

SYMPOSIUM ON RACE, RACISM, AND INTERNATIONAL LAW

INTERNATIONAL LAW, RACE, AND CAPITALISM: A MARXIST PERSPECTIVE

*Robert Knox**

The Marxist tradition is a crucial voice in the global anti-racist movement. Marxists were at the forefront of the anti-colonial and anti-imperialist movements, with those movements taking up Marxist concepts and deploying them to understand capitalism, race, and colonialism. Yet, these Marxist voices did not reflect systematically on international law. This essay attempts to remedy this neglect and understand what anti-racist and Third Worldist Marxists can offer international legal thought. It begins with a discussion of the typical (liberal) approach to racism in international law. It then explores how Marxists have understood the relationship between racism and capitalism, arguing that this fundamentally impacts upon international law. The essay concludes with an exploration of how these dynamics have played out in international law.

Race, Racism, and Racialization

The dominant understanding of racism in international law is best summed up by the International Convention on the Elimination of All Forms of Racial Discrimination. According to Article 1(1), racial discrimination is any “distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin.”¹

At first sight, this seems innocuous enough. However, a closer look reveals significant issues. The model of racism in the definition is one in which racism results from differential treatment or effects based on pre-existing “racial” characteristics. Yet, insofar as we accept “race” as a pre-existing phenomenon, we are in danger of sharing the very assumption that underlies racist thinking—that race is a natural fact. If racism results from a pre-existing phenomenon of “race,” then racism appears to be the result of prejudice against “difference.” However, such an account cannot tell us which “differences” assume an outsized importance, and *why* they do so in particular periods. This definition makes it impossible to historicize or explain racism.

A consequence of this account is that international law is assumed to play a heroic role. While there have certainly been racist international laws, these are easily remedied. International law is portrayed as standing in opposition to racism, insofar as it does not intrinsically discriminate against pre-existing categories of “race.”

The Marxist tradition has contested this definition. As Frantz Fanon has argued, “[a]s long as the black man is among his own, he will have no occasion . . . to experience his being through others.”² Populations which were labeled as “Black” (or other racial identities) did not initially identify as such—indeed they had many other identities through which to organize their existence. It was only when juxtaposed to whiteness that black people

* Senior Lecturer, School of Law and Social Justice, University of Liverpool, Liverpool, United Kingdom.

¹ [International Convention on the Elimination of All Forms of Racial Discrimination](#), Art. 1(1), Jan. 4 1969, 660 UNTS 195.

² FRANTZ FANON, [BLACK SKIN, WHITE MASKS](#) 109 (1986).

“became” Black. Yet it was not simply through *juxtaposition* that race came into being, since “the white man is not only The Other but also the master.”³ Black people became such so they could be inserted into a hierarchy.

In this way, rather than understanding racism as a product of race, Marxists argue that the *contrary* is true: “race” is a product of *racism*. As Eric Williams famously put it, “[s]lavery was not born of racism: rather, racism was the consequence of slavery.”⁴ The Marxist account is one of “racialization,” in which race is understood as *socially produced*.

This presents us with a different picture of international law’s role. If racism is centrally concerned with processes of racialization, international law’s contribution to racism cannot be reduced to discrimination. Instead, insofar as international law contributes to processes of racialization, and the conditions that generate and shape such processes, it is intertwined with racism.

Race and Capital

Marxists locate legal, social, and political relations in the processes and practices through which human beings produce and reproduce their social existence.⁵ It is in this way that Marxists have understood both racism and international law. Understanding racism in this way means moving beyond prejudice, and instead reflecting on racism’s social role. As W.E.B. Du Bois noted:

The problem of the twentieth century is the problem of the color line, the question as to how far differences of race—which show themselves chiefly in the color of the skin and the texture of the hair—will hereafter be made the basis of denying to over half the world the right of sharing . . . the opportunities and privileges of modern civilization.⁶

In later years, Du Bois nuanced his characterization of these “differences,” but he crucially articulated a materialist conception in which the role of race is to define one’s ability to share in the proceeds of “civilization.” As Ruth Wilson Gilmore notes, “[r]acism is a practice of abstraction,” in which certain characteristics of individuals are separated off, fixed, and used to sort humanity into groups. These groups are then inserted into a *hierarchy*. This hierarchy functions to push “disproportionate costs of participating in an increasingly monetized and profit-driven world” on those who have been racialized.⁷ On this reading, a core element of racism is that it structures access to the material benefits of society.

Du Bois and Gilmore represent a distinctive strand of Marxism. Marxists have often been understood as prioritizing “class” and “capitalism” over “race” and “racism,” and this is borne out in some Marxist work.⁸ However, Marxists also played a central role in the anti-racist and anti-colonial movements. Key participants in these movements mapped out how capitalist social relations are closely intertwined with processes of racialization. Global capitalism is characterized by extreme inequalities, with these inequalities differentiated along clear geographical lines. Capitalism was born in Europe, and spread and consolidated its hold over the globe on the basis of European

³ *Id.* at 138 n. 25.

⁴ ERIC WILLIAMS, *CAPITALISM AND SLAVERY* 7 (1944).

⁵ See Robert Knox, *Law*, in *THE SAGE HANDBOOK OF MARXISM* (Beverly Skeggs, Sara R. Farris, Alberto Toscano & Svenja Bromberg eds., 2021).

⁶ Alexander Walters, Henry B. Brown, H. Sylvester Williams & W. E. Burghardt Du Bois, [Address to the Nations of the World by the Pan-African Conference in London](#) (1900).

⁷ Ruth Wilson Gilmore, *Fatal Couplings of Power and Difference: Notes on Racism and Geography*, 54 *PROF. GEOGRAPHER* 15, 16 (2002).

⁸ See Robert Knox, [Valuing Race? Stretched Marxism and the Logic of Imperialism](#), 4 *LOND. REV. INT’L L.* 81 (2016).

colonialism and imperialism. In the process, European states fundamentally transformed the political-economic systems of non-European societies.

The spread, intensification, and maintenance of this system was absolutely central in the creation of “race.” In Fanon’s words, racism is anchored in the “exploitation of one group of men by another which has reached a higher stage of technical development.”⁹ In this way, “the white racism which came to pervade the world was an integral part of the capitalist mode of production.”¹⁰ However, racism does not emerge simply as a generic justification for inequality; rather, it stems from two key elements of capitalism: its transformative and expansive nature, and its tendency toward abstraction.

Capitalism is structured around the pursuit of profit. This pursuit of profit is framed by *competition*: there is always the potential that rivals will make productive innovations and thereby undercut prices. All of this makes capitalist societies highly crisis-prone. The combination of these factors means that capitalism has an unceasing and infinite drive toward expansion and transformation. Capitalists constantly seek out new sources of profit to fend off their rivals, as well as stave off the possibility of crisis. In order to seek these sources of profit, capitalists must transform the world to make it more amenable to capitalist processes. By the very nature of capitalism, this process is *endless*.

Capitalism also tends toward *abstraction*. Whereas previous modes of human existence have been territorially bounded and rooted in relatively stable customary hierarchies, capitalism is the opposite. Alongside this, capitalism must render all goods potentially exchangeable. This requires a colossal practice of abstraction in which all goods can be reduced to their abstract, universal value as judged against money.

These two facts help us to understand the deep interconnections between race, racialization, and capitalism. Capitalism began in Europe, based on the colonial extraction of raw materials from abroad.¹¹ The pressure of capitalist production to expand led to it go beyond these territorial bounds. Here, capitalism came into contact with pre-capitalist societies. These societies needed to be transformed to make them amenable to capitalist production, often in the face of resistance. In this way, the expansion of capitalism was accompanied by violence and dispossession, through which territory could be accumulated and managed. Even after the firm establishment of capitalism, the uneven global division of labor and its attendant requirement to enable capitalist transformations continue to require this.¹²

These processes of expansion and transformation appear as processes of *racialization*. As European capitalism expanded into the non-European world, it marked pre-capitalist societies out as “racially different.” Through a process of racialized abstraction, it assigned these peoples to specific “racial groups” which were inferior to European values. These values were frequently based on abstracted and idealized social relations of capitalism.

In this way, capitalism systematically generates practices of racialization. The forms that this racialization takes are protean, corresponding to particular conjunctures and different regimes of capitalist accumulation. Thus, in “the period of crude exploitation of man’s arms and legs,” practices of racialization threw up vulgar, biological racisms.¹³ Yet, “[t]he perfecting of the means of production inevitably brings about the camouflage of the techniques by which man is exploited, hence the forms of racism.”¹⁴

⁹ Frantz Fanon, *Racism and Culture*, in FRANTZ FANON, [TOWARD THE AFRICAN REVOLUTION: POLITICAL ESSAYS](#) 37–38 (Haakon Chevalier trans., 1988).

¹⁰ WALTER RODNEY, [HOW EUROPE UNDERDEVELOPED AFRICA](#) 88 (1982).

¹¹ KARL MARX, [CAPITAL: A CRITIQUE OF POLITICAL ECONOMY](#) (1867).

¹² KATHRYN GREENMAN, [STATE RESPONSIBILITY AND REBELS: THE HISTORY AND LEGACY OF PROTECTING INVESTMENT AGAINST REVOLUTION](#) 17–18 (2021).

¹³ [Fanon](#), *supra* note 9, at 35.

¹⁴ [Id.](#)

Race, International Law, and Capital

The anti-racist and Third Worldist Marxist traditions, therefore, direct our attention to the structural connections between capitalism and racism. Racism is not a natural phenomenon but is systematically generated through capitalist social relations. At the same time, capitalist social relations *require* racialization. The actually existing history of capitalism has been undergirded by racialization.

This perspective tells us something very different about international law. As Third World Approaches to International Law (TWAIL) scholarship has taught us, the colonial processes of dispossession and transformation were thoroughly mediated through international legal argument. Indeed, more than this, TWAIL scholarship has shown us the deep historical connections between the formation of international legal doctrine and European colonialism. Yet Marxist analysis runs deeper than this.

Both racialization and lawmaking are forms of abstraction. Where racialization assigns concrete humans to some “racial” group, law takes concrete humans and makes them into legal subjects. Famously, the Marxist legal theorist Evgeny Pashukanis argued that the abstract, formal legal equality of (international) law was a manifestation of the abstract universality of the commodity-form,¹⁵ and thus established a structural link between (international) law and capitalism.¹⁶

Thought in this way, a tripartite structural connection exists between capitalism, racism, and international law. Capitalism is structured by abstractions, with two of these abstractions being race and law. At the same time, each of these abstractions is constituted and shaped by the other. Thus, as capitalist social relations transform, so do these abstractions, which in turn react and reinforce capitalism.

This complex interpenetration is best illustrated through the legal arguments around “civilization.” This doctrine was significant in justifying and structuring colonial expansion. It established a European “standard of civilization,” which, if reached, enabled states to enter into the Family of Nations and consequently gain legal personality. The doctrine was fairly straightforwardly racialized, insofar as it posited non-Europeans as intrinsically inferior. Crucially, this racialization did not simply *facilitate* European expansion. Instead, the content of the racialization was rooted in capitalist social practices. In particular, jurists argued that non-European peoples could not be trusted to act in the reciprocal manner expected by capitalist contract and property.¹⁷

Yet, as Ntina Tzouvala points out, this doctrine articulated the imperatives of capitalist accumulation by allowing for the possibility that these non-Europeans might live up to European standards.¹⁸ This argument bolstered the transformative drive of capitalism, yet often did so in an indirect way, by encouraging non-European states to “civilize” themselves via the medium of unequal treaties.

In this context, the expansion of capitalist social relations created forms of racialization which were articulated legally. These racialized legal arguments were shaped by the particular capitalist configuration, and were central to that configuration’s constitution. This process of racialization was a thoroughly *juridified* one, made effective through international legal structures. Accordingly, as TWAIL scholars have demonstrated, was that core international legal concepts, particularly “sovereignty,” were developed *through* processes of racialization.¹⁹

¹⁵ Evgeny Bronislavovich Pashukanis, *The General Theory of Law and Marxism*, in [PASHUKANIS, SELECTED WRITINGS ON MARXISM AND LAW](#) (Piers Beirne & Robert Sharlet eds., 1980).

¹⁶ See CHINA MIÉVILLE, [BETWEEN EQUAL RIGHTS: A MARXIST THEORY OF INTERNATIONAL LAW](#) (2005).

¹⁷ Robert Knox, [Imperialism, Hypocrisy and the Politics of International Law](#), 3 *THIRD WORLD APPROACHES TO INT’L L. REV.* 25, 47–51 (2022).

¹⁸ NTINA TZOUVALA, [CAPITALISM AS CIVILISATION: A HISTORY OF INTERNATIONAL LAW](#) (2020).

¹⁹ ANTONY ANGHIE, [IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW](#) (2005).

Race and International Law Today

The doctrine of civilization was coterminous with formal colonialism, and its more explicit forms of racialization. Yet, international law no longer looks like this. Indeed, many would argue, international law played a fundamental role in ending this state of affairs. How, then, can we say that contemporary international law is structurally connected to processes of racialization?

Marxists have always understood that capitalist exploitation and inequality exist independently of formal state domination. It was for this reason that Marxists in the Third World insisted that, given the continued existence of global capitalism, formal colonialism had been replaced by a *neocolonialism* marked by “the granting of political independence minus economic independence,”²⁰ in which the formerly colonized states were “politically free” but enmeshed within a global system of economic dominance.

Such a situation was not one in which racism *disappeared*, but rather changed into more insidious forms. Given the structural connection between international law, racialization, and capitalism, it is no surprise that these forms are embedded in and mediated through international law. On a very basic level, this was the case for the international legal regime of decolonization. Even as decolonization represented a significant legal break, the law of self-determination retained some direct continuities. First, under the principle of *uti possidetis juris*, international law preserved those very colonial borders that had been established under the doctrines of civilization. Second, and more importantly, self-determination had to take place within the state-form. This form is one intrinsically linked to capitalist social relations *and* was formed during the colonial period. The net result of these two principles was that the law of self-determination channeled anti-imperialist resistance into a form that was ultimately compatible with capitalism, and preserved a racialized geographical division.

At the same time, the law of self-determination did not open up the possibility of a wholesale transformation of the international legal order. Instead, newly emerged states were said to have implicitly *consented* to those rules which had been created during the period of their active and directly racialized subordination. Any attempt to utilize international law to challenge the global capitalist order would need to be done through treaty, or via the emergence of new customary norms, both of which would require active and affirmative consent on the part of powerful states.²¹ Unsurprisingly, such consent was not forthcoming, and international law’s structure directly preserved the results of racialization, and indeed ascribed racialized states as *consenting* to this order.

However, international law has not simply preserved a historical legacy of racialization; it has also been crucial in articulating forms of post-colonial racism, through which transformation and intervention can occur even as post-colonial states retain formal legal sovereignty. This has been evident in the context of the international institutions of the International Monetary Fund and the World Bank. These institutions have played a significant role in restructuring the economies of states in the Global South to facilitate the movement and accumulation of capital. They have done so through mobilizing racialized discourses as to the laziness and ineptitude of such states and the corrupt or kleptocratic nature of their leaders. These racialized articulations are crucial in rearticulating contentious political-economic choices as “technocratic” exercises in growth, as against corrupt or inefficient social democratic policies.²² At the same time, the interventions are framed by a racialized assumption that it is the inability of non-Europeans to fulfill their obligations—or manage their affairs—which cause them to default on their debts, as opposed to the nature of the global capitalist system. In this way, political-economic restructuring in the Global South is undergirded by racialized assumptions.

²⁰ Kwame Nkrumah, *Address at the First Seminar at the Winneba Ideological School*, in KWAME NKUMAH, [REVOLUTIONARY PATH](#) 172 (1973).

²¹ [ANGHE](#), *supra* note 19, at 196–244.

²² James Thuo Gathii, *Representations of Africa in Good Governance Discourse: Policing and Containing Dissidence to Neo-Liberalism*, 18 *THIRD WORLD LEGAL STUD.* 65 (1998–99).

This particular racialized assumption—about the inability of non-Europeans to manage their own affairs—has been active in a number of international legal arguments. It underscores the “unwilling and unable” doctrine articulated in the War on Terror,²³ forms a crucial element in humanitarian and human rights discourse,²⁴ and serves as a powerful tool of delegitimation in the case of international legal reforms from the Global South. In this way, however, it serves as a powerful racial fix.²⁵ These racialized assumptions are vital in mediating the ways in which formal sovereignty is able to coexist with an unequal world, and where international law mediates political-economic intervention for the purposes of capitalist accumulation. Rather than international law’s importance to processes of racialization diminishing in the context of formal independence, it has in fact increased.

Conclusion

This essay has demonstrated that anti-racist and Third Worldist Marxisms can shed light on international law’s relationship to racism. Rather than opposition, or even contingency, it has shown international law’s deep connection with racism. It has done this through demonstrating the linkages between processes of racialization, international law, and the spread of global capitalism on a world stage. This analysis fundamentally undermines claims that international law might save us from the evils of racism.

²³ Ntina Tzouvala, *TWAIL and the “Unwilling or Unable” Doctrine: Continuities and Ruptures*, 109 AJIL UNBOUND 266 (2015).

²⁴ Makau wa Mutua, *The Ideology of Human Rights*, 36 VA. J. INT’L L. 589 (1995).

²⁵ Robert Knox, *Haiti at the League of Nations: Racialisation, Accumulation and Representation*, 21 MELB. J. INT’L L. (2020).