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Whiteness as Reparations

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doi:10.1017/aju.2025.10020

SYMPOSIUM ON WHAT CAN INTERNATIONAL LAW REPAIR?

WHITENESS AS REPARATIONS

*Christopher Gevers**

> With the end of the slave trade and the general emancipation of slaves, the problems of race did not disappear *but simply were transformed.*[1]

Introduction

Slavery was a global legal institution.[2] So too was emancipation, which not only "refigured" enslavement and white supremacy in various ways,[3] but instituted compensation schemes for white slaveholders and their creditors involving complex "credit instruments and financial arrangements,"[4] the beneficiaries and effects of which cut across empires and geographies and classes. Aside from the immediate effects of these efforts to "liquidate, relocate and securely preserve" white wealth globally,[5] these compensation schemes directly and indirectly consolidated and expanded white domination over Black land, labor, and lives. Compensation to slaveholders and creditors funded further colonial expansion and helped establish the material and symbolic infrastructure of racial capitalism—including colonial companies and banks that "became, in effect, the investment channel for the compensation,"[6] in both the colony and the metropole—whose tentacles would spread globally. In the aftermath of emancipation, the dominant racial ideologies were refigured as well—with the rise of biological racism and a hardening of racial ideologies and violences—and these shifts circulated through white supremacy's "transnational patterns of co-operation,"[7] including through international law.

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[1] W.E.B. DuBois, *Inter-Racial Implications of the Ethiopian Crisis*, 14 FOR. AFF. 82, 92 (1935).

[2] Adelle Blackett, *Follow the Drinking Gourd: Our Road to Teaching Critical Race Theory and Slavery and the Law, Contemplatively, at McGill*, 62 MCGILL L.J. 1251, 1268 (2016).

[3] SAIDIYA V. HARTMAN, SCENES OF SUBJECTION: TERROR, SLAVERY, AND SELF-MAKING IN NINETEENTH-CENTURY AMERICA 7 (1997); Christopher Gevers, *Refiguring Slavery Through International Law: The 1926 Slavery Convention, the "Native Labor Code" and Racial Capitalism*, 25 J. INT'L ECON. L. 312 (2022).

[4] Kris Manjapra, *The Scandal of the British Slavery Abolition Loan*, 68 SOC. & ECON. STUD. 172 (2019).

[5] *Id.*

[6] *See* KATHLEEN MARY BUTLER, THE ECONOMICS OF EMANCIPATION: JAMAICA AND BARBADOS, 1823–1843, at 137 (1995); *see further* NICHOLAS DRAPER, THE PRICE OF EMANCIPATION: SLAVE-OWNERSHIP, COMPENSATION, AND BRITISH SOCIETY AT THE END OF SLAVERY (2010).

[7] Charles. W. Mills, *Global White Ignorance*, *in* ROUTLEDGE INTERNATIONAL HANDBOOK OF IGNORANCE STUDIES 223 (Matthias Gross & Linsey McGoey eds., 2015).

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Scholars have pointed to the supposed irony of the fact that these developments took place *after* emancipation.[8] This "irony" covers all manner of sins. This essay aims to bring and hold together the "wages of whiteness"[9] that accrued *through* emancipation and highlight international law's role in the resulting refiguration of white supremacy globally. It shows how providing material and symbolic compensation *to white slaveholders* was also a global legal project, a worldmaking one, and if we think of slavery and compensation for emancipation as entwined global legal regimes we can begin to map the broader production and reproduction of whiteness itself as "reparations" for the formal end of enslavement. It concludes that radical reparations in the form of political, intellectual, legal, economic, social, spatial, and spiritual compensation are justified and necessary,[10] not only because of the nature of the crime but because of the ongoing spoils afforded to the beneficiaries of the white world that it made.

The 1833 Slavery Abolition Act and "Compensated Emancipation"

In 1833 Britain passed the Slavery Abolition Act, having determined that it was "just and expedient" that enslaved persons in "His Majesty's Colonies . . . be manumitted and set free, . . . that reasonable Compensation should be made [to the slaveholders]" and that "provision should be made for promoting Industry and securing the good Conduct of the persons so to be manumitted."[11] The Abolition Act proceeded to address the "expedien[cies]" of emancipation, which mostly concerned managing the transition from "blind domination founded on slavery" to domination through "economic conventions" (as Frantz Fanon later described it),[12] ensuring the continued subordination of the formerly enslaved through "apprenticeship," discipline, and disenfranchisement.[13]

As far as "justice" was concerned, the Abolition Act provided substantive and procedural justice *to the slaveholders and their creditors* for their "loss" by establishing a complex, transnational legal and financial compensation regime. In fact, as Manjapra notes, "[t]hirty-seven of the 66 articles of the Act, more than half, concern the terms and means for compensating slave-owners," making it "fundamentally, a *financial* document."[14] It was an *international legal* document as well. "Compensated emancipation" schemes were subsequently adopted across the French, Dutch, Spanish empires (and by Denmark and Brazil) —with Britain "set[ting] a model for other imperial powers to follow."[15]

Aside from putting the lie to two common "practical" objections to reparations (i.e., "doubt over government's ability to administer reparations" and "feasibility of valuing slavery's harms"),[16] two aspects of the Abolition Act are worth highlighting. *First*, like slavery and the slave trade, the tentacles of compensated emancipation schemes

[8] NANCY STEPAN, THE IDEA OF RACE IN SCIENCE: GREAT BRITAIN 1800–1960, at xii, 1 (1982); Nigel Worden & Clifton Crais, *Introduction*, *in* BREAKING THE CHAINS: SLAVERY AND ITS LEGACY IN THE NINETEENTH-CENTURY CAPE COLONY 23 (Nigel Worden & Clifton Crais eds., 1994).

[9] W.E.B. DuBois, BLACK RECONSTRUCTION IN AMERICA: TOWARD A HISTORY OF THE PART OF WHICH BLACK FOLK PLAYED IN THE ATTEMPT TO RECONSTRUCT DEMOCRACY IN AMERICA, 1860–1880, at 700 (1935).

[10] *See* MARCUS HUNTER, RADICAL REPARATIONS: HEALING A NATION'S SOUL (2004).

[11] Slavery Abolition Act of 1833, pmbl.

[12] FRANTZ FANON, THE WRETCHED OF THE EARTH 65 (1963).

[13] *See* Slavery Abolition Act of 1833, *supra* note 11, Arts. IV, XXII.

[14] Manjapra, *supra* note 4, at 171–72.

[15] KRIS MANJAPRA, BLACK GHOST OF EMPIRE: THE LONG DEATH OF SLAVERY AND THE FAILURE OF EMANCIPATION 68 (2022).

[16] Linda J. Bilmes & Cornell William Brookes, *Normalizing Reparations: U.S. Precedent, Norms, and Models for Compensating Harms and Implications for Reparations to Black Americans*, 10 RSF: RUSSELL SAGE FOUND. J. SOC. SCI. 30, 31 (2024).

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spread globally.[17] Many of the slaveholders to be compensated were based in Britain, as were many creditors with a legal "interest in or to" the enslaved.[18] The practicalities of claiming compensation under the scheme meant that the claims themselves became financial instruments to be liquidated, traded, and discounted by middlemen. In addition to this racialized transfer of public funds to white slaveholders, creditors, and middlemen in Britain, the massive injection of cash into the colonies drove the establishment and consolidation of the infrastructure of racial capitalism (including banks,[19] companies,[20] and rental housing "slums"),[21] and funded its expansion through these "slave-owners redeploying their capital" in other parts of the world.[22]

Second, the Abolition Act indexes the ongoing legal, material, and symbolic "entanglements of slavery and freedom"[23] following formal emancipation in three ways. First, "compensated emancipation" schemes "depended on an ongoing designation of black people as property,"[24] making compensated *expropriation* a more accurate legal description. Second, as in the United States, the colonial apprenticeship system ensured the racialized hierarchy of labor formalized under slavery continued through "the refiguration of subjection":[25] both directly—through "the subjugation of free labor through contractual and extralegal means" (including compulsory labor schemes, vagrancy statutes, criminalizing those without labor contracts, and "the prevalence of white violence")[26]—and indirectly, through "new forms of bondage [were] enabled by proprietorial notions of the self"[27] (or, in the words of the Slavery Abolition Act, "promoting Industry and securing the good Conduct of the persons so to be manumitted").[28] Third, the extended financial afterlife of Britain's compensated emancipation scheme—which formally ended in 2015 when the £20,000,000 loan initially secured from the Rothschilds to fund the scheme was paid off—mirrors the financial afterlives of "emancipation," secured by the debt paid for freedom by states[29] and individuals.[30]

Slavery did not only entangle Blackness and property, it forged whiteness as well, so when "emancipation" refigured the enslaved as property, so too did it refigure whiteness *as property*.[31] Cheryl Harris, echoing W.E.B.

[17] *See* KATHLEEN MARY BUTLER, ECONOMICS OF EMANCIPATION: JAMAICA AND BARBADOS, 1823–1843, at 121–39 (2017).

[18] Slavery Abolition Act of 1833, *supra* note 11, Art. LV.

[19] *See* Aaron Graham, *Slavery, Banks and the Ambivalent Legacies of Compensation in South Africa, Mauritius and the Caribbean*, 47 J. S. AFRICAN STUD. 473 (2021).

[20] Nicholas Draper, *Helping to Make Britain Great: The Commercial Legacies of Slave-Ownership in Britain*, *in* LEGACIES OF BRITISH SLAVE-OWNERSHIP: COLONIAL SLAVERY AND THE FORMATION OF VICTORIAN BRITAIN (Catherine Hall, Nicholas Draper, Keith McClelland, Katie Donington & Rachel Lang eds., 2014).

[21] Lalou Meltzer, *Emancipation, Commerce & the Role of John Fairbairn's Advertiser*, *in* BREAKING THE CHAINS: SLAVERY AND ITS LEGACY IN THE NINETEENTH-CENTURY CAPE COLONY, *supra* note 8, at 193–94.

[22] Draper, *supra* note 20, at 94.

[23] HARTMAN, *supra* note 3, at 7.

[24] Manjapra, *supra* note 4, at 184.

[25] HARTMAN, *supra* note 3, at 116.

[26] *Id.* at 127.

[27] *Id.* at 6.

[28] Slavery Abolition Act of 1833, *supra* note 11, pmbl..

[29] *See* Gevers, *supra* note 3.

[30] *See* HARTMAN, *supra* note 3, 9.

[31] Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993) (showing how "the law has established and protected an actual property interest in whiteness itself, which shares the critical characteristics of property and accords with the many and varied theoretical descriptions of property").

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DuBois, has shown how in the aftermath of slavery white supremacy was "transformed, but not discarded."[32] The reparations paid to white people in exchange for abolition, then, included "compensation" in the forms of these "wages of whiteness" that are afforded "to all whites regardless of class position, even to those whites who are without power, money, or influence."[33] In fact, scholars have shown how across different geographies "racist attitudes took shape, step by step, in the decade or so after emancipation,"[34] increasingly taking the form of *biological* racism.

These continuities illustrate the extent to which the legal, symbolic, and material architecture of global white supremacy was formed *through* emancipation. These legal, symbolic, and material continuities post-emancipation can be traced through international law as well, which entrenched whiteness as reparations in the decades to come.

White International Law

It is no small irony that it was partly through emancipation that late-nineteenth century international lawyers discovered that they were white "and, by that token, wonderful."[35] Shortly after "emancipation" in the United States, international lawyers reinvented their discipline and swiftly harnessed "the savage encroachments of power that [can] take place through notions of reform, consent, and protection."[36] The "West," which had been "founded on slavery,"[37] now scandalously and without shame claimed emancipation and *anti-slavery* as its defining feature and sole preserve, and its international lawyers weaponized the "freedom" of the enslaved in order to consolidate and expand white supremacy globally.[38]

Racial regimes are "constructed social systems in which race is proposed as a justification for the relations of power," whose "covering conceit . . . is a makeshift patchwork masquerading as memory and the immutable";[39] or as "History" or "Biology." In the first half of the nineteenth century, international lawyers invoked both covering conceits as justifications for slavery and the slave trade. For example, Henry Wheaton turned first to History (i.e., "[t]hroughout the whole extent of [Africa] . . ., so far as we know it history, it is still the law of nations that prisoners are slaves");[40] then to Biology (i.e., "African slaves" were "better fitted by their physical constitutions to endure the toil of cultivating, under a burning sun, the rich soil" than their white counterparts).[41]

In the latter part of the nineteenth century, following "emancipation" in the United States, international lawyers deployed the same conceits to justify the opposite conclusion, but in service of the same ends. In 1876, Montague Bernard (the inaugural Chichele Professor of International Law), Henry Sumner Maine (the soon-to-be Whewell Professor of International Law at Cambridge); and Robert Phillimore declared:[42]

[32] *Id.* at 1714.

[33] *Id.* at 1759.

[34] RL Watson, Slave Emancipation and Racial Attitudes in Nineteenth-Century South Africa 2 (2012); Catherine Hall, Civilising Subjects: Metropole and Colony in the English Imagination 1830–1867, at 121 (2002).

[35] W.E.B. Du Bois, *The Souls of White Folk*, Independent 339, 342 (Aug. 18, 1910); *see further* Christopher Gevers, *'Unwhitening the World': Rethinking Race and International Law*, 87 UCLA L. Rev. 1652 (2021).

[36] Hartman, *supra* note 3, at 5.

[37] Fanon, *supra* note 12, at 96.

[38] *See generally* Gevers, *supra* note 3.

[39] Cedric J. Robinson, Forgeries of Memory & Meaning: Blacks and the Regimes of Race in American Theater and Film Before World War II, at xii (2007).

[40] Henry Wheaton, Elements of International Law: With a Sketch of the History of the Science 170–71 (1836).

[41] Henry Wheaton, History of the Law of Nations in Europe and America 587 (1845).

[42] Royal Commission on Fugitive Slaves, Report of The Commissioners, Minutes of the Evidence, and Appendix, xxv (1876).

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> International Law. . . is not stationary; it admits of progressive improvement, . . . and *there is no subject on which so great a change of opinion has taken place as slavery and the slave trade.*

As such, while there were still some "differences" between "the laws of civilised States" concerning slavery and the slave trade—"which the progress of civilisation, tending though it does continually to produce a general uniformity, has not yet entirely effaced"—these would, in time and inevitably, be effaced in and through the progressive evolution of international law amongst "white" states.[43]

In this formulation, History and Biology both constructed the West and licensed its racial domination and violence, including through justifying colonialism in the name of combatting slavery.[44] This was done by extending the *evolutionary* "White Mythology" underpinning Henry Maine's *Ancient Law* (1961) to international law, carving up humanity at its ontological joints between the "progressive races" of "civilized," "white," "Western world," and the "primitive races" or "barbarians" (who remained, as a general rule, "stationary").[45] According to Phillimore, Bernard, and Maine, anti-slavery was now a key marker of the "white" West. This meant that—*as a matter of history and international law*— the "recrudescence" of slavery could henceforth only take place outside the West (and in Africa in particular), which was now ripe for violent intervention in the name of civilization. Notably, this "evolutionary" White Mythology was predicated on biological racism that: (1) treated sociocultural institutions (including law) as "exemplifying an isomorphic relation to biology,"[46] (or, as Maine put it, as "inherited");[47] and (2) presumed "an inherent progress to evolution, which meant that some groups within a species could be interpreted as living at an earlier stage of development, while another was at a later stage."[48]

As was the case with the Slavery Abolition Act, international law's symbolic refiguring of slavery and white supremacy in the name of emancipation went hand-in-hand with its material consolidation and expansion through colonialism and the institutions of racial capitalism. The 1884 Berlin Conference was convened in the name of "anti-slavery," while Article I of the subsequent 1890 Brussels Act declared that "progressive" European occupation and colonization of "African territories" was "the most effective means for *counteracting* the Slave Trade."[49] As Article II thereof explained, colonization was necessary to "raise [the 'natives'] to civilization" and "give aid and protection to commercial undertakings . . . *especially* by controlling contracts of service with natives."[50] Three decades later, Frederick Lugard and various colonial officials drafted the Slavery Convention and the International Labour Organization's "native labour code," which set the racial hierarchy of labor in international legal stone by dividing the workers of the world in two: between the "native" or "Indigenous" laborers—or the "Black worker"—and white "international" labor.[51]

In doing so, colonial officials acting through the League of Nations drew on the same material and symbolic racial technologies introduced to ensure continued subordination of the formerly enslaved in 1833 and repeated in the United States post-emancipation.[52] At their center were concerns about the idleness, intemperance,

[43] *Id.*

[44] These arguments were repeated by, among others, Bluntschli and Lorimer. *See* JOHAN KASPAR BLUNTCHLI, THE THEORY OF THE STATE 151 (2000 [1875]); JAMES LORIMER, THE INSTITUTES OF THE LAW OF NATIONS: A TREATISE OF THE JURAL RELATIONS OF SEPARATE POLITICAL COMMUNITIES 32 (1883).

[45] HENRY SUMNER MAINE, ANCIENT LAW 22, 77–78 (1870); Gevers, *supra* note 35.

[46] Lewis R. Gordon, *Race Theory, in* ENCYCLOPEDIA OF POLITICAL THEORY: VOL. III, at 1137 (Mark Bevir ed., 2010).

[47] MAINE, *supra* note 45, 116.

[48] Gordon, *supra* note 46, at 1137.

[49] General Act of the Brussels Conference Relative to the African Slave Trade (Brussels Convention), Art. (July 2, 1890).

[50] *Id.* Art. II.

[51] *See* Gevers, *supra* note 3.

[52] HARTMAN, *supra* note 3, at 116.

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hygiene, and unrestricted movement of the Black Worker[53] and—as the ILO's 1929 Forced Labour Report put it—the "social evils following upon contact between whites and primitive peoples."[54] These parallels are neatly illustrated by debates in the ILO Forced Labour Report concerning the "educative value of forced labour," which noted:[55]

> It must be recognised that . . . benefits have come to the native from the European occupation in the extinction of tribal warfare, the suppression of slavery, *the development of native production, improved health, improved education, and an appreciable modification in the character of the native, who has become much more docile and accessible to European contact.*

A century beforehand, the Abolition Act had described these "expediencies" of emancipation as "promoting the Industry and securing the good Conduct of the persons so to be manumitted." That Act had promised such measures would only be necessary "for a limited period," but DuBois knew better: by 1918 he had outlined this transformation of slavery into racial capitalism, noting that "[i]f the slave cannot be taken *from Africa*, slavery can be made permanent *in Africa*," by way of "organized and systematic toil" that placed "forced and contract labor under white drivers to increase and systematize the production of raw materials."[56]

Conclusion

Saidiya Hartman notes that "[i]rony riddled the event of emancipation,"[57] and "irony" continues to hobble important lines of inquiry. One example is the supposed irony that "just as the battle against slavery was being won by abolitionists, the war against racism in European thought was being lost."[58] For Black Radicals however there was no irony, only continuity. DuBois succinctly set out the global transformations of racial domination as follows:[59]

> The imperialist nations of Europe first used their African colonies as reservoirs from which to import slaves. But in the nineteenth century they began exploiting their African subjects on a large scale in the development of Africa itself. . . . The belief that racial and color differences made exploitation of the colonies necessary and justifiable was too tempting to withstand. As a matter of fact, the opposite was the truth; namely, that the profit of exploitation was the main reason for the belief in race difference.

The ongoing failure to make these connections is overdetermined: it has something to do with delinking of the symbolic and material aspects of racial domination, something to do with the failure to analyze white supremacy in global terms, and a lot to do with the failure to center Black Radical thought in conversations about slavery and its "abolition."[60] Doing so reveals the connections between the material and symbolic compensation paid to white people following emancipation—and the role on international law in reproducing these "wages of whiteness"—such that whiteness *as such* can be understood as an ongoing, unjust global legal institution of political, intellectual, economic, social, spatial and spiritual "reparations" paid to white people for the end of slavery.

[53] *Id.* at 116; *see further* International Labour Office, Forced Labour Report & Draft Questionnaire 234–35 (1929).

[54] *Id.*

[55] *Id.* at 236.

[56] W.E.B. DuBois, *Africa and the Peace Makers*, W.E.B. DuBois Papers 4 (ca. 1918).

[57] Hartman, *supra* note 3, at 126.

[58] Stepan, *supra* note 8, at xii, 1.

[59] DuBois, *supra* note 1, at 83–84.

[60] *See* Peter James Hudson, *The Racist Dawn of Capitalism*, Boston Rev. (Mar. 14, 2016).

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