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Saito, Natsu Taylor

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Natsu Taylor Saito, Georgia State University College of Law*

Different Paths

Abstract

A critical perspective on law and political economy requires an appreciation not only of how race, gender, sexuality, class, national origin, immigrant status, and other aspects of our identities intersect and interact, but also why they do so. Focusing on the United States as a settler colonial state, this essay suggests that the primary markers of identity used to oppress people are themselves the master's tools, i.e., constructs of the colonial project. Building on the late Stokely Carmichael's distinction between the paths of the exploited and the colonized, it argues that remediating status-based injustices will require us to go beyond a redistribution of social goods and resources, or even institutional restructuring, to challenge the paradigm that works to define and contain us—the one that propelled Western colonialism and now permeates not only the United States but legal, economic, and political institutions around the world.

Keywords: decolonization, identity, racism, patriarchy, settler colonialism, sovereignty

The exploited and the colonized, they must move in different paths.
—Stokely Carmichael (Kwame Ture), 1968

I. Introduction

Unprecedented heat waves. Species disappearing at mind-boggling rates. Migrant children washing up on European beaches or held in cages on the United States' southern border. White supremacy on the rise. All undergirded by apparently intractable racial and gendered disparities in wealth, income, healthcare, housing, and education, as well as incarceration and police killings (Gonzalez 2015; Saito 2020, 10-12). Over the past century we have seen mass movements for social change—socialist revolutions, wars to achieve independence from colonial domination, popular uprisings for political inclusion as well as fundamental human rights. And in the spring of 2020, in the wake of yet more brutal murders of unarmed Black men by the police, we have seen mass protests—during a global pandemic, no less—asserting solidarity with the #BlackLivesMatter movement (Cave et al. 2020). Nonetheless the devastation persists.

* Distinguished University Professor and Professor of Law, Georgia State University College of Law, Atlanta, Georgia. Direct correspondence to nsaito@gsu.edu. With much appreciation to Angela Harris, Eric George, and Jay Varellas for creating this space for critical discourse, as well as for painstaking editing; to Ward Churchill for feedback and insights into ongoing colonization; to the many activists and scholars who laid the foundations for this work; and to Georgia State University's College of Law for research support.

And, because it persists, as activists, we continue our struggles to create meaningful change and, as scholars, we articulate conceptual frameworks intended to promote “human flourishing” (Harris 2019). Bringing critical perspectives to the study of Law and Political Economy is part of our collective endeavor to respond effectively to the injustices surrounding us. In this effort, we begin from the premise that legal, political, and economic systems are mutually constitutive, and embrace as a common goal the identification and deconstruction of institutions and ideologies that perpetuate subordination and inequality. We recognize that accurate understandings of law, politics, and economic relations require a deep appreciation of the roles played by race, gender, sexuality, class, national origin, immigrant status, and a host of other aspects of our identities. Employing the lens of intersectionality, we see these attributes not in isolation from each other, but in a dialectical process of constant and organic interplay.

Envisioning the study of law and political economy in terms of structural intersectionality provides insights into the interdependence of social, political, economic, and/or legal actors and institutions, and how they perpetuate racialized, gendered, class-based, and nationality-based privilege and dispossession. But understanding *how* systems of oppression operate doesn’t necessarily tell us *why* they work the way they do; why we, collectively, allow them to do so; or how they can best be deconstructed. These inquiries compel us to think about the underlying causes of inequality and injustice, and about our ultimate goals (Harris 2006). Expanding upon critical approaches to law and political economy will inevitably require us, I believe, to choose between what the late Kwame Ture (formerly Stokely Carmichael) identified in a 1968 speech as the path of the exploited and that of the colonized (1971, 132).

Fifty years ago, Ture was insisting on what we are only now starting to take seriously—the need to recognize the United States as a settler colony and the fact that “[a] settler colony is, by its very nature, an unjust and immoral political state” (Carmichael 1971, 201). Explaining the distinction between the exploited and the colonized, he noted that both are oppressed and, therefore, their material conditions may look quite similar. However, colonized peoples are not only economically oppressed “but their culture, their values, their language, their entire way of life are stripped from them and they are forced to identify with the oppressor” (Carmichael 1971, 132). Their very identities are targeted because the state itself is built on what Giorgio Agamben describes as a process of “inclusive exclusion,” the use of colonial power to forcibly incorporate people into social structures that perpetually subjugate them (1998, 18, 21).

In the United States, even critics of the status quo tend to presume that its underlying institutions are fundamentally equitable, democratic, and life-enhancing—or that they can become so. To the extent this is accurate, it makes sense to believe that our goals can be achieved by enacting and enforcing laws and policies that curb greed, exploitation, or identity-based discrimination, and that provide for basic human needs and protect fundamental human rights. Such beliefs undergird the 150-year history of efforts in the United States to effectuate the constitutional guarantee of equal protection. If, however, the system “brilliantly serves its intended purpose,” as Dorothy Roberts puts it (2007, 265), reformist measures can only take us so far.

The question then becomes whether countering exploitation at a structural level—by, say, implementing a socialist or social democratic form of state governance—will provide the relief sought by those who are most oppressed. Because I believe that the inequities currently associated with race, national origin or immigration status, gender or sexual identity, and economic class are the product of both constitutive and ongoing colonial relations, I suggest here that effective remediation of status-

based injustices will require us to go beyond institutional restructuring or a redistribution of social goods and resources to challenge the paradigm that propelled Western colonialism and now permeates legal, economic, and political institutions across the globe. In other words, we will need to think about decolonization.

The United States is a settler colonial state, as Ture insisted, and the primary markers of identity used to oppress people in this society are not simply useful but necessary to the colonial project. Antony Anghie explains that colonialism creates and feeds off a dynamic of difference (2005, 4), and in the United States such difference has been constructed to facilitate the appropriation of lands and resources, to impose structures of law and governance, to exploit labor, and to enrich the colonizers (Saito 2020). Under these conditions, it is an exercise in futility to accept the legitimacy of colonial constructs—race, gender, property, and state sovereignty, for starters—and then work to equalize relations that have been defined in these terms. The constructs themselves are the “master’s tools,” incapable of dismantling the master’s house (Lorde 2015, 95). Beyond that, even if socioeconomic parity could somehow be achieved, we would simply be living under a kinder, more equitable form of colonial domination. The spoils of conquest might be shared among a greater proportion of the population, but this wouldn’t change—and might even entrench—the fundamental power dynamics. It wouldn’t return stolen lands or resources to Indigenous peoples; wouldn’t provide redress for centuries of enslaved, involuntary or exploited labor; wouldn’t prevent the destruction of the environment; wouldn’t let us live as free peoples.

This is the distinction I see between the path of the exploited and that of the colonized. A focus on exploitation leads us to challenge discrimination, unequal treatment, and inequitable access to social goods and sources of wealth. But an exclusive focus on such admittedly significant issues probably won’t change our most fundamental relationships to each other and to (the rest of) the natural world. The path of the colonized goes beyond measures of wellbeing defined by the colonizers to lay claim to the right to self-determination, a right that vests not in states or governments but in the people (Watson 2015, 90-91).

Globally, with the expansion of European colonial rule over the past five centuries, several thousand nations have been arbitrarily (and generally involuntarily) incorporated into the approximately two hundred political constructs we call independent states (Nietschmann 1994, 225-227). Virtually all of these states are colonial or neo-colonial powers, former colonies, or settler colonial entities, and each claims jurisdiction over peoples who are internally colonized or “encapsulated,” to use Henry Richardson’s term (1993, 48). One of the great myths of our time is that contemporary states have been freed from the shackles—or privileges—of colonial rule. In fact, the domestic legal systems of most if not all states are structured to reinforce colonial relations of domination and subjugation and the international legal system, being largely created and implemented by states, reflects and defends colonial presumptions of power and privilege (Anghie 2005).

These colonial presumptions arise from and reflect a worldview embedded in Euro-derivative understandings of Western civilization, a worldview that depends upon and perpetuates the inequities at issue. It is possible, and often necessary, to challenge exploitation and oppression within that framework. But it is a paradigm intended to absorb and eviscerate alternate ways of understanding our relationships to the world around us and of organizing human societies. To the extent that our analyses and proposed courses of action accept (and therefore reinforce) this worldview, we are foreclosing the possibility of decolonization. I write here to encourage us, in our study of Law and Political Economy, to be very conscious of the extent to which the Western colonial paradigm influences our

assessments of the problems and the solutions we consider, and to think beyond equality, or redistribution, to what it would mean to be free. As I write those words, I see the veil come down, the impulse to dismiss this all as utopian fantasy. But I believe that what is truly unrealistic, indeed utopian, is the assumption that the status quo just needs a bit of structural adjustment, so to speak, to be sustainable.

The arguments presented here focus largely on the United States, where we have to grapple, always, with the implications of living in a settler state. Section II provides a few examples illustrating that the usual building blocks of our critiques—most notably the constructs of race, gender, property, and sovereignty essential to our analyses of class distinctions and redistributive justice—are colonial impositions. Because our ability to effect change is shaped and limited by the presumptions we carry with us, Section III outlines some salient premises of the worldview that birthed these constructs: one that does its best to absorb all realities into its universalizing narrative of progress, one whose subtext is that resistance is futile. Section IV highlights differences between the paths of the exploited and the colonized, considering what it might mean to become non-subjects rather than colonial subjects who resist. Finally, Section V contemplates ways in which we might move toward the decolonization of settler society.

II. Colonial Constructions

In constructing race-, gender-, and class-conscious analyses of legal, political, and economic institutions in this country, we have begun to recognize that many markers of identity function in ways that reinforce systems of privilege and subordination. But we are much less conscious of the extent to which we continue to rely on colonially imposed constructions of reality. Acknowledging that the United States is not only an imperial power but the world's most powerful settler colonial state, and that its exploitation of Indigenous nations, lands, and resources—as well as the labor of racialized Others—continues unabated, is just the beginning of the inquiry, one which pushes us to reconsider how we understand ourselves and how we frame our struggles for justice.

European colonizers came to North America not just to exploit its lands and peoples, but to stay. They came with what Lorenzo Veracini terms a presumption of “sovereign entitlement,” an unquestioned belief in their right to exercise exclusive control over a state of their own creation, superimposed upon existing Indigenous polities and relations (Veracini 2010, 3, 20; see also Saito 2010b, 54-75). Unwilling to envision systems of shared power or governance, the settlers' first objective was the elimination of those peoples who “got in the way just by staying home” (Rose 1991, 46). Kwame Ture summarized this brilliantly:

In order to be a successful settler colony, one must commit genocide against the traditional owners of the land. That is exactly what the Europeans have done. After committing genocide, they changed the name to America. When you call them Americans, you make it sound as if they belong here. . . . But if we analyze history . . . we will see that they are not Americans, they are in fact European settlers. That's all they are (1971, 200; emphasis in original).

As these European settlers consolidated territorial control, they rendered the lands they claimed profitable, largely by enslaving American Indians and Africans (Gallay 2002, 299; Mann 2000, 41; Berlin 1998) and impressing other peoples of color into a labor force subjected to the push-pull dynamics of U.S. immigration regulation (Ngai 2004). Imperial ambitions, fueled by visions of

economic, political, and military hegemony, led to the occupation and annexation of Hawai'i and Alaska; the colonization of Puerto Rico, the Philippines, and other Pacific and Caribbean islands; and apparently never-ending warfare, overt and covert, in Central America, Asia, and the Middle East (Saito 2020).

The settler class insists upon defining *all* social, political, and economic structures and relationships within American society, but its hegemony remains in tension with its ideological justifications for conquest, generally framed in terms of the benefits of Western civilization and values (Anghie 2005, 96-97). Those in power mediate this tension by constructing identities and rights in ways intended to ensure that “the promised equality between coloniser and colonised[] is forever postponed,” for a “triumphant colonial society” is one in which “coloniser and colonised know and ultimately retain their respective places” (Veracini 2010, 22).

Our struggles for social justice generally focus on that “promised equality,” and are most often framed in terms of class, race, gender, sexual identity, and citizenship or immigration status. If, however, these markers of identity have been constructed precisely to ensure our subordination, opposing exploitation within the dominant paradigm will prove futile. As we consider how the distinction between exploitation and colonization might affect the ways in which we understand and challenge the legal, political, and economic structures that perpetuate identity-based disparities, I think it's important to think about the role colonization has played in determining the ways in which we are identified (notably race, gender, and nationality) and the most common measure of our wellbeing (property). That proposition is sketched out briefly in this section, focusing initially on race and gender, and then on our conception of property. It concludes with a discussion of sovereignty, which undergirds the construction of nationality and immigration status as markers of identity and rights in this society.

A. *Racial Patriarchy*

The advent of European colonial rule in Asia, Africa, and the Americas represented a transformative moment in the relationship between gender, identity, and power. The “civilized” European state is unremittingly patriarchal; it embodies a worldview that insists not only on gendered identities that are binary and mutually exclusive but also hierarchically ordered, with presumptively heterosexual males always dominant. By contrast, many—perhaps most—of the peoples subsumed by colonial states have had—and often still have—understandings of gender and gendered relations that are not only reciprocal but also much more fluid (Mann 2016; Gerulaityte 2018).

In such societies, it may be that neither dominance nor equality make sense, conceptually, with respect to gender. For example, historically, most Indigenous nations in North America have been matrilineal, with women often being responsible for the use of land, the distribution of goods, the maintenance of stable social relations, and the appointment of political leaders (Mann 2016; Mann 2000). But this does not mean that men have been subservient. According to Mann, in Iroquoian economies “men act[ed] as the Keepers of the Forest and women, as the Keepers of the Fields,” an arrangement she emphasizes was a “*distribution of the means of production*” rather than “a *sexual division of labor*” (Mann 2000, 187; emphasis in original). Gendered roles thus functioned to promote harmony and balance rather than domination and subordination.

Western “civilization,” by contrast, assigns everyone a place within social hierarchies, and constructs gender in accordance with those assignments. Women are defined as not-men and described as less-than: less intelligent, less courageous, less competent, less physically capable. Their purportedly positive attributes—beauty, for example, or the ability to reproduce or to caretake—are those which enhance their value as the property of men. As a consequence of the colonial encounter, exclusive, binary, and biologically assigned genders as well as patrilineal and patriarchal forms of social organization have been imposed by the very social and cultural forces that then frame “women’s rights” in terms of achieving parity with men (Chang and Wildman 2017; Wigginton 2014).

Racialization as we know it is also a product of colonial rule, on this continent and globally (Jackson 2009; see also Mahmud 1999). Like gender, race continues to be presented as a given and an exclusive category, despite longstanding recognition that it is a social and legal construct, not a biological reality (Desautels-Stein 2012; see also Appiah 1985). There is no logic to a system that limits whiteness to those of exclusively European ancestry, defines persons with but “one drop” of African ancestry as Black, and refuses to recognize individuals indigenous to these lands as “Indian” simply because their ancestors’ names were not inscribed on lists created by white colonizers (Wacquant 2001, 212n4; Haney López 1994). No logic, that is, unless the purpose of racialization is to maintain the dynamic of difference that undergirds colonial relations of power and privilege.

Dorothy Roberts reminds us that “[r]acism and patriarchy are not two separate institutions” but “two interrelated, mutually supporting systems of domination” that dehumanize African and Native peoples, appropriate women’s reproductive capacity, and control everyone’s sexuality (1993, 3). The result is what Cheryl Harris calls racial patriarchy: the “social political, economic, legal and conceptual system that entrenched the ideology of white supremacy and white male control over women’s reproduction and sexuality” (1996). Race and gender aren’t just cultural attributes of European settler society, they are essential to the maintenance of the colonial order. This means that the remediation of exploitation based on race and/or gender will require us not only to contest discrimination but also to deconstruct these forms of identity, thereby chipping away at the foundations of our colonization.

B. *Property*

The harm done by racialized and gendered exploitation, as well as class distinctions, is often assessed in terms of disparities in the ownership of, or access to, property. But that presumes that property—that which can be owned, controlled, and alienated—actually exists. We regularly dispute *whose* property something is, but the construct itself is rarely questioned. Furthermore, ownership is generally envisioned in terms of exclusive rights rather than collective responsibilities. However, if property itself is a colonial construct and, therefore, intrinsically and inextricably racialized and gendered (Padilla 2002; Harris 1996), equitable access or distribution is not likely to be possible or, perhaps, even desirable.

Early Anglo-American settlers’ claims to land ownership in North America routinely invoked John Locke’s contention that under natural law the transformative power of human labor justified the conversion of commonly held natural resources into private property (Williams 1990a; Carpenter 2008). The facially race and gender-neutral nature of this doctrine is belied by the colonizers’ insistence that only male European settlers could own land (Deloria 1988; Williams 2005). *Johnson v. McIntosh*, 21 U.S. (Wheat) 543, 573-74 (1823), undergirds U.S. property law to this day. In that case, Chief Justice John Marshall first noted that the doctrine of discovery gave the European colonial power making

first contact an exclusive right (vis-à-vis other European powers) to negotiate for land, and then asserted that because, under its terms, American Indian nations could not “dispose of the soil at their own will, to whomsoever they pleased,” they could not have really owned it (ibid.; see also Churchill 2002, 673–80). For those inclined to point out the illogic of this argument Marshall explained simply, “conquest gives a title which the Courts of the conqueror cannot deny.” *M’Intosh*, 21 U.S. at 588.

How was this to be reconciled with the United States’ purportedly superior moral values and its promotion of the rule of law? See, for example, *Marbury v. Madison*, 5 U.S. (Cranch) 137, 163 (1803). The best the chief justice could offer was that these “principles” may “find some excuse, if not justification, in the character and habits of the people whose rights have been wrested from them.” *M’Intosh*, 21 U.S. at 589. Which character and habits? As summarized by Justice William Johnson, American Indians were simply “wandering hordes, held together only by ties of blood and habit, and having neither laws or government, beyond what is required in a savage state.” *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 27 (1831). This transparently false depiction is what allowed the settlers—presumptively white, male, Christian, and “civilized”—an exclusive right to claim ownership of Indigenous peoples’ lands (Williams 2005). In the process, women’s rights to and responsibilities for the land in what were generally matrilineal and often matriarchal societies were also nullified (Mann 2000; Williams 1990b). But my main point is not that the colonizers excluded Indigenous people from property ownership; it is that *the land itself only became property*—that which could be held, legitimately defended, and alienated—*upon its appropriation by white men*.

The Lockean “productive use” justification is belied not only by the colonizers’ knowledge of extensive agricultural cultivation by American Indians, by also by the fact that, until the mid-1860s, much of the country’s productive activity was carried out not by the white settlers, but by enslaved people of color (Stannard 1992; Finkelman 1999). Unwilling to concede that enslaved Africans were entitled to own the lands they were rendering productive, or that they should have any recognized rights at all, the settlers instead constructed the workers themselves as “a highly volatile and unstable form of property”—property that could be bought or sold; raped, tortured, or abused at will; pledged as collateral; deeded and inherited (Harris 1993, 1720). Thus, property interests not only took precedence over people but resulted in the racial construction of (some) human beings as property. The settler colonial narrative would have us assume that “property” is a normatively neutral reference to material realities. However, as these examples illustrate, it is very much a (highly racialized and gendered) social and political construct.

C. *Sovereignty*

Like property, the reality and legitimacy of the construct of state sovereignty is often taken for granted. It has come to seem natural that the planet would be divided up into states, and that each state would exercise jurisdiction—i.e., virtually exclusive control—over “its” lands and peoples. However, there is nothing magical—nothing necessary or inevitable or even particularly beneficial—about state formations. Moreover, there is no reason to reflexively cede all power to assertions of state authority when, as Antony Anghie explains, contemporary sovereignty doctrine—“the complex of rules deciding what entities are sovereign, and the powers and limits of sovereignty”—serves to identify (or construct) cultural difference and to legitimize the imposition of state power on those deemed Other (2005, 16, 37).

Indigenous peoples, of course, have long “lived as sovereign peoples, respecting and recognizing the sovereignty of others and having independent authority over a territory,” but historically their understandings of sovereignty have not been tied to Western notions of property (Watson 2015, 151, 152-153). Their worldviews are often framed in terms of responsibilities rather than rights, and sovereignties conceived of as overlapping rather than exclusive. Under European colonial rule, the preexisting legal personality of colonized peoples was erased and replaced with the colonizers’ claimed prerogatives, asserted in the name of bringing “civilization” to the colonized (Anghie 2005). Thus, sovereignty as we have come to know it has been and continues to be “constituted through colonialism” (Anghie 2005, 38; see also Watson 2015, 5).

Anglo-American settlers brought with them a presumptive and “pre-emptive right to the continent,” one articulated in colonial charters that “designated the Pacific Ocean . . . as the western boundary of the several colonies” (Van Alstyne 1974, 8). As this illustrates, they were not simply immigrants, arriving with a desire to join another society. Instead, even before they had laid eyes on the lands or peoples at issue, these invaders were asserting a sovereign prerogative to establish a new state on someone else’s land; to create social, political, legal, and economic institutions that would function solely for their own benefit; and to determine who could or could not—or would be forced to—live within their claimed borders and exactly how they were to live. It is a version of sovereignty constructed explicitly to further colonial interests.

With the era of formal decolonization, sovereignty has come to be associated almost exclusively with statehood. The planet has been divided up into some two hundred nominally sovereign states but these, too, are largely colonial constructions. Their existence is contingent on being recognized as having governments with effective control over defined territories and populations, and their leaders must demonstrate the ability and willingness to play by the rules of an international legal order developed by current or former colonial powers (Saito 2020). Their borders, in many cases, were arbitrarily imposed by their colonizers and result in the continued internal colonization of many peoples (Mutua 1995; Richardson 1993; Mahmud 2010).

Once recognized as sovereign, states can exercise virtually unfettered control over the nationality and immigration status of persons within their claimed territorial boundaries and then insist that state-imposed identities take precedence over all other ways that people might understand themselves. Within settler states, the colonial governments sometimes claim to recognize the sovereignty of Indigenous nations but, upon closer examination, they are inevitably referring to some form of residual power that remains dependent on the will of the colonizer. To return to Chief Justice Marshall in *M’Intosh*, “the rights of the original inhabitants . . . to complete sovereignty, as independent nations, were necessarily diminished,” 21 U.S. at 574, a principle later enshrined in the plenary power doctrine (Williams 1990a; Saito 2020).

In the United States, we have seen people excluded from both birthright and naturalized citizenship on the basis of race or national origin and, conversely, included without consultation or consent. Notwithstanding this history, citizenship and immigration status are consistently used both to exclude individuals from rights and privileges and to force them to comply with state-imposed behavioral norms (Saito 2020). Thus, for example, it is common knowledge that people of African descent were initially excluded from both birthright and naturalized citizenship and then, with passage of the Fourteenth Amendment, unilaterally declared to be U.S. citizens. And yet, there is simply no room in the dominant narrative for the possibility that Black identity—or simply a concern for justice—might

transcend “American” identity. One of the benefits of civic inclusion is supposed to be the right to freedom of expression. However, as Colin Kaepernick can attest, this does not extend to African Americans who would kneel when the national anthem is played in order to call attention to the on-going murder of Black youth by agents of the state (Mindock 2018). State sovereignty thus comes with the power to exclude or include as well as the ability to demand loyalty and conformity.

Like racial patriarchy and property, sovereignty has been created by and for colonial interests. In the *Dred Scott* case, Chief Justice Roger Taney stated not only that the founders of the United States regarded people of African descent as “an ordinary article of merchandise” but also that this “opinion was at that time fixed and universal in the civilized portion of the white race.” *Scott v. Sandford*, 60 U.S. (19 How) 393, 407 (1857). In other words, not only did the opinions of those deemed white provide the foundation for legal decision making, those white people unwilling to accept colonial constructions of reality were insufficiently “civilized” for their views to be of significance. Which brings us to the centrality of “civilization” to our efforts to further economic and social justice. If this assessment of the impact of colonial rule is accurate, we won’t be able to effect meaningful change in our economic and political institutions, or the legal system that protects them, without deconstructing race, gender, property, and sovereignty as the building blocks of colonial rule. And this requires us to take an even larger step back to consider the ideological foundations—the cosmology, if you will—upon which the colonial order rests.

III. The Euro-Colonial Worldview

The Euro-derivative colonialism that has shaped social, political, and economic relations across the globe for the past five centuries arises from and relies upon a worldview so ubiquitous that it is difficult to appreciate the extent to which it distorts our perceptions and constrains our vision (Walker 2004). John Mohawk tells of Hopi traditionalist Thomas Banyacya’s observation that in Hopi teachings Spider Woman comes back to “weave her web across the landscape. Everywhere you will see her web. That’s how we will know that we are coming to the end of this world, when we see her web everywhere.” Stopping to take in the seemingly endless maze of transformers, towers, and cables emanating from the generating plant at Niagara Falls, Banyacya concluded, “I believe I have just seen her web” (Mohawk 2010, 91). And, indeed, this web is everywhere.

Resisting an all-encompassing paradigm is more difficult than condemning colonialism and more complicated than contesting the colonizers’ appropriation of lands and resources. It hides in the cracks and crevices of our social institutions, normalizing its premises until they become part of consensus reality, convincing us that there is no other way to think about our lives or societies. This is why Ngũgĩ wa Thiong’o describes the most problematic aspect of colonial rule as not necessarily its physical violence but rather the “cultural bomb” that “annihilate[s] a people’s belief in their names, in their languages, in their environment, in their heritage of struggle, in their unity, in their capacities and ultimately in themselves,” thereby eventually “mak[ing] them want to identify with that which is furthest removed from themselves” (1986, 3; see also Memmi 1965, 91).

The Euro-American settler paradigm collapses all of human history and the multiplicity of human experience into one teleological narrative that entrenches colonial rule by placing the colonizers at the forefront of human development, with the colonized trailing in their wake (Smith 2012; Wolf 1982). Racialized, gendered, or class-based privilege and subordination cannot be effectively challenged from perspectives that rely, implicitly or explicitly, on the very ideological framework that produced those

hierarchies. Therefore, it's worth engaging critically with the premises that may be implicit to our analyses.

Worldviews are multidimensional, overlapping, and capable of encompassing what appear to be contradictory premises; they do not readily lend themselves to compartmentalized description (Mann 2016). Nonetheless, in trying to understand the roots of identity- or status-based domination and subordination, five conceptual underpinnings of the Euro-colonial narrative stand out: (1) that there is a singular and hierarchically structured universe; (2) that humans are defined by our willingness and capacity to exploit, control, and dominate nature; (3) that such domination is the result of rational and reductionist science; (4) that the temporal takes precedence over the spatial; and (5) that this linear, unidirectional progress, often called civilization, gives meaning and purpose to our existence.

A. Singular Hierarchy

Western civilization—the web that would encompass us conceptually and materially—is organized hierarchically. The Divine (or currently, perhaps, scientific Truth) is at the apex, followed by humans who, in turn, are more important than the rest of the natural world (Tinker 2004b). Human superiority is evidenced by the linguistic and conceptual abilities that give us art and literature; by our cultivation of the earth, which provides the material basis for organized societies, particularly cities; and by the scientific knowledge that allows us to produce goods, provide sophisticated services, and control our environment (Waswo 1997).

Within this hierarchically ordered macrocosm, all relationships can be ranked in terms of status and power; everyone and everything is superior or inferior to someone or something else. Consequently, it is not surprising that human beings would be racialized, gendered, and assigned identities intended to keep them “in their place,” literally and figuratively. By way of contrast, we could understand “the cosmos as a halved and interdependent whole,” where balance is the objective and “[t]wo of everything are required, not redundant” (Mann 2016, 12, 45). Or, we could simply see ourselves as living not within *the* universe, but in a “pluriverse” of realities, as Gustavo Esteva and Madhu Suri Prakash put it (2014, 41).

B. Exploitation and Control

If the higher manifestations of “human-ness” are closest to the divine and farthest from nature, it follows that human progress or development would be measured by the conquest of the natural world (Genesis 1:27-28, King James Version). Thus, Vandana Shiva notes, “‘Nature’ [has been] transformed in the European mind from a self-organizing, living system to a mere raw material for human exploitation, needing management and control” (1997, 104). The Western understanding of nature as the object of conquest and control leads directly to the construction of property and legal systems designed to protect property ownership. Property, according to Peter Fitzpatrick, becomes “the foundation of civilization, the very motor-force of the origin and development of society, the provocation to self-consciousness and the modality of appropriating nature” (1992, 50). Again, this perspective could be turned on its head. Tink Tinker (2004b) explains, for example, that rather than believing humans to be superior to other forms of life, and all living beings superior to inert objects, we could recognize that rocks are not only consciousness beings, but our grandparents—our oldest relatives who, because they have the most experience, are also the wisest.

C. *Atomization and Accumulation*

The exploitation of natural resources is known in colonial-speak as rendering the earth “productive.” Science and technology are considered inherently positive because they allow us to create property by harnessing or converting nature. In Bosire Maragia’s words, they gave us the “industrial production that came to be identified with social progress”; in turn, “progress, civilization, and development required privileging science and technology as well as the systematic obliteration of all types of knowledge that were identified with primitive, uncivilized, and, today, underdeveloped societies” (2006, 217-218).

This trajectory has been undergirded by the bifurcation of mind and body, as well as the status given to “reason,” which is presumed to be a distinctly human attribute. Reason generates “knowledge,” which is frequently equated with breaking something down into its smallest components and then quantifying those parts, with little regard for the relationships between wholes that might actually help us understand phenomena (Gallagher 1999). Thus, Western sciences and social sciences are characterized by reductionism. Knowledge becomes fixed, discrete, and transferrable across space. Participants in this process believe themselves to be constructing a cumulative and inexorably expanding “body” of knowledge, and they rank themselves according to the “expertise,” or quantity of knowledge, they have accumulated.

Quantification facilitates accumulation and that which can be quantified and accumulated can presumptively be owned. Knowledge is thus atomized and commodified, as illustrated by the “extraction” and accumulation of what Shoshana Zuboff describes as “behavioral surplus” by hugely profitable computer-mediated platforms such as Google and Facebook (2019, 128-137). Euro-colonial cultures presume a right, perhaps even a duty, to appropriate and accumulate knowledge. There is no room in their paradigm for the recognition found in many cultures that knowledge is always accompanied by responsibility; no way to understand that there may be good reasons why some people are entrusted with particular forms of knowledge, why some stories are only told in the winter or some songs sung only by those to whom they have been given.

Colonial rule atomizes and bifurcates all human relations, producing cultures in which individuals are not woven into communal fabrics of relationships but disconnected from what we once might have regarded, quite literally, as our “roots” (Walker 2004). Thus, Tinker reports that “the very first missionary to enter any Indian community effectively initiated a political division of that community that proved genocidal” because it forced people to choose between participating in the culture of their community or “participation *as an individual*” in the colonizer’s tradition (2008, 6-7; emphasis added). The same could be said of participation in our contemporary economic, political, or legal institutions, all of which elevate the individual over the collective.

D. *Temporality*

The late Vine Deloria considered the most fundamental ideological difference between American Indian and Euro-colonial cultures to be their respective orientations to space and time. In the Western worldview time “marches on,” giving us linear and predictable benchmarks for documenting history and quantifying human progress. Its dominant narrative still relies on the Newtonian characterization of “the cosmos as an ordered mechanical system operating with the linear and stable predictability of a well-oiled clock,” even though “time’s movements [as] variable, elastic, and idiosyncratic [were]

confirmed scientifically by Albert Einstein in his explanation of time's contingent relationship to the constant speed of light" (Hall 2010, 12). While many of us take linear progression as a given, Irene Watson explains that for the first peoples of what we now call Australia, "time and space are encompassed within a circle of becoming. We are always returning to the beginning and are walking into both the future and the past" (2015, 17).

"American Indians," Deloria said, "hold their lands—places—as having the highest possible meaning, and all their statements are made with this reference point in mind" (2003, 75). European settlers, by contrast, "review the movement of their ancestors across the continent as a steady progression of basically good events and experiences, thereby placing history—time—in the best possible light" (Deloria 2003, 75-76). While the appropriation of others' lands might appear spatial rather than temporal, "[s]pace as it has been understood by the children of Europe in America has tended to mean room to expand, to grow, or to move around [and] these are temporal processes" (Tinker 1986, 70). Conversely, for many Indigenous peoples, spatiality is "a spiritual, not a geopolitical, issue" because "[t]he interactions and relationships formed among things residing in any space—say, in the desert southwest or on the moon—create a specific spiritual consciousness that is simply not transportable or transferable to any other locale" (Mann 2016, 54-55).

E. Progress

Each of the premises common to the colonial master narrative undergirds a conceptual framing in which human history—indeed, all of life—inevitably proceeds along a path that is not only linear but unidirectional. This direction, of course, is "up," as humans move further from the natural world and closer to that posited as divine. Ludwig Wittgenstein may have best captured the West's self-conception when he said, "Our civilization is characterized by the word 'progress.' Progress is its form rather than . . . being one of its features" (Fitzpatrick 1992, 92 [quoting Wittgenstein 1980]).

The inevitability of progress—always quantified, and most often measured by growth and consumption—is the cornerstone of the construct of "development" that has replaced decolonization in mainstream discourse. Human societies are now described as either already "developed" or still "developing"; there are no options outside of this continuum (Gordon and Sylvester 2004; Saito 2010a). The development paradigm conveniently precludes the need for redress or reparations, or for the restoration of balance, when grave injustices have occurred. Rather, those who have been exploited or dispossessed are to be uplifted by the continuously expanding material benefits of a world in which science and technology allow humans to consume the natural world at an ever-increasing pace.

Between the religiously rooted mandate to dominate the earth and the assessment of any given endeavor in terms of "productivity" and "progress," we have come to a place in which ecological devastation threatens our very survival. Ironically, we are repeatedly assured that science will save us. Thus, in his 2009 inaugural address President Barack Obama promised to "restore science to its rightful place, and wield technology's wonders" to improve health care, "harness" nature to "fuel our cars and run our factories," and "roll back the spectre of a warming planet" (Coghlan 2009). It is true, of course, that we need science to maintain the societies we have built, and to provide reliable information about the many dangers confronting those societies, whether they result from a depleted ozone layer, a deadly virus, or weapons of mass destruction. And yet, it is difficult to trust what is promoted as scientific knowledge when we know that Western science has, for example, told people of color that we were inferior, justified medical experimentation and mass sterilization, filled the

oceans and covered the earth with single-use plastics and genetically modified food, and made it relatively easy to destroy hundreds of thousands of people at a time.

Relying on scientific progress to solve both economic and ecological problems reflects “the ethos of development strategies, including sustainable development, . . . that human beings have unlimited potential, which it is somehow *unethical not* to utilize and/or exploit” (Tinker 2004a, 20). However, sustainability cannot be premised on continuous expansion, and measuring progress in terms of development not only “requires a capitulation to genocide on the part of indigenous peoples” but also “stands to cost the world community a set of lived cultural values that may be the key to world survival” (Tinker 2004a, 21). Or, as Kwame Ture argued, “progress will not be measured for us by white people. We will have to tell you when progress is being made. You cannot tell us . . . because progress for us is getting you off our backs” (1971, 82).

Tinker’s invocation of genocide is not hyperbolic. Raphael Lemkin coined the term “genocide” to clarify that it was criminal to “destroy, cripple, or degrade entire nations, racial and religious groups,” thereby eradicating their cultures and their (potential) contributions to humanity (Moses 2008, 12). Under international law, genocide encompasses actions “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, *as such* [emphasis added].” Convention on the Prevention and Punishment of the Crime of Genocide (New York, 9 Dec. 1948) 78 U.N.T.S. 277, Art II, *entered into force* 12 Jan. 1951. Such destruction is an essential and inevitable aspect of the establishment of a settler colonial “civilization.” In Jean-Paul Sartre’s words, colonialism is intrinsically genocidal because it “cannot take place without systematically liquidating all the characteristics of the native society” (Sartre 1968, 615). Lemkin explained, “genocide has two phases: one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor” (Lemkin 1944, 79). It is this “national pattern of the oppressor”—Spider Woman’s web—that we will have to continuously recognize, call out, and contest if we are to bring about fundamental change.

IV. Different Paths

We return here to Kwame Ture’s paths of the exploited and the colonized to ask why the distinction matters. Why do we care if our goal is framed in terms of equality or decolonization? Aren’t all those contesting oppression engaged, ultimately, in the same struggle? The answers to these questions depend, I believe, on whether non-exploitative relationships are possible within a settler colonial state and, ultimately, whether any state-centric model of global governance is capable of providing a sustainable future for the planet. For reasons that can only be touched on here, I cannot see how any of our most fundamental problems can be resolved without acknowledging the role that colonialism, past and present, continues to play in our social, economic, legal, and political institutions—within the United States and globally. This implies that we cannot end exploitation without genuine decolonization. Furthermore, given the extent to which the state formations currently recognized in international law both arise from and continue to perpetuate colonialism, I believe this means we will have to think beyond states.

To the extent that the path of the exploited focuses primarily on more equitable distributions of wealth and power, it can be accommodated within the parameters of the Western colonial paradigm. Anti-discrimination measures that promote assimilation, for example, readily comport with universalized Euro-derivative norms and the same can be said for most human rights campaigns (Esteva and

Prakash 2014). This is why, in the United States, we could emerge from the civil rights movements and urban rebellions of the mid-twentieth century with (minimally) expanded access to the privileges claimed by the settler class but without either redress for historic injustices or fundamental institutional change. Thus, for example, rather than reparations for centuries of enslavement and apartheid, we got a “war on poverty” which soon devolved into a war on crime and mass incarceration. Similarly, on a global scale, the most powerful states—all former and/or current colonial powers—have avoided genuine decolonization by characterizing the devastating consequences of colonial rule as problems of poverty and prescribing “development” as the ever-elusive cure (Gordon and Sylvester 2004; Saito 2010a).

Visions for social change that prioritize redistribution or collective control of state power—including those considered socialist or Marxist—often reject extant economic or political formations while continuing to rely, implicitly or explicitly, on the foundational tenets of the Euro-colonial paradigm. Thus, for example, while a theoretical framing characterized by a dialectical approach would seem open to non-linear, relational forms of knowledge, proponents of Marxism often accept, implicitly or explicitly, the separation of humans from (the rest of) the natural world; a linear historiography of civilizations; the privileging of the material over the spiritual; an understanding of “progress” as rooted in science, technology, and rationality; and a universalizing vision of a collective human future (Churchill 2003).

John Bellamy Foster, among others, has emphasized that Marx recognized humans as part of nature and is keenly aware of capitalism’s devastation of the natural world (Foster and Burkett 2017; Foster, Clark, and York 2010). More generally, proponents of eco-socialism insist that socialism and ecological sustainability are organically related (Wallis 2018; see also Moore 2016). Within these analyses, however, class division and oppression remain the primary lens through which other forms of injustice and inequality are understood. Colonization is condemned because it is inherently exploitative and because it paved the way for capitalism (Patel and Moore, 2017), but visions of remediation generally emphasize the dismantling of class distinctions rather than the fact that entire peoples have had “their culture, their values, their language, their entire way of life . . . stripped from them and they are forced to identify with the oppressor” (Carmichael 1971, 132).

How might the path of the colonized differ from that of the exploited? Another way of framing this question is to ask what “decolonization” encompasses. In external colonial settings, decolonization is often understood as a process in which the colonizers “grant” independence to the territories they have exploited and then “go home.” Veracini likens such “classic” colonialism to “an *Odyssey* consisting of an outward movement followed by interaction with exotic and colonised Others in foreign surroundings, and by a final return to an original locale” (2010, 96). But that, of course, is the story told from the colonizers’ perspective.

Decolonization through withdrawal provides little (or nothing) in the way of restoration to the societies devastated by colonial rule. The “post-colonial state is,” according to Makau Mutua, “in concept and substance, the colonial state in another guise” (1995, 1160). “There is little doubt that the only significant change at independence was . . . the changing of the guard, the replacement of white by black faces in the state house” (Mutua 1995, 1145). This reality leads Anthony Hall to observe that “humanity is still a long way from realizing the egalitarian promise of genuine decolonization. The transformation of colonial empires into dozens of nominally self-governing countries after the Second World War marks only the initial steps in the process of ending the exploitative subjugation of the

largest plurality of global citizens by a small, disproportionately entitled minority” (Hall 2010, 5; see also Achiume 2019, 1543-1547).

The problems of decolonization are even more complicated in settler states—entities that don’t pretend to decolonize because they don’t acknowledge that they have been, and continue to represent, colonial occupations. For the settler colonists, there is no turning back, no endpoint to their vision beyond the permanent normalization of settler hegemony. Theirs is a totalizing narrative *within* which “the discontinuation of a settler colonial circumstance remains unthinkable” (Veracini 2010, 104). Nonetheless, the decolonization of settler societies can be envisioned from *without*.

There are no formulaic solutions, no roadmaps to liberation, for decolonization is necessarily context-specific. But we do know that, first, we will have to recognize ongoing colonization for what it is. With the massive uprisings against police violence that have emerged across the United States and the world in 2020, for example, the existence of “systemic racism” is being acknowledged by corporate and public sector institutions, large and small (George 2020), but we know that this is motivated by their hopes for a speedy return to business-as-usual. We also know, I believe, that our most fundamental problems cannot be meaningfully addressed until we are willing to look beyond structural inequalities to the still-genocidal occupation and appropriation of Indigenous lands and resources.

Decolonization entails the exercise of self-determination by colonized peoples, and this implies that it cannot be legislated from above or directed by well-intentioned outsiders but, rather, must be envisioned and implemented from the ground up. Moreover, it will necessarily be a dialectical process because peoples cannot fully exercise their right to self-determination while colonized, yet they achieve liberation only by acting upon that right. Patrick Wolfe made the powerful observation that settler colonial “invasion is a structure not an event” (2006, 388). Likewise, I expect that the decolonizing of settler society will not be an event but a process (or, most probably, many processes) of deconstruction and re-construction. While we can’t predict the particular forms decolonization will take, we can facilitate the process by refusing to allow our imaginations to be constrained by colonial presumptions, by supporting the right of all peoples to self-determination, and by being willing to imagine societies unconstrained by assertions of state sovereignty.

A. *Stepping Outside the Box*

To escape the constraints of a world order that has given us genocide, enslavement, gendered and racial oppression, and ecological devastation, we will have to recognize the reach of Spider Woman’s web and move, consciously and continuously, beyond its reach. The options offered within the Euro-American settler paradigm—religious or secular; white supremacist or “multicultural”; genuinely conservative, neoliberal, liberal democratic, or socialist—all reinforce the web. To the extent that even radically redistributive proposals rely on doggedly materialist assessments of social welfare or statist forms of social organization, they almost always assume that scientific progress and economic development, based upon the exploitation of the natural world, will provide the material base for improved social conditions. That is a presumption I consider entirely fantastical, because everything we see around us, in human societies and in the larger natural world, tells us that a theory of well-being premised upon continuous growth and expansion is unsustainable.

Viable options become visible only when we stop trying to force a diverse range of realities into constricted understandings of time, space, and consciousness, and stop looking for universal

alternatives to the status quo. Noting the astonishing extent to which “virtually all branches of humanity have been subjected to so much pressure to conform to a single regime of material interaction,” Hall observes that “the greatest obstacle to the universalization of capitalism remains the collective propensity of Indigenous peoples the world over to resist both the appropriation of their Aboriginal lands and resources and the elimination of their diversity of languages, laws, and institutions” (Hall 2010, 5; see also Tinker 2008, 19). Those of us steeped in colonial cultures can learn a great deal from perspectives that remain “outside the ‘logic of possession’” (Watson 2015, 149; citation omitted), while remaining mindful that such ways of understanding reality are grounded, quite literally, in space or place and, therefore, cannot be universalized.

It can be difficult to think about law, politics, and economics outside the colonial compulsion to turn life into property and to control access to that property in accordance with a scheme of “rights,” but it is not impossible. We could start by envisioning relationships that are not mediated by state power. Robert Vachon observes that in many traditional Indigenous cultures rights and entitlements cannot be defined solely by or for human beings and, therefore, the notion that they “could be defined by a sovereign state . . . is almost ridiculous” (Vachon 1990, 165). In a similar vein, Robert Cover reminded us that the presumption “that only the state creates law . . . confuses the status of interpretation with the status of political domination” (1983, 68). Law can, for example, be understood as indistinguishable from other dimensions of life. “Our ancient laws were not written down,” Irene Watson notes, for “[l]aw inheres in all things and is alive in all things” (Watson 2015, 12).

If we are to learn from societies that have managed to avoid being consumed by Spider Woman’s web, first we will have to ensure that these societies survive the onslaught of contemporary colonization. There are many ways in which those of us who are outsiders to those cultures can provide assistance. We might start with simple physical survival. The coronavirus pandemic of 2020 has hit Native nations at higher rates, per capita, than any state in the country (Kristof 2020). This would be an ideal time to insist on adequate funding for American Indian health services, as well as access to running water for the forty percent of homes on the Navajo Nation that lack it. We could stand with the Oglala and Cheyenne River tribal governments as they defend their COVID-19 highway checkpoints against threats from the South Dakota governor (Zionts 2020). Going further, we could defend those who struggle to retain, regain, or repatriate their languages, cultural traditions, and spiritual relatives that have been commodified as “artifacts” by the colonizers (Platoff, 2018; Nathanson 2019) or, perhaps most significantly, we could stand between state power and those who defend their lands (Lusamba 2020).

To the extent that various cultures are able to survive “outside the box,” they will have much to teach us. However, we cannot approach this endeavor as if their knowledge is simply another commodity, a resource to be appropriated and consumed. The decision to share must be made by those to whom the specific information as well as the broader paradigms have been entrusted, even as we remain mindful of Barbara Mann’s caution that “geographical place of origin is an essential aspect of genuine Indigenous knowledge, so that a tradition or ceremony developed in one place makes no sense, or worse, makes lethal sense, in another place” (2016, 12).

By attempting to understand both the natural world and our social institutions not in terms of their atomized components but, rather, the interrelationships on which they depend, we may be able to get beyond the “systemic fragmentation” of the disciplines remarked upon by Linda Tuhiwai Smith to recognize that law, politics, and economics are not only mutually constitutive but organically related to the belief systems that shape them and the spaces, or lands, they inhabit (Smith 2012, 28). From

that perspective, perhaps we can think of law not in terms of rights recognized by the state, but as reflecting responsibilities to all of our relatives. We might envision economies based on relationships rather than property rights, or build political structures that promote consensus and collective well-being rather than power and privilege. My point here is simply that as we contemplate the relationship between law, political economy, and social justice, we can find ground on which to stand outside of the Euro-colonial web that would define and consume us.

B. *Taking Self-Determination Seriously*

No real transformation of law or political economy will be possible as long as we accede to the claimed jurisdiction of a still-colonial state. Thus, while appeals to domestic law or political institutions are often necessary components of our struggles to survive, they are unlikely to yield justice. Under these circumstances, is it worth invoking rights or pursuing remedies recognized in international law? International law goes well beyond US domestic law in its prohibitions of discrimination based on race or gender, its acknowledgment of the unique status of Indigenous peoples, its relatively expansive understanding of what constitutes genocide, and the scope of the remedies it recognizes (Saito 2020).

That said, the international legal system remains tightly controlled by those who wield state power (Anghie 2005). It can empower human rights defenders at the grassroots level by confirming that law, at some level, acknowledges the legitimacy of their efforts to protect their communities (UN Committee on the Elimination of Racial Discrimination 2020). And, as in the domestic context, we can, at times, expand substantive legal protections or facilitate their implementation by leveraging the contradictions between stated ideals or public commitments and realities on the ground. However, both international and domestic legal systems remain some variant of “the Courts of the conqueror,” to return to Chief Justice Marshall’s blunt descriptor. *M’Intosh*, 21 U.S. at 588.

A major hurdle to obtaining relief under international law is that, generally speaking, we can pursue international legal remedies only as subjects of colonial power. However, it is a legal system that does recognize the right of *all* peoples to self-determination—the clearest path to decolonization—and this does not require state action. According to the International Court of Justice (ICJ), the right to self-determination, “as it evolved from the Charter and from United Nations practice, has an erga omnes character”; in other words, it is binding on all. *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Rep. 1995 (June 30), p. 90, 102 at ¶ 29. But what does it mean?

As proclaimed by the UN General Assembly’s 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples and repeated almost verbatim in Common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, “[a]ll peoples have the right to self-determination” and “by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Self-determination was accorded such primacy because, the UN Human Rights Committee reports, its “realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.”¹

¹ Human Rights Committee, General Comment 12, Art. 1 (Twenty-first session, 1984), Right to Self-Determination, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev. 5, at ¶ 1. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6626&Lang=en.

In other words, individual rights cannot be fully realized while people are still colonized.

Robert Williams summarizes the core concept of self-determination as “the idea that human beings, individually and as groups, should be in control of their own destiny, and that systems of government should be devised accordingly, and not imposed upon them by alien domination” (1991, 51 [paraphrasing S. James Anaya]). As with any legal principle, the real debates emerge in its application. Richard Falk observes that self-determination “bears directly on many of the bloodiest and persistent struggles that presently beset every region of the planet, and bring intense suffering and continuous frustration to millions of people” (2001, 6). Its potential to relieve this suffering, he says, hinges on “whether the criteria relied upon to clarify the right to self-determination are to be determined in a top-down manner through the mechanisms of statism and geopolitics or by a bottom-up approach that exhibits the vitality and potency of emergent trends favoring the extension of democratic practices and the deepening of human rights” (2001, 6).

States, of course, have developed many strategies for resisting or minimizing the impact of the right to self-determination. Because it is articulated as a right of “peoples,” a state’s first line of defense is often to claim that a particular group is not a distinct “people” but simply a minority group within the general population (Daes 2008, 12–13). Another response common to settler states and other entities with internally colonized peoples is to invoke the “salt water” or “blue water” thesis to limit decolonization to territories that are “geographically separate” as well as “distinct ethnically and/or culturally” from the “administering” state.² Finally, states almost inevitably claim that exercise of the right to self-determination in any meaningful manner violates their right to “territorial integrity” and, if supported by external forces, constitutes interference in their “internal affairs.” UN Charter, Art 2(4); UN General Assembly, Resolution 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples, A/RES/1514(XV), ¶ 7 (December 14, 1960).

A different picture emerges when self-determination is viewed from the bottom up. From this perspective, self-determination is a process and a continuing right, with respect to which compliance “is a legitimate question, with reference to any State, at any point in time” (Cassese 1995, 55.) It is not an endpoint but a way of being for “all peoples—not only indigenous peoples. Social and economic conditions are ever-changing in our complex world, as are the cultures and aspirations of peoples. For different peoples to be able to live together peacefully, without exploitation or domination . . . they must continually renegotiate the terms of their relationships” (Daes 2001, 57-58; see also Vogel 2006, 478).

States do not get to determine which groups under their claimed jurisdiction constitute peoples; “the definition of the term ‘peoples’ in a minority rights context must be left to the people themselves” (Vogel 2006, 447). Peoplehood is established by common history, beliefs, and actions; further, it need not be essentialized but may be actively constructed. The ICJ’s Vice-President Fouad Ammoun noted with reference to the Namibian struggle for independence that “[s]overeignty, which is inherent in every people, just as liberty is inherent in every human being, therefore did not cease to belong to the people” as a result of prolonged colonization. Rather, “[i]t had simply, for a time, been rendered inarticulate and deprived of freedom of expression.” *Legal Consequences for States of the Continued*

² UN General Assembly, Resolution 1541, Principles Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for Under Article 73e of the Charter, A/RES/1541(XV), Principle IV (December 15, 1960), [https://undocs.org/en/A/RES/1541\(XV\)](https://undocs.org/en/A/RES/1541(XV)).

Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Rep. 1971 (June 21), p. 16.

And the invocation of “territorial integrity” to maintain internal colonization is nothing but a blatant appeal to a bygone era of colonial power. The *uti possidetis* principle and the “salt water” thesis are invoked in defense of the inviolability of colonially imposed boundaries, but these “principles” were shoe-horned into international law, following the mandate to decolonize, by the major settler states whose interests converged, in this instance, with those of newly independent states anxious to preempt secessionist movements. It is an anachronistic position. As Henry Richardson observed more than a quarter-century ago, “[t]he colonialism-derived condition that a ‘people’ may only exist on territory not belonging to the metropolitan state . . . has arguably been dropped” (1993, 49n27). More fundamentally—logically and legally—the right to decolonization is surely a function of structural relations, not geographic proximity.

C. *Becoming Non-Subjects*

If we consider genuine decolonization to be grounded in the right to self-determination, it becomes clear that we cannot extract ourselves from the Western paradigm by invoking our rights (as subjects) vis-à-vis governments whose legitimacy we deny. Yvonne Dion-Buffalo and John Mohawk are said to have observed that colonized peoples can “become *good subjects*, accepting the premises of the modern West without much question; become *bad subjects*, always revolting against the parameters of the colonizing world; or become *non-subjects*, acting and thinking in ways far removed from those of the modern West” (Esteva and Prakash 2014, 145). The latter, I believe, is what Ture was doing when he urged Black college students to identify as African, rejecting as “junk” the notion that “[w]e’re Americans first” (Carmichael 1971, 150). “We happened to be born in America because the white man needed us there, and that’s the only reason why. That does not make you an American, incidentally. It makes you a tool of America” (Carmichael 1971, 150-151).

The contemporary international legal order is composed of state actors, and to many of us it seems “natural” for lands and peoples to come under the exclusive jurisdiction of a particular state. But history reveals that “[p]ossession of [state] sovereignty is the result of force threatened and applied,” and that “[s]tates are the results of wars fought and won, rather than of some sort of natural truth about the community” (Kahn 2004, 263). The path toward decolonization supports our emergence as non-subjects by affirming that peoples can determine their own identities and political futures without the permission of entities claiming authority over them. “The myth of colonialism is that it carried with it and applied sovereignty. The truth is that state sovereignty was claimed and constituted through colonialism” (Watson 2015, 5).

Rosa Ehrenreich Brooks suggests that “if we stop fetishizing the state, perhaps many phenomena that now often appear . . . as problems . . . would instead appear as virtues or opportunities” (Brooks 2005, 1181-1182). Territories have long been shared between peoples, and individuals have often identified themselves within networks of relationships rather than as subjects of sovereigns. Human societies were organized in different ways for millennia before state formations were imposed upon them, and in most places “sub-state” forms of governance continue to be as influential, in many respects, as state governments (Chabal, Feinman, and Skalnik 2004).

In other words, nations and peoples can be organized in multiple and overlapping ways. This is true not only with respect to the internal organization of any given society but to relationships between peoples. Thus, for example, Mutua proposes that “in principle sovereignty be returned to pre-colonial entities who should then ‘trade it in’ for consensual map-making to voluntarily create larger democratic entities” (1995, 1150). Irene Watson challenges us “to think outside of the colonial matrix of power, thinking in terms of a new international law, which is ‘disconnected from its own imperial sources and history’” (Watson 2016, 149, citing Anghie 2005).

In that vein, we could develop a very different paradigm of international law—one that is truly *international*, allowing free peoples to negotiate their relationships with each other. As, for example, Rob Williams explains with respect to the Haudenosaunee Confederacy: “Through dialogic interaction, the sharing of sufferings, the clearing of barriers to communication, the reciprocal exchanges of gifts and goodwill, and the mutualization of interests and resources, different peoples could . . . link arms together in a multicultural treaty relationship” quite relevant to “contemporary understandings of the problems of achieving human solidarity” (Williams 1994, 1048-1049). If we wish to move toward such a transformation, we will need to envision paths that promote the decolonization of settler societies.

V. Toward Decolonization

Most “progressive” social movements recognize the need to build alliances across the lines of race and class, as well as the many other dimensions of our identities. A common strategy is to emphasize that we are all exploited; to describe, for example, racial subordination as a dimension of class oppression, or class oppression as reliant upon racial subordination, in order to argue that we would all be better off recognizing the common struggles of poor and working people. The problem with such approaches, from my perspective, is that they almost invariably are, or quickly become, struggles for a more equitable division of the fruits of colonialism. Equitable redistribution, however, is unlikely to happen in a society where institutional structures have been designed precisely to enrich the colonizers at the expense of the colonized—and race, gender, and property constructed to further that end. As Kwame Ture put it, “the resistance to doing anything meaningful about institutionalized racism stems from the fact that Western society enjoys its luxury from institutionalized racism, and therefore, were it to end institutionalized racism, it would in fact destroy itself” (Carmichael 1971, 79).

Furthermore, even if a kinder and more equitable variant of settler colonization were possible, it would still owe its existence to the ongoing occupation and appropriation of Indigenous lands and resources. If we are to have an ideology of revolution, Ture said, we must address its three “necessary ingredients”: “we must speak to the problem of class, against capitalism; we must speak to the problem of race, against racism; and we must speak to the problem of land” (1971, 198). Eschewing the temptation to struggle for equality within the parameters of a statist identity, he emphasized the importance of understanding the United States as a settler colony, a state that exists on someone else’s land, and one that cannot be accepted as legitimate without embracing its genocidal foundations. “We have to be an African people,” Ture urged an audience at Morehouse College in 1970. “See, if we say we are Americans . . . it means that we participate in committing genocide against the red man, and support the genocide that ‘Americans’ are committing in Vietnam, Asia, Africa, and Latin America” (1971, 200). For Ture, this is what Black Power was about—the construction of peoplehood in furtherance of self-determination (Carmichael and Hamilton 1967).

Can a vision of unity be maintained in a move from the path of the exploited to that of the colonized; a move that rejects the legitimacy of the mantra “we are all Americans”? I believe so. But choosing the path of the colonized will require us to re-think the ways in which we have, for so long, described our common interests. Given the triumphal master narrative of settler colonization in the United States, it’s hard to recognize that white people, too, have been colonized. But that is how Europe itself came about—through the imposition of the hierarchical and universalizing narrative described earlier, and the attendant colonial exercise of hegemonic state power (Wolf 1982).

Those who seem to benefit from the status quo may not be particularly happy about being boxed into such a constricted space in the world. Eric Cheyfitz, who identifies as a beneficiary of “the privilege of Western patriarchy,” describes this as the problem of being “locked away in our comfort.” “We cannot afford to enter most of the social spaces of the world,” he says, for “they have become dangerous for us, filled with the violence of the people we oppress, our own violence in alien forms we refuse to recognize” (Cheyfitz 1997, xx).

Additionally, even if those who benefit from racial privilege are reluctant to question received history, it’s increasingly clear that the current world order is unsustainable. Ecological devastation may hit poor communities of color first, but it is also wreaking havoc on everyone’s climate, the air we breathe, the water we drink, the food sources available to us. And it appears to be a major factor in the emergence and impact of infectious diseases, including the current coronavirus pandemic (Lustgarten 2020).

For all these reasons, I see real grounds for common cause, but we’re not going to get there by arguing over who gets what share of the profits of ongoing colonial exploitation of land, labor, or natural resources. Rather, we’ll need to seek out a wide range of radically different perspectives on liberation, and support struggles that take many different forms. As Esteva and Prakash emphasize, “[l]ocal autonomy has a hundred, a thousand, a million incarnations. In a pluriverse, there can be no one dominant notion of autonomy. . . . Initiatives for autonomy and independence . . . in an isolated village in the south of Mexico seem to have no relation to the struggles of peoples in downtown Mexico City, and even less with those in Vancouver, Philadelphia, Bangkok, Boston, Paris, Delhi or Chapel Hill.” But in all these places, they find “independent initiatives, applying ingenuity and courage, taken by people who are succeeding in relearning to rule themselves” and, thereby, “regaining confidence in being themselves” (Esteva and Prakash 2014, 41).

These are initiatives that we can all support and defend, if we choose to do so. One such struggle was catapulted to global consciousness in late 2016, when over ten thousand people—including three thousand U.S. military veterans—traveled across the country to join water protectors encamped on unceded treaty lands near the Standing Rock Sioux Reservation in North Dakota, determined to prevent completion of the 1,200-mile Dakota Access oil pipeline that endangers Indigenous lands and sacred sites and threatens long-term environmental harm (Dunn 2016). By that time the camps had survived for almost a year under Indigenous leadership, demonstrating the ability of people to organize themselves in the interest of a common purpose.

These were concrete expressions of the responsibility to protect the land and the life it supports, unconstrained by colonial law or power. As 25-year-old Nataanii Means explained, “We are making this stand for water. For your future’s right to clean water, for our futures’ right, for all the winged, four-legged, water beings, things that crawl and cannot speak for themselves’ right to clean water” (Saito 2020, 15). And it was a self-conscious effort at decolonization. Thus, Oglala Lakota elder Regina

Brave insisted that all who came to join the camps recognize that “We are Nations. We are enacting our sovereign right to say what happens to our children, our water and our land” (Saito 2020, 15).

There is no simple formula for determining whether particular actions move us in a liberatory direction. Ture highlighted the importance of assessing grassroots initiatives in terms of dignity and empowerment. Thus, even though he did not believe that voting would bring about meaningful change for Black people in the rural South, he went to jail dozens of times for defending their right to vote because the struggle itself was contesting their colonization.

The *act* of registering to vote . . . gives one a sense of being. The black man who goes to register is saying to the white man, “No.” He is saying: “You have said that I cannot vote. You have said that this is my place. . . . You have contained me and I am saying ‘No’ to your containment” (Carmichael and Hamilton 1967, 104).

For Ture, “[t]he goal of black self-determination and black self-identity—Black Power—is full participation in the decision-making processes affecting the lives of black people, and the recognition of the virtues in themselves as black people” (Carmichael and Hamilton 1967, 47). Toward this end, he saw the first step as unifying the community; the second as “seek[ing] to take over all the political institutions inside our community: the police station, the judicial system, the board of education, the welfare system”; and the third as developing economic independence (1971, 206-208). He cautioned that this process was not just about confrontation: “you confront, you seize, you hold, you develop—then, after you’re ready, you go again” (Carmichael 1971, 207).

This approach is playing out in Jackson, Mississippi. It is not only the state capital and a city where about 30 percent of the population lives in poverty, it is a community that is attempting, collectively and quite consciously, to proceed on the path of the colonized (Akuno and Nangwaya 2017; Fradette and Ladd 2017). During the global decolonization era of the 1960s, as self-determination became a central organizing principle of Black liberation movements, the Republic of New Afrika (RNA) focused its efforts to “free the land” in Jackson, where there had long been a Black majority. In 1971, RNA member Chokwe Lumumba defended the community against attacks by white supremacists, local police, and FBI agents, and later returned to continue his work in Jackson (Umoja 2018).

In 2005, in the aftermath of hurricanes Katrina and Rita, the Malcolm X Grassroots Movement—an organization with roots in the RNA—was instrumental in organizing “survivor assemblies.” These evolved into “People’s Assemblies” that, among other things, developed platforms for political candidates. Running on one such People’s Platform, Lumumba was elected mayor of Jackson in 2013 by a stunning 87 percent of the vote (Umoja 2018). As mayor, Lumumba observed that his “view on self-determination” had not changed since the 1960s; rather, “what has changed are the tactics, and somewhat the strategy, for reaching that goal” (Umoja 2018, 7). What did this look like on the ground? One priority of the People’s Platform was the city’s crumbling infrastructure and, in a subsequent referendum, 90 percent of the voters approved a tax increase to support “clean water, sewer and drainage, sidewalks, and street improvement” (Umoja 2018, 13).

Rather than simply trying to attract corporate investors, “Cooperation Jackson” was established in 2014 with the goal of creating “a solidarity economy” that would be “anchored by a network of cooperatives and worker-owned, democratically self-managed enterprises” (Cooperation Jackson, n.d.). Modeled after the Mondragón federation of worker cooperatives in the Basque region of Spain,

by 2019 this initiative had established a network of Freedom Farms, groceries, and restaurants; a land trust maintained by a lawn care cooperative; and a solar energy installation project. Among many other activities, it hosted the first North American EcoSocialist International Convergence and sponsored a Trueke Training to educate Jackson residents about a Venezuelan communal practice that facilitates the exchange of goods, services, and knowledge without using money (Cooperation Jackson, n.d.; see also Rushton 2018 [providing links to similar initiatives around the world]).

VI. Conclusion

Chokwe Lumumba passed away unexpectedly in 2014, but the Jackson People's Assembly continues to function. In 2017, his son Chokwe Antar Lumumba was elected on the slogan "when I become Mayor, you become mayor" (Bragg 2017). After attending the first People's Assembly of the younger Lumumba's administration, a 25-year-old white resident and community leader was "excited to have heard so many voices." "Honestly," he said, "I think it's pretty crazy because I grew up with an education that Malcolm X was this like terrorist and Martin Luther King Jr. being a savior, right? . . . But then to understand that the people's movement allows an individual person to have a voice—what could possibly be scary about that?" (Bragg 2017).

Only those who believe they can or should be able to control the people find it threatening for *all* the people to have a voice. The coronavirus pandemic of 2020, combined with the massive protests against police violence and institutionalized racism, have given us glimpses of how dysfunctional the old "normal" was, and the potential we have, in the United States today, to transform this society in fundamental ways. For example, we have seen just whose work is actually "essential" and whose isn't; how much can be done by locally organized mutual aid societies; that schools and courts aren't as vital as we presumed—but that access to running water is critical; that people don't need to be evicted when they can't pay the rent; that food can be delivered directly to those who need it, bypassing market mechanisms; why we all need for healthcare to be recognized as a basic human right; that "law enforcement" is simply state-sanctioned violence; and why people should not be kept in cages.

Collectively, we have tremendous opportunities to build on those and many other realizations. But perhaps the most important thing is that these times have unleashed the imagination. In some places, people and their local governments have been willing to think—and act—creatively. Keenly aware that COVID-19 was having a more devastating effect on Native nations than anywhere else in the United States and that South Dakota had refused even to issue a stay-at-home order, the Cheyenne River and Oglala Sioux tribal governments began in April 2020 to protect their lands and people with checkpoints on state and federal highways leading into their reservations. Threatened by the South Dakota governor, Cheyenne River Chairman Harold Frazier responded, "[w]e will not apologize for being an island of safety in a sea of uncertainty and death," and Oglala President Julian Bear Runner noted that his people were ready to "stand against foreign intrusion" (Walker 2020).

Following the callous murder of George Floyd, grassroots pressure led the Minneapolis City Council to vote unanimously to disband the city police department and transition to community-based public safety programs (Bear 2020). In the meantime, a community activist notes, residents have "created community fire brigades, a people's ambulance, a transit support system, food banks and hot meal bars, and community safety and defense teams . . . Neighbors are talking to each other and actually getting to know who lives on their street" (Shim 2020).

In June 2020, after a week of protests in Seattle’s Capitol Hill neighborhood, the police withdrew and the people established an “autonomous zone” in which they organized food, medical care and educational events, as well as poetry, music, and art activities for children (Baker 2020). The fire chief helped them obtain sanitation services and the mayor refused to evict them, responding to President Trump’s instructions to “[t]ake back your city NOW” with a request that he return to his bunker in the White House, newly encircled with highly fortified fences after a series of peaceful demonstrations (Baker 2020). The autonomous zone was ultimately cleared by the police but, in the meantime, everyone involved had witnessed the power of saying “No” to their containment (Carmichael and Hamilton 1967, 104).

As scholars and activists, we can support those who struggle for liberation by being conscious of the presumptions underlying our analyses and the implications of taking different paths. We can defend those attempting to decolonize their communities—even when we might disagree with some of their positions, or their tactics, because we don’t get to decide what others’ self-determination looks like. We can also take seriously the notion of becoming non-subjects. Stepping outside the presumptions of “Western civilization” ingrained in our consciousness opens up possibilities for (re)constructing relationships and societies whose goals are not framed in the linear terms of development or progress but, instead, in the circular, relational framing of balance, renewal, and genuine sustainability.

“Liberation does not come as a gift from anybody,” Adolfo Gilly observed in introducing Frantz Fanon’s *Studies in a Dying Colonialism* (Gilly 1965, 2). The devastation we see around us is not simply the collateral damage of an otherwise beneficial world order, the “price worth paying” for the marvels of progress. Rather, it is the direct and entirely foreseeable consequence of more than five centuries of colonization, with its imposition of social orders intent on turning everything encountered into property and on assigning worth in terms of the accumulation and control of that property. In responding to this devastation, “[t]he definition of ourselves, the road we pursue, and the goals we seek, are our responsibility” (Carmichael 1971, 96).

Is it utopian to contemplate paths that might lead us toward legal, political, or economic formations unconstrained by state power and conceived outside the linear, universalizing, hierarchical perspectives imposed on us by colonial rule? Probably. But no more utopian than believing that we can meaningfully address racism, sexism, homophobia, xenophobia, or the economic exploitation that keeps so many in poverty within the boundaries of “the possible.” Or believing that science and technology will prevent the imminent destruction of so much life on this planet. Settler states have an apparently unremitting need to prevent peoples under their claimed jurisdiction from exercising genuine self-determination. This suggests that there may be real potential in confronting state hegemony by recognizing a multiplicity of perspectives and understandings of the world and figuring out how to allow them to flourish, in the interest of restoring balance to our lives and relationships.

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