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# Colonialism and Constitutional Memory

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*The United States shares a number of basic traits with various British settler societies in the nonwhite world. These include longstanding histories in which colonists and their descendants divided legal, political, and economic rights between insiders and subordinated outsiders, be they expropriated indigenous groups or racial minorities. But Americans rarely think of themselves as part of an imperial family of settler polities and instead generally conceive of the country as quintessentially anti-imperial and inclusive. What explains this fact and what are its political consequences?*

*This Article offers an initial response, arguing that a significant reason is the symbolic power of the American Federal Constitution in sustaining a particular narrative of the country as free and equal from the founding. Although this creedal narrative has played a powerful and productive role in creating a more inclusive national community, it has also, paradoxically, made it more difficult for Americans to appreciate the country's colonial underpinnings, and thus to address specific structural grievances. In developing these claims, this Article first explores how universalistic accounts of national identity and constitutional meaning began to take political hold with the country's emergence onto the global stage following the Spanish-American War. It then analyzes the unacknowledged contemporary costs of creedal narratives by recovering a tradition of radical black critique, which viewed the dominant national identity as truncating dilemmas of race in part by de-emphasizing the need for material restitution and symbolic rupture.*

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#### INTRODUCTION: THE DECLINE OF SETTLER SELF-CONCEPTION

In March 1942, General Douglas MacArthur arrived in Australia, having fled the Japanese assault on the Philippines, which for more than four decades had been the central American colonial possession in the Pacific. Speaking to a parliamentary dinner in Canberra, MacArthur underscored the deep personal importance to him of the warm Australian reception, especially given recent events. He declared,

Although this is my first trip to Australia, I already feel at home. There is a link that binds our countries together which does not depend on written protocol, upon treaties of alliance or upon diplomatic doctrine. It goes deeper than that. It is that indescribable consanguinity of race which causes us to have the same aspirations, the same hopes and desires, the same ideals and the same dreams of future industry.<sup>1</sup>

In focusing on the “indescribable consanguinity of race,” MacArthur was highlighting a shared cultural project that marked the two communities. Above all, both were experiments in Anglo-Protestant settlement, in which English colonists successfully wrested political supremacy from nonwhite indigenous groups. And in the context of a global war that pitted European descendants against a rising Asian power, Australia embodied an outpost of white rule and white values in an otherwise treacherous region.

In many ways, MacArthur’s implicit invocation of a common settler experience linking the United States to Australia, and presumably to other polities like New Zealand and South Africa, was part of a longstanding refrain in American public life. For the better part of a century, politicians and authors had described the common racial identities and political predicaments facing these white colonies in the nonwhite world—perhaps no one more intently than President Theodore Roosevelt. Indeed, in 1907, following Japan’s stunning victory over Russia, and thus at an earlier moment of Asian ascendancy, Roosevelt—in a move MacArthur would have appreciated—sent the American fleet to Australia as a show of solidarity.<sup>2</sup> He told a correspondent for the *New York Times* that the

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1. Douglas MacArthur, *We Shall Win, or We Shall Die*, in *WELL MAY WE SAY . . . : THE SPEECHES THAT MADE AUSTRALIA* 107, 107–08 (Sally Warhaft ed., 2004); see also Nikhil Pal Singh, *The Problem of Color and Democracy*, in *THE SHORT AMERICAN CENTURY: A POSTMORTEM* 59, 64 (Andrew J. Bacevich ed., 2012) (quoting General MacArthur).

2. See MARILYN LAKE & HENRY REYNOLDS, *DRAWING THE GLOBAL COLOUR LINE: WHITE MEN’S COUNTRIES AND THE INTERNATIONAL CHALLENGE OF RACIAL EQUALITY* 199

fleet's presence there was necessary to emphasize to the world "that those colonies are white man's country."<sup>3</sup>

For Roosevelt, Australia, like the United States, embodied the hegemony of "English-speaking peoples over the world's waste spaces,"<sup>4</sup> in the process spreading civilization across the globe. This fact "ha[d] been not only the most striking feature in the world's history, but also the event of all others most far-reaching in its effects and importance."<sup>5</sup> But in the view of Roosevelt, such hegemony was increasingly imperiled. If anything, the great twentieth century challenge was the preservation of white settler dominance—and with it European civilization itself—under conditions of indigenous uprising and growing nonwhite political assertiveness.

Predicting the demise of white power in South Africa, Roosevelt worried that the civilizing mission would inevitably fail there because, unlike the United States, where Anglo settlers had been able to "exterminate[]"<sup>6</sup> the Indians, white South Africans were "confronted by a very large native population with which they cannot mingle, and which neither dies out nor recedes before their advance."<sup>7</sup> These hard truths only elevated the importance of white success in Australia and New Zealand, colonial experiments that bore the most "resemblance"<sup>8</sup> to the United States. He hailed Australian historian and journalist Charles Pearson's 1893 book *National Life and Character: A Forecast* in which the author too foresaw a twentieth century of receding European power and thus presented Australia as "guarding the last part of the world, in which the higher races can live and increase freely, for higher civilisation."<sup>9</sup> According to Roosevelt, the text was nothing less than "one of the most notable books of the end of the century."<sup>10</sup>

Such concerns about the future viability of settler colonization and white imperial authority, widespread in the early twentieth-century United States, speak to a profoundly different way of imagining the national project than what citizens today would find recognizable. Many white Americans at the time took for granted—and indeed positively identified with—the fact that the country was an important piece in a global European project of imperial conquest. Akin to white societies in South Africa and Australia, they understood their own community as a project of settlement structured fundamentally around a basic legal, political, and economic divide between insiders and subordinated outsiders, be they

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(2008) (quoting Roosevelt as explaining his decision to send the fleet based upon a belief that "America should be ready to stand back of Australia in any serious emergency").

3. *Id.* at 197.

4. See THEODORE ROOSEVELT, *THE WINNING OF THE WEST* 21 (Hastings House 1963) (1889).

5. *Id.*

6. *Id.* at 28.

7. *Id.* at 29.

8. *Id.*

9. CHARLES PEARSON, *NATIONAL LIFE AND CHARACTER: A FORECAST* 17 (2d ed. 1913).

10. Theodore Roosevelt, *National Life and Character*, 2 SEWANEE REV. 353, 353 (1894).

expropriated Native Americans, formerly enslaved blacks, or even Asian migrants, the last group confined to the category of “aliens ineligible to citizenship.”<sup>11</sup> In taking for granted that the United States was what I have elsewhere called a “settler empire,” most Americans had long presumed that collective institutions were meant to do two things simultaneously. First, they were supposed to provide racially defined insiders with the emancipatory conditions of self-government and economic independence. And second, to support this overarching project, these institutions were designed to extract much-needed land and labor from native and nonsettler groups, in the latter case particularly African slaves and their descendants.<sup>12</sup> Above all, if the term “settler empire” would not have been familiar to early twentieth-century Americans, the basic ethical vision and political objectives certainly would have.

Today, by contrast, to describe in mainstream public discussion the United States as part of an imperial family of settler societies would be deeply jarring. Americans are certainly painfully aware of a past marked by both native dispossession and African slavery. But these features of the collective experience are integrated into a very particular narrative about national identity, one in which the country is understood to be the quintessential civic polity. In the words of Michael Ignatieff, the American community, rather than being grounded in prepolitical ethnic, religious, or racial ties, has long been constituted by “equal, rights-bearing citizens, united in patriotic attachment to a shared set of political practices and values.”<sup>13</sup> This fact places the American project in an exceptional position, standing outside the contested histories of Europe—particularly its bitter conflicts over class and empire—and enjoying a distinctive character vis-à-vis other nation-states.

No doubt most commentators, Ignatieff included, readily admit that the United States has never fully lived up to these civic values. Yet as Swedish sociologist Gunnar Myrdal declared in the 1940s, while the country may have only partially achieved its ideals, “[t]he main trend” in American history has been “the gradual realization of the American Creed.”<sup>14</sup> Thus, such a view accepts the practical reality of injustice, particularly the sinfulness of slavery, but understands the United States to be at root a liberal society engaged in a process of self-fulfillment. Ignatieff, like Myrdal before him, sees the country’s civic promise as the essential truth of the American experience, a truth steadily redeemed over

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11. For more on the treatment of Asians as culturally unfit for settler membership, see HIROSHI MOTOMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* 70–75 (2006).

12. See AZIZ RANA, *TWO FACES OF AMERICAN FREEDOM* (2010). In particular, see *id.* at 12–14, for a fuller account of American settler empire—including its ideologies and constitutional practices.

13. MICHAEL IGNATIEFF, *BLOOD AND BELONGING: JOURNEYS INTO THE NEW NATIONALISM* 3–4 (1993).

14. GUNNAR MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* 1021 (1962).

time, while representing the ascriptive and exclusive elements as aberrational.<sup>15</sup> Most telling about this dominant narrative is that it neglects to depict the civic drive—aimed at vesting sovereignty in all people “regardless of race, colour, creed, gender, language or ethnicity”<sup>16</sup>—as only a relatively recent development. Instead, this account reads such aspirations back into the very founding of the United States, albeit while accepting the extent to which equality may have been deferred in historical fact.

A large part of why exceptionalist narratives of American civic identity have had such a powerful grip on the national imagination is because of the presumed symbolic meaning of the Federal Constitution. According to today’s scholars and commentators, the Constitution gives concrete substance to the country’s civic ideals, generating a political order grounded in democratic consent, pluralism, and equal rights for all. In Cass Sunstein’s words, “exceptionalism is real” and “[i]t began in 1787, with the Constitution’s effort to establish a large, self-governing republic, in which diverse views serve as both a safeguard and a creative force.”<sup>17</sup> Quoting Alexander Hamilton’s language in *Federalist No. 1*, Sunstein declares that while European history, marked by social conflict and monarchical despotism, has been the product of “accident and force,” the defining feature of the American experiment—expressed most profoundly by that initial act of constitutional construction—is instead the effort to base politics on “reflection and choice.”<sup>18</sup> For Jack Balkin, the 1787 Constitution provided the “legal and political” mechanisms through which the Declaration of Independence’s promise of equal liberty could “be redeemed in history.”<sup>19</sup> The Constitution’s writing and ratification are therefore the constituent acts of American exceptionalism and civic founding, embodying above all the collective break from an imperial and absolutist Europe.

Ultimately, what is especially remarkable about the contemporary framing of the United States as a civic polity is how it erases, almost entirely, the colonial structure of the American past. According to the civic imagination, to the extent that the United States bears any meaningful relationship to European histories of empire, it is not as a sustained experiment in settler colonization. Rather, the country from its birth has been anti-imperial, conceived as an assault on an entire “system of social hierarchy.”<sup>20</sup> Indeed, for Seymour Martin Lipset, the very essence of American exceptionalism is its status as the first *postcolonial* society as opposed to a continuation of European colonialism: “The United States is

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15. See IGNATIEFF, *supra* note 13, at 6–7.

16. See *id.* at 3.

17. Cass Sunstein, *The Real Meaning of American Exceptionalism*, BLOOMBERG VIEW (Sept. 23, 2013, 9:00 AM EDT), <http://www.bloomberg.com/news/2013-09-23/the-real-meaning-of-american-exceptionalism.html>.

18. *Id.*

19. JACK M. BALKIN, CONSTITUTIONAL REDEMPTION: POLITICAL FAITH IN AN UNJUST WORLD 19 (2011).

20. *Id.* at 21.

exceptional in . . . being ‘the first new nation,’ the first colony, other than Iceland, to become independent.”<sup>21</sup> If anything, under this civic framing, the American experience—whatever the problems of inequality—has more in common with the independence projects of indigenous societies than it does with English settler experiments in South Africa, Australia, or New Zealand.

How does a community reconstruct the meaning of its own past—to such an extent that defining historical attributes no longer resonate at all with collective self-perceptions—and what are the long-term consequences of such a reconstruction? Over the following pages, I offer a sketch of the process by which white Americans came to think of themselves in civic rather than settler terms, and then turn to a consideration of what this shift has meant for issues of racial equality and native self-determination. I begin in Part I by contending that the initial move toward a sustained civic identity occurred not at the founding, Reconstruction, or even the more recent civil rights period. Rather, civic identity as a growing public sentiment developed out of a sense of ideological uncertainty that enveloped the United States in the early twentieth century. In particular, the closing of the frontier and the country’s emergence onto the global stage with the Spanish-American War raised basic questions about the future of colonial settlement as well as the meaning of American power in the world. In this context, many white Americans began to rally around a specific reading of the Constitution as the moment at which universally accessible Enlightenment principles first took historic root, thus presenting the country in explicitly exceptionalist terms. This view separated European imperialism on the one hand from American global influence on the other, with the latter depicted as benign tutelage fundamentally in keeping with the basic interests of nonwhite peoples. Such civic arguments, structured around the symbol of the Constitution, steadily reimagined the country in more inclusive terms. But they also provided an ideological framework that allowed classically privileged American insiders to preserve nonetheless the basic institutional structures of the polity—those of an increasingly completed settler project—while at the same time asserting greater authority abroad.

Part II then argues that although such civic self-conception has brought with it profound social improvements that cannot be underestimated, it has also come at a significant cost. The country’s identitarian shift from settler to civic nation has meant that Americans have never properly confronted the county’s colonial infrastructure or the living legacy of its settler history. As a consequence, today’s vision of the country as intrinsically—if incompletely—liberal systematically deemphasizes those forms of economic and political subordination that continue to mark the experience of historically marginalized communities. In effect, the two narratives of national identity—settler and civic—should not be thought of as establishing fundamentally distinct legal and political periods. Rather, the lack of a

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21. See SEYMOUR MARTIN LIPSET, *AMERICAN EXCEPTIONALISM: A DOUBLE-EDGED SWORD* 18 (1996).

proper reckoning with the past has meant that prevailing civic ideologies remain institutionally and conceptually interlinked with settler ones; thus, the two eras of national identity fold into one another instead of marking a clear chronological divide or break in political time.

I pursue these thoughts by recovering a black political tradition especially dominant with the radicalization of the civil rights movement in the late 1960s. This tradition maintained that the emphasis on the American Revolution's anti-imperial dimension undermined the ability of most twentieth-century Americans to appreciate the extent to which their society was a continuation of European projects of empire. These black thinkers focused their critique on the centrality of the Constitution for sustaining narratives of American exceptionalism and civic identity. They were especially attracted to such constitutional critique—and to the colonial framing more generally—because they believed that the politics of civic inclusion truncated the dilemma of race in the United States, de-emphasizing both the links to global structures of inequality and the need for more thoroughgoing socioeconomic changes. Just as important, the language of colonialism allowed both black radicals and indigenous activists to highlight an unacknowledged harm to subordinated groups generated by traditional creedal accounts. These accounts compelled outsiders, as a condition of any reform, to accept and repeat self-validating majority narratives. They seemed to require that marginalized communities deny both their own sense of profound alienation as well as their belief that such alienation spoke to a constitutive and oppressive truth about the nation's identity.

By way of a conclusion, I discuss the basic reasons why black power activists, especially those associated with the Black Panther Party, argued for a new constitutional convention and a conscious break from the existing legal order. Such calls were above all part of a sustained effort to make apparent to Americans a striking fact about the shift in national consciousness from settler to civic self-conception. According to black radicals, white Americans had essentially adopted a postcolonial sense of nationhood despite the fact that the country had never gone through an actual process of systematic *decolonization*, one akin to those initiated in newly freed Asian and African countries. In such former colonies, much of the independence project concerned the formal and substantive transfer of economic and political power from imperial elites to historically subordinated populations. But in the United States, by contrast, at no point did historically oppressed groups successfully generate a similar and explicit institutional or normative rupture from the American settler past—including its governing structures and prevailing national symbols—nor did they succeed in claiming either material reparations or meaningful indigenous sovereignty. In fact, part of the discursive power of civic national identity continues to come from its disavowal of any need for such structural transformation, precisely since it reads a liberal and egalitarian identity into the country's very genesis.

## I. HOW A SETTLER SOCIETY RECONCEIVED ITS OWN PAST

In many ways, today's dominant language of civic identity consciously repeats a set of arguments developed by Abraham Lincoln during the Civil War. Lincoln famously referred to the Declaration of Independence as an "apple of gold" framed in the "*picture of silver*" that was the Constitution.<sup>22</sup> By this, he meant that the animating purpose of the constitutional project was to fulfill the egalitarian promise of the Declaration: "The picture was made, not to conceal, or destroy the apple; but to adorn, and preserve it. The picture was made for the apple—not the apple for the picture."<sup>23</sup> Crucially, for my purposes, although Lincoln may have evoked such civic ideals in the context of debates over slavery and secession, this vision did not reflect how the overwhelming majority of white Americans understood their collective project and its relationship to the Constitution, either during the antebellum period or in the closing decades of the nineteenth century.

In fact, the far more entrenched pre-Civil War view was that the country was a white republic and the Constitution served as the governing document for this racially defined community. As Stephen Douglas declared during his victorious Senate campaign against Lincoln:

I hold that a negro is not and never ought to be a citizen of the United States. . . . I hold that this government was made on the white basis, by white men, for the benefit of white men and their posterity forever, and should be administered by white men and none others. . . . [T]he signers of the Declaration [of Independence] had no reference to the negro whatever when they declared all men to be created equal. They desired to express by that phrase, white men, men of European birth and European descent, and had no reference either to the negro, the savage Indians, the Fejee, the Malay, or any other inferior and degraded race, when they spoke of the equality of men.<sup>24</sup>

This sentiment even shaped the era's Republican Party, whose leadership, as legal historian Mark Graber reminds us, "routinely described their coalition as a 'white man's party' and proposed 'to settle the Territories with free, white men.'"<sup>25</sup> Indeed, with strong Republican backing, nonslave African Americans were not only barred from entrance into frontier states like Indiana, Illinois, Iowa, and Oregon, they also were explicitly barred from claiming property through western land grants.<sup>26</sup>

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22. Abraham Lincoln, Fragment on the Constitution and Union (Jan. 1861), in 4 THE COLLECTED WORKS OF ABRAHAM LINCOLN 168, 169 (Roy P. Basler et al. eds., 1953).

23. *Id.*

24. See Senator Stephen Douglas, Speech at the Third Lincoln-Douglas Debate, Jonesboro, Ill. (Sept. 15, 1858), reprinted in ABRAHAM LINCOLN: SPEECHES AND WRITINGS 1832–1858, at 598 (Don. E. Fehrenbacher ed., 1989).

25. MARK GRABER, DRED SCOTT AND THE PROBLEM OF CONSTITUTIONAL EVIL 80 (2006).

26. See RANA, *supra* note 12, at 118.

Moreover, Douglas's alternative vision of the Declaration as racially circumscribed spoke to a profound truth deemphasized by Lincolnian rhetoric. Alongside the egalitarian dimension, Thomas Jefferson had also highlighted as grievances against the British Empire the crown's responsibility for "excit[ing] domestic insurrections amongst us, and . . . endeavor[ing] to bring on the inhabitants of our frontiers, the merciless Indian Savages."<sup>27</sup> In effect, the Declaration did not evoke a civic promise of equal liberty unproblematically. Its language taken as a whole instead intertwined arguments for internal settler freedom with a clear drive to pacify those external threats posed by both excluded slaves and expropriated Indians.

For all these reasons, radical abolitionists as well as African Americans—the only real constituencies in the antebellum period that imagined a multiracial community—often directly attacked the central symbols of national identity. For instance, before the Civil War, free blacks tended to celebrate Independence Day on July 5th as a conscious commentary on black enslavement and exclusion from the body politic.<sup>28</sup> For instance, Frederick Douglass's famous 1852 address to the Antislavery Society of Rochester, *What to the Slave is the Fourth of July?*, was delivered on July 5th since, according to historian Mason Lowance, Douglass "did not wish to participate in the celebration of hypocrisy and could not join the festivities recalling the Declaration of Independence."<sup>29</sup> Even more pointedly, Nat Turner's slave revolt had been planned to begin on July 4, 1831.<sup>30</sup> As for the Constitution, prominent radical abolitionists like William Lloyd Garrison denounced the text's accommodations with slavery as an "agreement with hell."<sup>31</sup> In the era's most notorious act of constitutional opposition, Garrison, outraged by a Boston federal judge's decision returning a fugitive slave, Anthony Burns, to his Virginia owner, burnt a copy of the U.S. Constitution before an 1854 Independence Day audience.<sup>32</sup>

This vision of the country as first and foremost a white Republic, and of the Constitution as its ruling text, remained solidly entrenched for decades after the Civil War.<sup>33</sup> If anything, with the collapse of Reconstruction, the Lincolnian narrative of the relationship between the Constitution and Declaration of

27. THE DECLARATION OF INDEPENDENCE para. 29 (U.S. 1776).

28. See MATTHEW DENNIS, RED, WHITE, AND BLUE LETTER DAYS: AN AMERICAN CALENDAR 24 (2002).

29. Mason Lowance, *Frederick Douglass (1818–1895)*, in AGAINST SLAVERY: AN ABOLITIONIST READER 38 (Mason Lowance ed., 2000).

30. DENNIS, *supra* note 28, at 287 n.18.

31. William Lloyd Garrison introduced a resolution before the Massachusetts Anti-Slavery Society in 1843, stating: "That the compact which exists between the North and the South is 'a covenant with death, and an agreement with hell,'—involving both parties in atrocious criminality; and should be immediately annulled." BALKIN, *supra* note 19, at 253 n.7 (quoting William Lloyd Garrison).

32. Eric Foner, *Blacks and the U.S. Constitution 1789–1989*, 183 NEW LEFT REV. 63, 63 (1990).

33. See RANA, *supra* note 12, at 182–93; see also DAVID W. BLIGHT, RACE AND REUNION: THE CIVIL WAR IN AMERICAN MEMORY 338–80 (2001).

Independence retreated to the political margins by the turn of the twentieth century<sup>34</sup>—a point highlighted by Teddy Roosevelt’s colonial rhetoric described in the introduction. In the interceding years, the country had witnessed the consolidation of white supremacy in the South through brutal force, facilitated by a mixture of Northern white indifference and complicity. In many ways future President Woodrow Wilson, the son of a Virginia slave owner, better captured the prevailing judgments about national identity and radical Reconstruction than did a Lincolnian view.<sup>35</sup> According to Wilson, Reconstruction promoted a destructive project of racial readjustment, in which Republicans imposed black voting and legal protections on Southern whites, the region’s “real citizens.”<sup>36</sup> For him and many others, “the sudden and absolute emancipation”<sup>37</sup> of slaves, and especially the efforts to impose equal citizenship on whites, embodied a “dark chapter of history.”<sup>38</sup> To underscore just how widely such views were held, even socialists like Victor Berger took for granted the racially circumscribed nature of American membership, declaring “there can be no doubt that the Negroes and mulattoes constitute a lower race.”<sup>39</sup>

The governing account of national identity only began to change permanently with the completion of the settler project itself. At the beginning of the twentieth century, the closing of the frontier meant that the historic role of territorial expansion in sustaining American economic growth and internal settler prosperity would soon come to an end. In effect, the very success of American colonization imperiled the future viability of what amounted to the settler way of life. One solution, increasingly embraced by political and economic elites, was to engage in practices of economic and political expansionism abroad as the natural extension of settler territorial growth. As Frederick Jackson Turner wrote in 1893 of the national experience, “Movement has been its dominant fact, and, unless this training has no effect upon a people, the American energy will continually demand a wider field for its exercise.”<sup>40</sup> For Turner and others like him, just as the project

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34. See BLIGHT, *supra* note 33, at 381–97.

35. Historian Michael Dennis describes Wilson as personifying the emerging white middle class sensibilities in the urban South, especially the commitment to “regional progress through national reconciliation, industrial growth, agricultural diversification, and racial control.” Michael Dennis, *Looking Backward: Woodrow Wilson, the New South, and the Question of Race*, 3 AM. NINETEENTH CENTURY HIST. 77, 77 (2002).

36. *Id.* at 82 (quoting Woodrow Wilson, *Reconstruction of the Southern States*, 87 ATLANTIC MONTHLY 1, 11 (1901)).

37. Wilson, *supra* note 36, at 6.

38. *Id.* at 11. Wilson decried Reconstruction practices for producing a vast “laboring, landless, homeless class,” once slaves, now free; unpracticed in liberty, unschooled in self-control; never sobered by the discipline of self-support, never established in any habit of prudence; excited by a freedom they did not understand, exalted by false hopes; bewildered and without leaders, and yet insolent and aggressive, sick of work, covetous of pleasure,—a host of dusky children untimely put out of school.

*Id.* at 6.

39. MARK PITTENGER, AMERICAN SOCIALISTS AND EVOLUTIONARY THOUGHT, 1870–1920, at 181 (1993) (quoting Victor Berger).

40. See FREDERICK JACKSON TURNER, THE FRONTIER IN AMERICAN HISTORY 37 (1920).

of continental conquest had in the past promoted internal wealth and external power, greater assertiveness on the global stage could now serve similar ends.

But whatever its potential benefits, the ideological and practical problems with a new grab for international power were manifold. To begin with, the classic method of territorial conquest in the United States had been white settlement, with new land steadily incorporated into the republic on grounds of equal statehood. But land in the Americas and especially in Asia could not be colonized in this way. Indeed, as one commentator noted, formally annexing distant foreign territory created the likelihood of ruling over racially distinct nonwhite communities in a context that “forb[ade] the hope that Americans will migrate to it in sufficient numbers to elevate its social conditions and ultimately justify its admission as a State.”<sup>41</sup> Even more important, the country had appeared on the global stage at a decidedly late moment, after the most valuable colonial possessions had already been claimed.<sup>42</sup> This limited the usefulness of direct colonial rule as either a symbol of national strength or a means for expanding economic and political power.

Finally, the American foray into overseas empire with the Spanish-American War emphasized the profound pitfalls of becoming ensnared in colonial adventures. The takeover of the Philippines generated a massive indigenous uprising, one that was only suppressed after years of intense fighting and the brutal application of military force.<sup>43</sup> This experience brought home not only the costs in blood and treasure of maintaining actual foreign land, but also emerging truths about nonwhite political assertiveness. It reinforced arguments in the public discourse, such as those associated with the Australian Charles Pearson, regarding the precariousness of permanent white control across the colonized world.<sup>44</sup> All these issues emphasized that if American authority were to expand abroad, it would have to do so in a way that came to grips with new global realities.

Especially following events in the Philippines, a growing number of political elites responded to these dilemmas by repurposing the Lincolnian narrative of a universalist national identity, only now to justify a new vision of American international mission.<sup>45</sup> This vision was conceived as inherently anti-imperial and suspicious of maintaining expensive foreign colonies.<sup>46</sup> And by focusing on the United States’ own break from Britain, the account of national identity also highlighted the perceived differences between American and European values. Rather than treating foreign territories as extractive assets, the United States’ global ambition concerned the spread of mutually advantageous commercial trade,

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41. See Carman F. Randolph, *Constitutional Aspects of Annexation*, 12 HARV. L. REV. 291, 304 (1898).

42. See RANA, *supra* note 12, at 283.

43. See MICHAEL H. HUNT & STEVEN I. LEVINE, *ARC OF EMPIRE: AMERICA’S WARS IN ASIA FROM THE PHILIPPINES TO VIETNAM* 10–63 (2012).

44. PEARSON, *supra* note 9, at 31.

45. RANA, *supra* note 12, at 262–90.

46. *Id.*

democratic self-government, and above all international peace.<sup>47</sup> Interventionists therefore stressed the shared benefits for all communities, regardless of race or ethnicity, of enhanced American power, and in the process de-emphasized the need for formal land acquisition let alone actual white settlement.<sup>48</sup> In fact, such elites reframed the project in the Philippines not as one of a colonial scramble, but rather as that of assisting an indigenous population on a path to ultimate self-determination.<sup>49</sup>

In developing this civic account, the Constitution increasingly played a central role in arguments about the inherently inclusive nature of American identity and thus American authority abroad. For those like David Jayne Hill, diplomat, university president, and influential author of *Americanism: What It is* (1916), what most distinguished the American character from Old Europe was the document itself.<sup>50</sup> Whereas European communities were the product of feudalism as well as political and religious absolutism—and thus disposed to treat foreign populations instrumentally—the Constitution underscored how the American experiment had been built instead on an effort to fulfill universal Enlightenment principles. Hill claimed that the Federal Constitution above all “developed here in America a new estimate of human values, and this has led to a new understanding of life.”<sup>51</sup> Contrasting European monarchical despotism with American commitments to liberty and self-government, Hill—in words virtually identical to Cass Sunstein’s today—declared that the “original and distinctive contribution of the American mind to political theory” was the focus on eliminating “forever the recurrence of absolutism in *every* form, whether official or popular, whether of dominant individuals or of popular majorities.”<sup>52</sup>

Moreover, in line with the Lincolnian idea that the Constitution gave substance to the egalitarian aspirations of the Declaration, Hill maintained that “Americanism” was not reducible to racial criteria:

It cannot be maintained that Americanism . . . is a matter of race. Our country from the beginning has been populated by people of widely different ethnic origins. Some of their qualities are perpetuated with practically little effacement, others are obscured by the syncretism of races; but there is no definable ethnic type that is exclusively entitled to be called American.<sup>53</sup>

Rather than merely a white settler polity no different than Australia or South Africa, the Constitution was living proof that Americans had produced a

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47. *Id.*

48. *Id.*

49. For a more complete account of the shifting visions of external power and national identity in the context of the Spanish-American War and the occupation of the Philippines, see generally *id.*

50. See DAVID JAYNE HILL, *AMERICANISM: WHAT IT IS*, at vii–x (1916).

51. *Id.* at viii.

52. *Id.* at 27.

53. *Id.* at vii.

phenomenon unique in global history: they had erected out of divergent racial communities a single, unified, and powerful nation committed to inclusive civic values. Hill and others at the time began to map out an early twentieth century variant of what scholar Nikhil Pal Singh has called “American universalism”<sup>54</sup>—the idea that what establishes the United States as exceptional is its status as the first nation truly grounded on equal liberty for all.

Such claims about the interconnection between American constitutionalism and American exceptionalism emphasized how an expanded U.S. role abroad served the basic interests of foreign populations. According to Hill, European Powers sought to divide the world based on the principle of “imperialism”<sup>55</sup> and thus treated other communities as little more than material spoils. Given these facts, and the increasing disorder wrought by European action, both domestic security and international peace required a far greater national presence. Precisely because the American civic vision, embodied by the Constitution, was “antithetical to Imperialism, whose watchword is unlimited power,”<sup>56</sup> only the United States could offer the world a counterbalance to European hegemony. In opposition to empire, the constitutional principle meant that American authority was centrally about creating the conditions in foreign, oftentimes nonwhite, societies for peaceful self-government. Distinguishing U.S. control over the Philippines from European practices in Asia and Africa, Hill argued that American conduct on the island had been a step in the advancement of civilization and democratic order. Glossing over the actual history of extreme American violence, he declared, “[W]e have taken in tutelage a population in its political childhood and conscientiously striven to lay the foundations for its future self-government.”<sup>57</sup> In other words, although it may have required American imposition, at stake in the Philippines was not imperial rule but the entrenchment of civic values and Enlightenment principles in a culturally undeveloped region.

Even Woodrow Wilson pursued the logical implications of this inclusive narrative of American power. In his 1916 address to the Railway Business Association, Wilson made clear that the country’s global ambitions did not entail new colonial dependencies.<sup>58</sup> Also emphasizing the essentially anti-imperial nature of U.S. global authority, Wilson declared, “There is no spirit of aggrandizement in America. There is no desire on the part of any thoughtful and conscientious

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54. See NIKHIL PAL SINGH, *BLACK IS A COUNTRY: RACE AND THE UNFINISHED STRUGGLE FOR DEMOCRACY* 17–18 (2004) (“‘American universalism,’ historian John Higham summarizes, is ‘our egalitarian ideology . . . molded by the Enlightenment and forged in the revolution . . . simultaneously a civic credo, a social vision and a definition of nationhood.’” (ellipses in original)).

55. HILL, *supra* note 50, at 134.

56. *Id.*

57. *Id.* at 177.

58. See President Woodrow Wilson, Address to the Railway Business Association, N.Y. (Jan. 27, 1916), *reprinted in* THE POLITICAL THOUGHT OF WOODROW WILSON 268, 268–69 (E. David Cronon ed., 1965).

American man to take one foot of territory from any other nation in the world.”<sup>59</sup> This of course did not mean that military and economic interventions were not critical to nonwhite tutelage or to the spread of civic ideals. In the same speech, Wilson, echoing Hill, spoke in laudatory terms of the Spanish-American War:

The world sneered when we set out upon the liberation of Cuba, but the world sneers no longer. The world now knows, what it was then loathe to believe, that a nation can sacrifice its own interests and its own blood for the sake of the liberty and happiness of another people.<sup>60</sup>

For Wilson too, the American projection of power, if necessary through actual military force, was a key tool in promoting a tranquil and civilized global community.

As underscored by the persistent language of tutelage, the emerging civic rhetoric of American universalism was above all an adaptation rather than a rejection of the settler past. It was promoted by privileged insiders and consciously embraced the history of North American colonization as proof of the country’s exceptional status. Indeed, in order for Hill and others to explain why Americans were worthy of global leadership, they focused especially on the idea that the particularities of colonial settlement generated a culturally distinct community, one that allowed universal creedal values to flourish in the first place. According to Hill, the earliest colonists left monarchical England because of a “protest against mere power,”<sup>61</sup> and in fact the first truly American charter of liberty was not the Constitution but the November 11, 1620 Mayflower Compact. Long before England’s 1647 “Agreement of the People” or the later writings of Locke and Rousseau, settler colonists—“a company of plain men, sailing over wintry seas to an unknown land with the purpose of escaping the too heavy hand of an absolute government”<sup>62</sup>—forged “the beginning of real self-government.”<sup>63</sup> Thus, the reason why the framers were later able to devise the Constitution was because they had been raised in a political community attuned to practices of self-rule and principles of liberty. This meant that the Constitution, a century and a half later, was just the culmination of a specifically American cultural commitment to the “voluntary renunciation of arbitrary power.”<sup>64</sup>

Such a settler experience therefore not only explained why the United States enjoyed a special and redemptive global mission, it also spoke to why white Americans in particular were equipped at home and abroad to supervise projects of tutelage and racial uplift. In essence, the emerging civic self-conception, especially through arguments about exceptionalism and constitutional founding, combined seemingly conflicting political ideas of universalism and cultural

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59. *Id.* at 269.

60. *Id.*

61. HILL, *supra* note 50, at 13–15.

62. *Id.*

63. *Id.* at 15.

64. *Id.* at 29.

superiority. Figures like Hill may have believed in the theoretical fitness of all ethnic and racial groups for full self-government. But transforming this theoretical fitness into reality entailed a sustained project of white stewardship in which racial and ethnic communities both within the United States and in distant lands would be led from their “political childhood” into a civilized adulthood. In this way, and perhaps counterintuitively, the increasing prominence of civic notions provided a powerful mechanism for preserving ethno-cultural accounts of American identity and with them settler privilege.

What these facts bring home is the extent to which the shift to civic frameworks emerged out of efforts by political elites to make sense of how best to promote American power under radically altered circumstances. Thus, civic accounts, grounded especially in a budding vision of the Constitution as a symbol of American inclusiveness, were the ideological outgrowth of a fundamentally settler imagination and predicament—namely, how to conceive of collective purpose given the completion of North American expansion. Slowly, and over the course of decades, these accounts eclipsed the preexisting view of the United States as an exclusively white republic. Domestically, they created the political space for liberalizing reform efforts such as the push to end segregation and to provide legal protections to historically excluded groups. Indeed, creedal arguments about American exceptionalism allowed civil rights leaders like Martin Luther King, Jr., half a century later, to depict black inclusion as part of the country’s founding aspirations, albeit “essentially a dream, a dream yet unfulfilled.”<sup>65</sup> And today, the dominance of the civic self-conception is so comprehensive that citizens no longer even perceive its settler roots and genesis. But as the following section highlights, these settler roots underscore the persistent continuities between the civic present and the colonizing past—continuities that only rarely have been confronted directly in American political life.

## II. BLACK POWER AND RECALLING THE COLONIAL LEGACY

Perhaps the most sustained and broad-based public examination of the country’s colonial legacy took place during the late 1960s. Against the backdrop of independence movements in Asia and Africa, African American activists, especially those who gravitated toward ideas of black power, increasingly presented their relationship to mainstream society as akin to that of colonized communities in the so-called Third World.<sup>66</sup> In the process, they directly challenged narratives of American universalism and exceptionalism and denied the basic legitimacy of the existing constitutional order, which they viewed as the great

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65. See Martin Luther King, Jr., The American Dream (Feb. 5, 1964), in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 208, 208 (James M. Washington ed., 1990).

66. See *infra* text accompanying notes 86–93.

symbol of the prevailing civic identity.<sup>67</sup> With the collapse of both the student and civil rights movements, today these arguments—along with the settler legacy they recall—have essentially receded from memory. But they nonetheless provide a critical means for appreciating the significant costs associated with our contemporary reconstruction of the national experience as a liberal and redemptive project from the founding.

In many ways, black power activists developed their position in response to what they viewed as the limitations of the traditional civil rights framework, a framework that refrained from challenging the civic account of the American experience and instead sought to unleash its reformist potential.<sup>68</sup> In the 1950s, middle class African Americans, along with liberal white allies, presented the struggle for black freedom as one of fulfilling the universal ideals embedded in the Constitution. Analogous to arguments made earlier in the century by David Jayne Hill, the principal civil rights discourse maintained that American belonging was not racially defined but built on shared and inclusive liberal values.<sup>69</sup> This articulation of how antiracism fulfilled notions of American universalism drew especially from Gunnar Myrdal's classic study *An American Dilemma*. For Myrdal, the Constitution embodied what he called "the American creed"<sup>70</sup> and through the text "[t]his nation early laid down as the moral basis for its existence the principles of equality and liberty."<sup>71</sup> This meant that at its core the United States—the nation where the Enlightenment took historical root—was "humanity in miniature."<sup>72</sup>

Such arguments presented the United States as an essentially liberal national experiment, contaminated in the present by un-American and illiberal practices of racism. This vision of the country—as a fundamentally universalist polity on a march toward liberal completeness—carried with it key implications for the civil rights agenda at home and for American power abroad. At home, fulfilling the creed primarily entailed ending formal discrimination and providing worthy elements within the black community with an equal opportunity to enjoy professional and middle-class respectability.<sup>73</sup> It emphasized social mobility for black elites and meritocratic inclusion for some into arenas of corporate and political power.<sup>74</sup> Abroad, the invocation of the creed, as Nikhil Pal Singh writes, "upheld the prerogatives of the American national security state."<sup>75</sup> Precisely since

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67. See *infra* text accompanying notes 86–93.

68. RANA, *supra* note 12, at 329–30.

69. *Id.*

70. See generally MYRDAL, *supra* note 14. Myrdal contended that "American civilization early acquired a flavor of enlightenment which affected the ordinary American's whole personality" and generated a creedal commitment to "liberty, equality, justice, and fair opportunity for everybody." *Id.* at lxx, lxxii.

71. *Id.* at 1021.

72. *Id.*

73. RANA, *supra* note 12, at 329–30.

74. *Id.*

75. See Nikhil Pal Singh, *The Black Panthers and the "Undeveloped Country" of the Left*, in *THE BLACK PANTHER PARTY RECONSIDERED* 57, 73 (Charles E. Jones ed., 1998).

U.S. civic commitments expressed the world community's ideals, the projection of American power necessarily meant the defense of inclusive values against illiberal threats. As Myrdal argued, Americans stood "warmheartedly against oppression in all the world."<sup>76</sup>

In effect, the traditional civil rights discourse allowed activists to combine a reform politics of black integration at home with a Cold War commitment to supporting U.S. objectives internationally. In this way, activists were able to construct a deeply appealing account of black equality for white politicians at the national level, who themselves were increasingly embarrassed by the eyesore of southern segregation. These politicians and the constituencies they represented could see racial reform as simply making archaic regional practices consistent with those prevailing across the country—in the process, preserving American domestic economic and political stability while strengthening U.S. moral standing globally, especially in newly independent nations.

But by the late 1960s, the failure of legal desegregation to address deep-rooted socioeconomic hierarchies, alongside the war in Vietnam, left many black activists increasingly discontented with the traditional civil rights embrace of civic nationalist rhetoric. For those that gravitated to the idea of black power, the 1950s and early 1960s focus on American universalism and the American creed concealed more than it illuminated. In particular, it undermined the ability of most Americans, white and black, to appreciate the extent to which the country from its birth had been an enterprise in colonialism—an extension of European empire rather than an egalitarian and anti-imperial break. As Stokely Carmichael and Charles Hamilton wrote in *Black Power* of the traditional civil rights narrative:

[T]here is no "American dilemma" because black people in this country form a colony, and it is not in the interest of the colonial power to liberate them. Black people are legal citizens of the United States with, for the most part, the same *legal* rights as other citizens. Yet they stand as colonial subjects in relation to the white society. This institutional racism has another name: colonialism.<sup>77</sup>

To Carmichael and Hamilton, race relations in the United States mirrored settler frameworks common in Asian, African, and Latin American societies, in which substantial imperial populations were able to expropriate indigenous land and claim political dominance. Akin to "South Africa and Rhodesia," Carmichael and Hamilton argued that the United States too was a society organized around a basic divide between settlers and nonsettlers, with the specific African American condition of "black and white inhabit[ing] the same land [but] blacks subordinated to whites."<sup>78</sup>

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76. MYRDAL, *supra* note 14, at 1021.

77. STOKELY CARMICHAEL & CHARLES HAMILTON, *BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA* 5 (1967).

78. *Id.* at 6.

For such activists, the American experience was not a story of steady progress toward an inclusive ideal embedded in the Constitution. Rather, the historical practice vis-à-vis subordinated groups consisted of reproducing and adapting classic modes of colonial authority for changing American circumstances. As with similar experiments in Asia, Africa, and elsewhere, settler colonialism in the United States had long been organized around two distinct forms of sovereign power: one of democratic consent and internal checks, and another of external and coercive discretion.<sup>79</sup> In the United States, such a dual framework served to separate free settler insiders from a patchwork of marginalized groups, particularly native peoples and slaves and their descendants, who found themselves subject to a complicated structure of overlapping hierarchies. According to Huey Newton, cofounder of the Black Panther Party, this duality meant that the defining feature of collective life had been “majority freedom and minority oppression”: “[w]hile the majority group achieved their basic human rights, the minorities achieved alienation from the lands of their fathers and slavery.”<sup>80</sup>

For Carmichael, Hamilton, and Newton, under this internal American colonialism each subject community enjoyed distinct modes of governance and levels of rights, depending on the “majority group’s” economic needs and the dictates of settler political order.<sup>81</sup> For instance, blacks and nonwhite Mexicans were formally granted citizenship and, by the late 1960s, even enjoyed explicit legal protections, but were still overwhelmingly denied the basic economic and political conditions essential for meaningful equality.<sup>82</sup> For Native Americans, the reservation system mimicked structures of indirect rule common throughout the colonized world and pointedly denied indigenous peoples—whom Newton called “the legitimate heirs” of the national territory—their right to self-determination as independent and sovereign political communities.<sup>83</sup> For such black radicals, all of this meant that the framing of the country in civic terms, despite its reformist

79. Highlighting this duality between internal constraint and external force, Carmichael and Hamilton continued, “But what about . . . the system of ‘checks and balances’? We are well aware that political power is supposedly divided at the national level . . . . But somehow, the war in Vietnam has proceeded without Congressional approval.” *Id.* at 9.

80. Huey Newton, To the People’s Revolutionary Constitutional Convention, Address Before the Plenary Session in Phila., Pa. (Sept. 5, 1970), reprinted in OFF THE PIGS! THE HISTORY AND LITERATURE OF THE BLACK PANTHER PARTY 377, 378 (G. Louis Heath ed., 1976).

81. See *id.* at 377–82; CARMICHAEL & HAMILTON, *supra* note 77, 2–32.

82. The first chapter of *Black Power*, titled *White Power: The Colonial Situation*, gives an overview of how Carmichael and Hamilton believe the “colonial status operates in three areas—political, economic, social.” See CARMICHAEL & HAMILTON, *supra* note 77, at 2–32.

83. On the experience of native peoples in the U.S. as proof of the country’s colonial structure, Newton states:

We find evidence for majority freedom and minority oppression in the fact that the expansion of the United States Government and the acquisition of lands was at the unjust expense of the American Indians, who are the original possessors of the land and still its legitimate heirs. The long march of the Cherokees on the “Trail of Tears” and the actual disappearance of many other Indian nations testify to the unwillingness and inability of this government and this government’s Constitution to incorporate racial minorities.

Newton, *supra* note 80, at 378.

potential, played a deeply problematic role in collective life. By cloaking basic structural features of the American experience from public debate, it allowed those features to persist in shaping the opportunities and experiences of historically subordinated communities.

This presentation of the African American condition, not to mention the Native American and Mexican experiences, as existing in a colonial order tapped into a longstanding black tradition of conceiving black identity in international rather than purely domestic terms. If men like Teddy Roosevelt and Douglas MacArthur in earlier decades appreciated the extent to which the United States was part of a global history of white settlement, so too did black thinkers during the same historical periods. Especially following Reconstruction, the black journey from bondage to freedom and back again to bondage highlighted to late nineteenth- and early twentieth-century African Americans how, despite the Lincolnian rhetoric of American liberal equality, white society remained trapped by the same logics as other European experiments in the nonwhite world. As W.E.B. Du Bois wrote at the turn of the century, black inequality was only one piece of the global “problem of the color-line,—the relation of the darker to the lighter races of men in Asia and Africa, in America and the islands of the sea.”<sup>84</sup> Indeed, Du Bois, like Carmichael and Hamilton after him, explicitly attempted to resituate the American national project in imperial terms; he remarked to an audience in Haiti in 1944 that colonial circumstances were not only those in which one country “belong[ed] to another country.”<sup>85</sup> They also included “groups, like the Negroes of the United States, who do not form a separate nation and yet who resemble in their economic and political condition a distinctly colonial status.”<sup>86</sup>

In fact, black power activism in many ways embodied the return to political vibrancy, after a period in the United States marked by anticommunist suppression and Cold War orthodoxy, of a powerful black internationalist politics. According to previous leaders like Du Bois, Paul Robeson, and Hubert Harrison, the reality that the color line was a global issue—bound to European practices of empire—meant that African Americans had to question not only civic accounts of identity but their very allegiance to the American nation as the primary site of political attachment.<sup>87</sup> For Harrison, a journalist and social critic, to the extent that African Americans were part of any community, it was an international community of “darker races” who shared the same interest in self-determination and independence.<sup>88</sup> Harrison wrote in 1921, “We have appealed to the common patriotism which should bind us together in a common loyalty to the practice

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84. W.E.B. DU BOIS, *Of the Dawn of Freedom, in THE SOULS OF BLACK FOLK: ESSAYS AND SKETCHES* 23, 23 (Henry Steele Commager ed., Fawcett Publ'ns 1961) (1953).

85. W.E.B. DU BOIS, *The Colonial Groups in the Postwar World, in AGAINST RACISM: UNPUBLISHED ESSAYS, PAPERS, ADDRESSES, 1887–1961*, at 229, 229 (Herbert Aptheker ed., 1985).

86. *Id.*

87. HUBERT HARRISON, *Wanted—A Colored International, in A HUBERT HARRISON READER* 223 (Jeffrey B. Perry ed., 2001); see, e.g., W.E.B. DU BOIS, *supra* note 85.

88. HARRISON, *supra* note 87, at 224.

rather than the preachments of democracy, and in every case we have been rebuffed and spurned.”<sup>89</sup> The only solution was to link the black struggle in America with that of “peoples of all colors” who across the globe sought “their own enfranchisement from the chains of slavery, social, political and economic.”<sup>90</sup> A half century later, Carmichael and Hamilton echoed these views and argued that “Black Power means that black people see themselves as part of a new force, sometimes called the ‘Third World’; that we see our struggle as closely related to liberation struggles around the world.”<sup>91</sup> For Carmichael and Hamilton, just as for Harrison before them, African Americans must not seek solidarity exclusively within the polity, but rather “must hook up with these struggles. We must, for example, ask ourselves: when black people in Africa begin to storm Johannesburg, what will be the role of this nation—and of black people here?”<sup>92</sup>

By the closing of the 1960s, this longstanding internationalist orientation led African American radicals to challenge directly the great symbols of American civic nationhood, in particular by explicitly tying their analysis of colonialism to the Constitution. In large part, this was because of a sense that key questions of race had moved away from those primarily of formal legal equality. As Du Bois himself told a college audience in North Carolina shortly before leaving for exile in newly independent Ghana, although the United States was “definitely approaching . . . a time when the American Negro will become in law equal in citizenship to other Americans,” this represented only “a beginning of even more difficult problems of race and culture.”<sup>93</sup> For Carmichael, Newton, and others, the central predicament facing the country was how to uproot a colonial infrastructure that perpetuated black disenfranchisement, even despite formal equality.<sup>94</sup> In confronting this challenge, they viewed the Constitution—especially its symbolic links to dominant ideas of American exceptionalism and universalism—as more a hindrance than an aid.<sup>95</sup>

To begin with, Lincolnian narratives of how the Constitution gave concrete substance to egalitarian revolutionary ends reaffirmed widespread views of the United States as the quintessential anti-imperial republic—“conceived in liberty and dedicated to life, liberty, and the pursuit of happiness,” as Newton remarked.<sup>96</sup> Thus, while the historical reality of American life was one of colonization, the anti-imperial and creedal narrative of the Constitution meant that white insiders did not see themselves as colonizers. If anything, to the extent that most white Americans contemplated the relationship between the United States

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89. *Id.* at 225.

90. *Id.* at 224.

91. CARMICHAEL & HAMILTON, *supra* note 77, at xi.

92. *Id.*

93. W.E.B. DU BOIS, *Whither Now and Why*, in *THE EDUCATION OF BLACK PEOPLE: TEN CRITIQUES 1906–1960*, at 149 (Herbert Aptheker ed., 1973).

94. *See generally* CARMICHAEL & HAMILTON, *supra* note 77.

95. *See infra* pp. 282–86.

96. Newton, *supra* note 80, at 377.

and European imperial practices, they viewed the country as a colony that shook off the shackles of empire. Instead of perceiving their real continuities with other imperial outposts, social insiders actually depicted the country as the first postcolonial community. In other words, they reimagined the white majority not as settlers at all, but if anything as natives themselves—situated in the same relationship to European empire as other colonized groups. There was obvious truth to the point that the revolutionary founding had indeed been an anti-imperial break from England. However, this anti-imperial narrative ignored the equally central fact that American independence and constitutional founding did not entail the end of colonization. Rather, it explicitly empowered local settler populations and thus spurred a new phase of both expansion and political control over outsider groups. This meant that instead of simply one history of empire, the United States had been marked by a double history of British and then locally led expropriation.<sup>97</sup>

Thus, for black radicals, the fact that civic conceptions, undergirded by the Constitution, distorted the basic relationship between white Americans and European empire had two related consequences. First, by reading out of the collective experience a post-revolutionary colonial past, constitutional discourses emphasized a politics of integration that downplayed the systematic forms of economic and political subordination that marked the pervasive experience of most blacks. For Newton, regardless of whether black elites now had the legal right to access professional power, discrimination was nowhere close to disappearing.<sup>98</sup> This was because longstanding settler structures had reduced “the life of a substantial proportion” of the country’s nonwhite communities, not only blacks but American Indians and Latinos as well, to “nothing more than a prison of poverty.”<sup>99</sup> As even Martin Luther King Jr. stated, such subordination produced the nonwhite reality of “poverty amid plenty,” in which the condition for those marginalized was one of “educational castration and economic exploitation.”<sup>100</sup> For King, not unlike for younger black radicals, overcoming racism required more than elite black advancement; it entailed “a radical restructuring of the architecture of American society.”<sup>101</sup>

Just as problematic, this occlusion of the colonial dimension also allowed the goal of black freedom in the United States to become disconnected from global independence struggles—the natural allies of African Americans. Even worse, the traditional civil rights framework, with its governing faith in civic nationhood and a redemptive Constitution, pressed African Americans to identify their own

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97. For more on the complexities of thinking of post-revolutionary America in “postcolonial” terms, see the discussion of early American constitutional formation in Chapter 2, *Citizens and Subjects in Postcolonial America*, of RANA, *supra* note 12, at 99–175.

98. Newton, *supra* note 80, at 377.

99. *Id.*

100. MARTIN LUTHER KING, JR., *WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY?* 112 (1967).

101. *Id.* at 133.

interests with those of the American state regardless of how the country operated abroad—a fact highlighted by Myrdal’s defense of American international power.<sup>102</sup> In the context of Vietnam, the traditional leadership within the black community opposed combining a critique of legal discrimination at home with any challenge to American Cold War imperatives or interventionist policies. For instance, Whitney Young, the head of the Urban League, warned activists at the NAACP’s 1966 convention that the League would denounce those groups that linked issues of “civil rights with the Vietnam conflict.”<sup>103</sup>

For Carmichael, this presented the deeply perverse consequence of black acceptance of a national security agenda that fought against fellow colonized peoples while reproducing domestic conditions of racial domination.<sup>104</sup> According to black radicals, Vietnam was only one example of how intertwined accounts of constitutionalism and American universalism undermined liberation alliances and destructively reframed the real enemies to black freedom—white elites at home and abroad—as friends of an American civic project.<sup>105</sup> For this reason, the 1966 Black Panther Party Platform and Program called for the exemption of black men from military service: “We will not fight and kill other people of color in the world who, like black people, are being victimized” by racism and colonial authority.<sup>106</sup> Nothing spoke more directly to this point than the United States’ ongoing relationship with South Africa. Reminding African Americans of the need for black opposition to the national security state—and indeed the need for an *independent* black foreign policy—Carmichael and Hamilton emphasized the United States’ active role in assisting apartheid: “It seems inevitable that this nation would move to protect its financial interests in South Africa, which means protecting white rule in South Africa. Black people in this country then have the responsibility to oppose, at least to neutralize, that effort by white America.”<sup>107</sup>

These concerns with the political effects of constitutional rhetoric, especially in promoting policies that truncated black equality domestically while justifying interventionism abroad, led the Black Panther Party to write its own competing constitution. As Huey Newton declared,

Black people and oppressed people in general have lost faith in the leaders of America, in the government of America, and in the very structure of American Government (that is, the Constitution, its legal foundation). This loss of faith is based upon the overwhelming evidence

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102. See MYRDAL, *supra* note 14, at 1021.

103. MANNING MARABLE, RACE, REFORM, AND REBELLION: THE SECOND RECONSTRUCTION IN BLACK AMERICA, 1945–1982, at 105 (1984) (citation omitted).

104. See CARMICHAEL & HAMILTON, *supra* note 77, at x–xii.

105. *Id.*

106. See *October 1966 Black Panther Party Platform and Program*, in OFF THE PIGS! THE HISTORY AND LITERATURE OF THE BLACK PANTHER PARTY, *supra* note 80, at 248, 249.

107. CARMICHAEL & HAMILTON, *supra* note 77, at xi.

that this government will not live according to that Constitution because the Constitution is not designed for its people.<sup>108</sup>

In a mass popular act of constitutional rejectionism—and indeed one of the most striking such acts in twentieth century America—the Panthers chose to celebrate the anniversary of the document by descending on Philadelphia in September 1970 to stage a large-scale “Revolutionary People’s Constitutional Convention.”<sup>109</sup> Depending on estimates, the number of delegates and participants ranged from 12,000 to 15,000 people, with 5000 to 6000 attending the plenary sessions at Howard University as well as Newton’s opening speech (quoted above); thousands more stood outside the doors but could not get seats.<sup>110</sup> As one participant recalled later, delegates to the Convention came “from an array of organizations” besides the Panthers: “the American Indian Movement, the Brown Berets, the Young Lords, I wor Keun (an Asian-American group), Students for a Democratic Society . . . , the newly formed Gay Liberation Front, and many feminist groups.”<sup>111</sup> In fact, another participant reported that various 1960s era activists and celebrities mingled with the crowd and took part in plenary sessions, from Abbie Hoffman, Jerry Rubin, Tom Hayden, and William Kunstler to Muhammad Ali himself.<sup>112</sup>

The most interesting feature of the convention was that, alongside plenary sessions, participants broke out into workshops that produced a new alternative text framed around a variety of basic demands.<sup>113</sup> These demands in many ways mirrored the policies increasingly debated as part of decolonization efforts in Asia and Africa. Abroad, such efforts had revolved around practices including commissions to uncover the truth about colonial crimes and related legal prosecutions, monetary and land-based reparations, massive resource redistribution to those historically subordinated, the constitutionalization of meaningful indigenous sovereignty, fundamental changes to internal security and policing (a central coercive tool of colonial regimes), and even symbolic and institutional changes (from renaming localities and landmarks to creating new flags and writing new constitutions). In line with those international debates, the

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108. Newton, *supra* note 80, at 381.

109. See *A Convention to Write a New U.S. Constitution*, in OFF THE PIGS! THE HISTORY AND LITERATURE OF THE BLACK PANTHER PARTY, *supra* note 80, at 185; see also George Katsiaficas, *Organization and Movement: The Case of the Black Panther Party and the Revolutionary People’s Constitutional Convention of 1970*, in LIBERATION, IMAGINATION, AND THE BLACK PANTHER PARTY 141, 146 (Kathleen Cleaver & George Katsiaficas eds., 2001).

110. See Katsiaficas, *supra* note 109, at 146.

111. *Id.*

112. Trevor Wyatt Moore, *A Rumbling in Babylon: Panthers Host a Parley*, CHRISTIAN CENTURY, Oct. 28, 1970, at 1296.

113. Revolutionary Peoples’ Constitutional Convention, Philadelphia Workshop Reports (Sept. 1970), in LIBERATION, IMAGINATION, AND THE BLACK PANTHER PARTY, *supra* note 109, at 289.

Convention workshops proposed everything from broad-ranging reparations<sup>114</sup> to truth commissions and political trials<sup>115</sup> to expanded socioeconomic rights and significant wealth transfers (such as through the provision of free food, housing, clothing, medical care, and a guaranteed income)<sup>116</sup> to fundamental changes in the control and exercise of military and police power (the end of the draft, the demobilization of the existing standing army, and, above all, community-organized police control boards).<sup>117</sup>

The plan for the participants had been to reconvene in Washington, D.C. in November to hold a massive ratification of the new constitution, but internal disagreements within the Panther leadership led to the collapse of the second convention.<sup>118</sup> Still, the Philadelphia Revolutionary Convention was not without its own political significance. In many ways, the call for explicit rupture from the existing constitutional order was an attempt to highlight to both whites and nonwhites a basic fact about the collective experience. Over the course of the twentieth century, it was certainly true that oppressed groups had been able to access greater legal protections in the United States. But these changes had occurred ultimately on ideological terms shaped by a white majority. Unlike colonized peoples abroad, African Americans and American Indians in particular had never been able to impose within the United States an actual conscious moment of colonial accounting, and with it, national disavowal. There had been no symbolic raising of a new flag or writing of a new governing text, let alone imposition of the type of sustained policies that marked decolonization efforts elsewhere. If anything, the civic frame had been constructed by white elites on terms that allowed for reform precisely so long as historically excluded communities accepted an unconditional attachment to the nation, its central symbols at home, and its practices abroad. The following conclusion explores the present-day implications of this absence of rupture—especially what it means for Americans to embrace a postcolonial identity while rejecting any colonial legacy.

#### CONCLUSION: A POSTCOLONIAL IDENTITY WITHOUT DECOLONIZATION

Today, the Revolutionary People's Constitutional Convention has more or less been lost to history. And to the extent that there is any collective memory of black radical efforts to generate a constitutional rupture in the country, these efforts are largely incorporated into a very specific account of black power and of the Panthers in particular. Under this reading, the rise of the Panthers to prominence in the late 1960s—especially given their militant posturing and

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114. *Id.* at 290 (“Reparations should be made to oppressed people throughout the world, and we pledge ourselves to take the wealth of this country and make it available as reparations.”).

115. *Id.* at 295 (“These tribunals will be decentralized and arise out of the area where the incidents or alleged crimes themselves took place.”).

116. *Id.* at 290–94, 299–300.

117. *Id.* at 298–99.

118. For more on the story of the Convention and its aftermath, see Katsiaficas, *supra* note 109, at 141–55.

fixation on armed self-defense—embodies the moment when the civil rights and student movements lost contact with mainstream America and instead descended into violence and irrelevancy. Moreover, such views place black radicalism's anticolonial agenda, and suspicion of the great symbols of American nationhood, at the center of this shift away from the "good" 1960s of desegregation campaigns to the "bad" 1960s of urban riots and left disintegration. As Richard Rorty declared fifteen years ago, rather than "shar[ing] in a national hope"<sup>119</sup> of liberal self-fulfillment, black radicals, along with the student activists who followed them, courted marginality and veered between "self-disgust" and "self-mockery."<sup>120</sup> The consequence has been that, even within what remains of politically relevant leftwing groups, the prevailing sentiment is that all reform projects must begin by reaffirming accounts of American civic promise. In a sense, not only has the colonial frame been dismissed, but—to the extent that there is any public awareness of such a frame—disassociating oneself from it is seen, even by left-liberals, as a precondition for being taken seriously in politics.

In these final pages, I wish to underscore the straightjacket these developments place on popular self-recognition, not to mention on meaningful reform. The actual history of the sustained shift from settler to civic imagination over the first half of the twentieth century highlights the extent to which civic arguments were constructed by settler elites themselves. Ideas of American exceptionalism and universalism were at root the product of debates about how an essentially completed settler project could transform itself into a global power, especially against the backdrop of a closed frontier at home and both bloody European rivalries and nonwhite political assertiveness abroad. Politicians and policymakers came to embrace an anti-slavery Civil War discourse and, in effect, employed this discourse to lay the ideological foundations for what would become the American Century. In the process, they reimagined the fundamental meaning of the national past while at the same time reaffirming its key markers—from Puritan settlement to revolutionary independence and from constitutional founding to continental expansion. This vision called on all communities within the country—regardless of their own histories of expropriation or enslavement—to participate in an ongoing narrative of American identity, one that read subordination as aberrational and viewed white settlers not as colonizers but as the rightful inheritors of the land.

In a sense, the black radical assault on this account was an effort to confront the profound dissonances such civic arguments imposed on marginalized communities. For many African Americans, the experience of living within the United States was that of an internal exile,<sup>121</sup> and accepting redemptive stories of

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119. See RICHARD RORTY, *ACHIEVING OUR COUNTRY: LEFTIST THOUGHT IN TWENTIETH-CENTURY AMERICA* 8 (1998).

120. *Id.* at 6.

121. In fact, Singh and other scholars highlight how many of the key figures in twentieth-century black politics, including Du Bois, Robeson, C.L.R. James, Richard Wright, and Robert

liberal national purpose did not simply mean allowing dominant presumptions about the country's basic character to go unchecked. It also meant being forced for all intents and purposes to celebrate such exile and to suppress one's deep estrangement. Indeed, the majority's self-conception as the first independent and anti-imperial colony—if anything culturally similar to newly independent societies in the Global South—brought home this dissonance. It told native peoples in the United States that, as a requirement of gaining minimal respect (not even actual sovereignty and political autonomy), one had first to agree to one's own expropriation as the natural order of things. And similarly, it required blacks to deny that their sustained experience of enslavement and subordination embodied an essential, perhaps irredeemable, truth about the nation's character.

The discursive triumph today of civic nationalism—and with it redemptive stories of American fulfillment—does more than make us all complicit in the perpetuation of such dissonances. It also forces any reform project to proceed exclusively within a framework compelling to the majority self-understanding. As exemplified by the mainstream civil rights movement, historically excluded groups cannot claim equality—let alone meaningful power—except by taking the dominant society's view of itself as the actual political truth. But what happens to those very real modes of hierarchy that fail to resonate with national self-perception? Even more specifically, what does it mean when a community adopts a postcolonial identity but denies the necessity for any systematic project of decolonization? In a sense, most Americans have accepted successful transformation—an increasingly liberal completion of the nation's ostensible founding ideals—as the reality of the present, while at the same time rejecting the need for precisely the structural economic and political changes that might in fact produce equal and effective freedom. As for those that remain dispossessed, the lesson is simple: limit one's own aspirations, objectives, and allies or gain little in return from society at large. The question for the future is whether Americans, both white and nonwhite, are capable or willing once again to imagine other alternatives.

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Williams (author of *Negroes with Guns* (1962) and president of the Monroe, North Carolina NAACP chapter) to name just a few, experienced real repression and even became actual exiles. See Singh, *The Black Panthers*, *supra* note 75, at 72.