The testing papers for W.E.B. Du Bois' oft-quoted insight—that the problem of the 20th century is that of the color line—are now prominently on the public table in the United States and in the global community.").

62. *Failed States*, *supra* note 60, at 9.

63. Richardson, III, *supra* note 36, at 78.

64. *Id.* at 55 (emphasis added).

65. On whether the Westphalian ideal was ever actualized, see STEPHEN D. KRASNER, *SOVEREIGNTY: ORGANIZED HYPOCRACY* (2000).

66. Others have advanced similar claims. See, e.g., Jordan J. Paust, *Nonstate Actor Participation in International Law and the Pretense of Exclusion*, 51 VA. J. INT'L L. 977, 977 (2011) ("[A]lthough far too many assume incorrectly that traditional or classical international law had been merely state-to-state and that under traditional international law individuals and various other nonstate actors did not have rights or duties based directly in international agreements or customary international law.").

67. Richardson, III, *supra* note 44, at 69.

the areas of human rights and minority rights—important as those areas are—but should extend to the entire panoply of international legal issues.⁶⁸ Thus, *all* international legal doctrines should be reexamined and, if necessary, revised, to account for African-American interests which historically have not been accounted for. Applying this principle to a concrete example, Henry provocatively suggests that:

A proposal on the principle of self-defense that incorporates African-American interests might read as follows: the right of a state to use military force in self-defense should be conditioned on the equitable participation of the diverse peoples and “minorities” represented in its population in the effective power processes and authoritative decision processes regarding its characterization of the situation as requiring a military response [This representation] involves participation by broadly based, authentic representatives of the groups in the making of both the basic policy governing military deployments and the decisions about each and every use of military force to be recommended and justified under the doctrine of self-defense. Any attempt to justify a use of force as self-defense that fails to meet these conditions should be rejected by the international community, including by the Security Council (and the General Assembly) under the United Nations Charter.⁶⁹

This is a dramatic proposal, with extraordinarily far-reaching implications. How would one determine whether a deliberative process resulting in a state’s decision to invoke self-defense was sufficiently representative? Who would make this determination? And what would the proposal mean for the right of self-defense by non-democratic states?

Read in context, I take Henry’s proposal as not limited to the area of self-defense, but generalizable across different areas of international law. That said, we might wonder how far the proposal would go. In particular, which bodies or institutions should be required to adopt the inclusive approach that Henry advocates? Would we demand the same of international organizations, such as the United Nations or World Bank, that engage in normative standard-setting exercises? Would we demand that international courts, when determining questions of international law, engage in an inclusive process, and, if so, whose input should international tribunals seek?

Revisiting Henry’s proposal more than two decades after it was published, one cannot help but be impressed by its boldness and its power. Even more so, I am impressed by the idea that, at the time of this October 2016 festschrift, Henry’s proposal is in many respects not at all unrealistic or utopian. Specifically, the advent and democratization of new technologies and communication platforms in the years since Henry advanced this proposal makes it entirely plausible to survey and ascertain citizen sentiments, if one were inclined to do so. To take just one example, in the context of ongoing negotiations over the Transatlantic Trade and Investment Partnership, in 2014 the European Commission engaged in an

68. *Id.*

69. *Id.* at 70.

extensive consultation with the European public over provisions on investment protection and investor-to-state dispute resolution.⁷⁰ The consultation was open to all interested E.U. citizens and stakeholders, and sought input on twelve key issues, including doctrinal issues such as fair and equitable treatment and non-discriminatory treatment for investors. Astonishingly, the European Commission received a total of nearly 150,000 replies, representing a broad cross-section of European society,⁷¹ and this public input has helped to inform the European position in the context of negotiations with the U.S.⁷² Thus, even in one of his boldest proposals, Henry has been ahead of his time.⁷³

III. CONCLUSION

I opened this short essay with an invocation of an outstanding piece of classical music that cuts against the conventions of an elite genre by celebrating the common man. I have suggested that many of Henry Richardson's writings engage in much the same move. In so doing, these works not only break the conventions of the genre of international legal scholarship but also provide a unique and valuable vision of the relationship between international law's history, theory, and practice.

For these reasons, Henry Richardson is one of those rare scholars that international lawyers and others should read, regularly and repeatedly. To be sure, Henry's writings make serious demands upon their readers. But the demands are worth it. Henry's works raise the largest, the most essential, and the most existential questions that inform the discipline's past, present, and future.⁷⁴ These writings are centrally about the most pressing issues of our time, prominently including the need to engage in, to struggle against, to resist, and to be resilient in the face of various forms of domination and oppression. They provide us with a more acute understanding and new image of international law that is ethnographically informed, theoretically aware, and historically cognizant.

70. See Directorate-General for Trade, *Online Public Consultation on Investment Protection and Investor-to-State Dispute Settlement (ISDS) in the Transatlantic Trade and Investment Partnership Agreement (TTIP)*, EUROPEAN COMMISSION, http://trade.ec.europa.eu/consultations/index.cfm?consul_id=179 (last visited Mar. 4, 2017) (describing the objective of the public consultation and giving instructions for those who wished to complete the questionnaire).

71. EUROPEAN COMMISSION REPORT: ONLINE PUBLIC CONSULTATION ON INVESTMENT PROTECTION AND INVESTOR-TO-STATE DISPUTE SETTLEMENT (ISDS) IN THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP AGREEMENT 3 (Jan. 13, 2015), http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153044.pdf (stating that 145,000 replies were submitted with pre-defined answers in addition to 3,000 individual replies).

72. *Id.* at 28.

73. This is hardly the only occasion, as Michael Van Alstine details. Michael P. Van Alstine, *Prescience and Insight in International Law Scholarship*, 31 *Temp. Int'l & Comp. L.J.* (May, 2017).

74. To provide just one example, his impassioned rejection of the idea of "failed states" claims that "The stakes for incorporating a 'failed states' doctrine into international law go to no less than the shaping of the constitutive structure of the world community." Richardson, III, *Failed States*, *supra* note 56, at 5.

Finally, I might conclude by suggesting just one other way in which Henry's work stands apart from that of many of his contemporaries. His work has an element of poetry about it. By this, I do not mean to suggest that Henry writes rhyming verse, or even that he uses meter and rhythm to tease out the aesthetic qualities of language. Rather, I see him as a poet in the broader sense that Shelley uses in the closing line of *A Defense of Poetry*, which famously ends with the claim that "Poets are the unacknowledged legislators of the world."⁷⁵ I think by "poets" Shelley meant to include all creative individuals who muster the courage, intelligence, and imagination to conceive of a different world, and who use bits of this imagined world to attempt to transform our current reality into something just a bit closer to the world that they imagine. In this sense, poetry is about the fusing of intelligence and insight, on the one hand, with empathy and imagination, on the other. This combination is quite rare. Listen closely, and you will hear it in Copeland's *Fanfare for the Common Man*. Look closely, and you will see this combination in Henry Richardson's scholarship. Read Henry's work, and you will find an eminent international law scholar's fanfare for the common man.

75. PERCY BYSSHE SHELLEY, *A DEFENSE OF POETRY* 46 (Albert S. Cook ed., 1891) (1840).