

INTRODUCTION TO THE SYMPOSIUM ON RACE, RACISM, AND INTERNATIONAL LAW

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In 2020, the United Nations Human Rights Council held its first ever special session on systemic racism, at the request of the Africa Group, and in the wake of a historic transnational racial justice uprising. The session marked a significant shift in global attention to systemic racial subordination as a global phenomenon, with a particular emphasis on anti-Black racism rooted in persisting legacies of colonialism and the trans-Atlantic trade in enslaved Africans. The events of 2020 also coincided with efforts to push for broader and deeper academic and practitioner reckoning with race, racism, and international law.¹ The American Society of International Law (ASIL)—among the most prestigious such associations in the field of international law—is a crucial site for this reckoning. In 2020, ASIL adopted the findings of the Richardson Report, which revealed that notwithstanding efforts early in ASIL’s history to recruit prominent foreign officials and scholars, especially from Latin America and Asia, “domestic Black, Latino, Asian or other minority members of color” were not deemed “appropriate” for ASIL membership.² The Richardson Report concluded that in the first sixty years of its existence, ASIL “silently but effectively exclude[d] domestic persons of color and others, based on their ethnicity, culture, religion or sexual orientation.”³ The purpose of this symposium is to highlight scholarship that confronts race, racism, and international law—as a diverse field of study and field of practice—with the aim of spurring even deeper and sustained racial reckoning across international law.⁴

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¹ See, e.g., E. Tendayi Achiume & Asli Bâli, *Race and Empire: Legal Theory Within, Through and Across National Borders* 67 UCLA L. REV. 1386 (2021) (introducing a special issue of the *UCLA Law Review* on race, empire, and international law); see also Matiangai Sirleaf, *Racing National Security: Introduction to the Just Security Symposium*, JUST SECURITY (July 13, 2020) (introducing symposium on the role of national security in facilitating racial subordination nationally and globally); James Thuo Gathii & Ntina Tzouvala, *Racial Capitalism and International Economic Law: Introduction*, 25 J. INT’L ECON. L. 199 (2022) (introducing a special issue on the centrality of race and racism to international economic law). For earlier, see Symposium, *Critical Race Theory and International Law: Convergence and Divergence*, 45 VILLANOVA L. REV. (2000). We have no doubt this list is non-exhaustive.

² Am. Soc’y Int’l L., *The Richardson Report, Final Report from the ASIL Ad Hoc Committee Investigating Possible Exclusion or Discouragement of Minority Membership or Participation by the Society During Its First Six Decades*, 5 (2020) [hereinafter, Richardson Report].

³ *Id.* at 10. It further found that “[ASIL]’s exclusion practices in a continuous half century of internal decisions and policy aims constitute a continuing racially discriminatory policy during that period, for which the Society is responsible.” *Id.* at 11.

⁴ We view this symposium as a complement to a number of other recent and essential gap-filling *AJIL Unbound* symposia, namely, the symposium on *Queering International Law*. See Grainne de Burca, *Introduction to the Symposium on Queering International Law*, 116 AJIL UNBOUND 1 (2022), and the symposium on *Feminist Approaches to International Law*. See Catherine Powell & Adrien K. Wing, *Introduction to the Symposium on Feminist Approaches to International Law Thirty Years on: Still Alienating Oscar?*, 116 AJIL UNBOUND 259 (2022).

A recent study by one of us found that over the course of the existence of the *American Journal of International Law* (AJIL) (first published in 1907) and *AJIL Unbound* (first published in 2014) that: “only 64, or 1.25%, of 5,109 *AJIL* documents substantially engaged with race in the body of their texts. In *AJIL Unbound*, only 11, or 1.94%, of the 568 documents substantially engaged with race in the bodies of their text.”⁵ This symposium on race, racism, and international law is a modest contribution to filling the gap in the pages of *AJIL* and in most of international law on these themes. Although, as members of the association we focus on the American Society of International Law, related concerns are salient within the European Society of International Law,⁶ and a blog symposium highlights the broader but related problem of systemic racism (and sexism) in legal academia.⁷

The contributors to this symposium examine race, racism, and international law from a range of different subject matter and methodological perspectives. The first essay is by Henry J. Richardson, Professor Emeritus at Temple Law School, who has for the last several decades led efforts both within ASIL and in his scholarship to surface issues of racial (in)justice in the United States and beyond.⁸ Richardson’s essay traces the initial exclusion of African Americans in ASIL and the *American Journal of International Law*, and subsequent efforts that allowed incremental and slowly widening participation.⁹ He positions the 2014 adoption of the Richardson Report by ASIL, the same year the first African American was elected to the *AJIL* Board of Editors, as key outcomes of the minority-led racial-critique of ASIL. Richardson, like many contributors to the symposium, traces the exclusion of African Americans in ASIL and *AJIL* to narratives about European superiority which also assigned African heritage peoples to an inferior status that made them incapable of producing intellectually reputable writing and engaging in sophisticated theoretical debates. Noting that the grudging progress ASIL and *AJIL* have made come at a moment of revitalized white identity extremism, Richardson argues that ASIL and *AJIL* must sustain their efforts to enhance racial equity.

The second essay, by Darin Johnson of Howard University School of Law and Catherine Powell of Fordham University School of Law, also illuminates the African American tradition in international law, moving beyond ASIL and celebrating the human rights legacy of Dr. Pauli Murray, a graduate of Howard University School of Law.¹⁰ Johnson and Powell argue that although scholarship has recognized Dr. Murray’s significant contributions to U.S. race and sex equality law, little attention has been paid to how she used international human rights law to develop and advance civil rights domestically. Johnson and Powell’s account connects Dr. Murray’s ideas and legal theories to her personal experiences as a queer African American woman, recounting how her work anticipated the concept of “intersectionality,” and how she pursued her activism domestically and abroad, viewing Black liberation as part of a global struggle for human rights.

Natsu Taylor Saito of Georgia State University College of Law argues that international law has constructed racial difference and deployed racial hierarchies to shape international migration and mobility, and to determine the rights and responsibilities of those whose transnational movement it authorizes.¹¹ Saito notes that race, indigeneity, and migration are fundamentally related in international law, highlighting how all three are a function of a colonial world order. For Saito, the contemporary system of migration remains structurally dependent upon

⁵ James Gathii, *Studying Race in International Law Scholarship Using a Social Science Approach*, 22 CHI. J. INT’L L. 71, 75 (2021).

⁶ Mohsen al Attar, *Tackling White Ignorance in International Law—“How Much Time Do You Have? It’s Not Enough”*, OPINIO JURIS (Sept. 20, 2022).

⁷ Mohsen al Attar, *Symposium on Systemic Racism and Sexism in Legal Academia: The Promise of Victory*, OPINIO JURIS (May 16, 2022).

⁸ See James T. Gathii, *Henry J. Richardson III: The Father of Black Traditions of International Law*, 31 TEMP. INT’L & COMP. L.J. 325 (2017).

⁹ Henry Richardson III, *Reflections on Race and the American Society of International Law*, 117 AJIL UNBOUND 31 (2023).

¹⁰ Darin E.W. Johnson & Catherine Powell, *Pauli Murray: Human Rights Visionary and Trailblazer*, 117 AJIL UNBOUND 37 (2023).

¹¹ Natsu Taylor Saito, *Race, Indigeneity, and Migration*, 117 AJIL UNBOUND 43 (2023).

racism, xenophobia, and the systemic erasure of indigeneity. The only solution, she argues, is the genuine decolonization of international law itself.

Sarah Riley Case of McGill University Faculty of Law relatedly considers the intertwined history and present of racial differentiation and hierarchy, Indigenous subordination and genocide, African enslavement, and Asian indenture, with a focus on climate and racial justice.¹² Her essay analyzes the meanings of and demands for reparations coming from the Caribbean for the harms of climate catastrophes and racialized oppression that can be traced to “accumulative ways of life that justified slavery and colonialism,” and which, she argues, persist in new forms under liberal international law. Riley Case calls attention to the Caribbean as a central site of anti-imperial thought—one that has been generative of liberatory visions of international law in the past as well as the present. She analyzes the innovative calls for reparations for racial and ecological injustices being advanced by the Caribbean Community’s Reparations Commission. These calls challenge “racializing critiques from the First World that reparations are irrational, or politics separate from law.”¹³

Robert Knox of the School of Law and Social Justice at the University of Liverpool provides an account of what anti-racist and Third Worldist Marxists can offer to international legal thought.¹⁴ He argues that the liberal and dominant understanding of race and racism as differential treatment based on race, color, descent, or national or ethnic origin is ahistorical, and masks the ways in which international law contributes to processes of racialization and to the conditions that shape and generate such processes. Knox provides a “materialist” conception of race and racism, according to which a capitalist society superintended by white racism came to exploit and transform the world—economically, socially, ecologically, and politically—by separating, fixing, and sorting humanity into groups then inserted into a hierarchy. The expansion of capitalism into the non-European world, according to Knox, was accompanied by a process of racialization in which non-European peoples were assigned to an inferior status. International law, Knox argues, played a key role in justifying the dispossessions and transformations of non-European societies as they were subjected to the expansion of capitalist social relations and the violence and dispossession that accompanied European expansion into the non-European world.

James Gathii of Loyola University Chicago School of Law continues these themes from the Knox essay.¹⁵ Gathii’s central claim is that the role of race in international economic law has been erased, and much more needs to be done to recover its large footprints in the discipline, as well as in the policies and practices that constitute it. He shows, for example, how legacies of slavery and colonialism are reflected in the disadvantaged status of those who are the descendants of former enslaved persons or of those otherwise victimized by imperialism. Gathii argues that rules of international economic law formally embed racially constructed hierarchies, such as those that subordinate the status of former and current colonies. In his view, this subordination is not merely of the former and current colonies, but also of large swaths of Black and Brown peoples around the world. In his view, international economic law in both the Global North and the Global South has played a key role in the cultural production of racist tropes that justify the continued subordination of the former and current colonies.

Vasuki Nesiah of The Gallatin School at New York University also centers race and the political economy of empire, calling attention to how “slavery’s spectral presence continues to haunt the international labor law regime.”¹⁶ She argues that, paradoxically, the racial legacies of slavery were carried forward in regimes of protection and free contract following the abolition of slavery across the British empire, even as references to slavery

¹² Sarah Riley Case, *Looking to the Horizon: The Meanings of Reparations for Unbearable Crises*, 117 AJIL UNBOUND 49 (2023).

¹³ *Id.* at 49.

¹⁴ Robert Knox, *International Law, Race, and Capitalism: A Marxist Perspective*, 117 AJIL UNBOUND 55 (2023).

¹⁵ James Thuo Gathii, *Beyond Color-Blind International Economic Law*, 117 AJIL UNBOUND 61 (2023).

¹⁶ Vasuki Nesiah, *Slavery’s Afterlives: Humanitarian Imperialism and Free Contract*, 117 AJIL UNBOUND 66 (2023).

were deployed to “sanitize and rationalize regimes of indenture and wage labor in the Indian Ocean world.” Building on the work of Adelle Blackett, Nesiiah emphasizes the persistence of a double move of analogy and disconnection. On the one hand, slave analogies are invoked to connect denunciation of slavery with guarantees of protection and free market profit in ways that ostensibly redeem humanitarian imperialism and racialized commodified labor. On the other hand, contemporary invocations of slavery as a metaphor disconnected from its specific material history serve to “distract, disguise, and even defend atrocity” that remains racialized.

Christopher Gevers of the University of KwaZulu-Natal focuses on the intractable links between slavery, abolition, international law, and race. Gevers makes the case that international law “was central to the establishment, expansion, and consolidation of the racialized institution of slavery and the slave trade on which the West was built.”¹⁷ He argues that histories of slavery in international law are partial and remain largely unwritten. They are partial because they make no mention of race and are overwhelming histories of white abolitionists and judges, officials, and settlers. His essay also traces how slavery was refigured as a problem predominantly in Africa, an argument that in turn laid the basis for European occupation and colonization of African territories under the 1926 Slavery Convention. Gevers argues for rewriting these histories in ways that center the slaves, their resistance, and how slavery and its continuing legacies were inflected with race.

Noura Erakat of Rutgers University, Darryl Li of the University of Chicago, and John Reynolds of Maynooth University bring to the fore Palestine’s centrality to debates over race, racialization, and racism in international law.¹⁸ They begin by recalling international law’s juridical erasure of the national status of the Palestinian people, achieved in part by framing Arabs as incapable of self-rule, and by noting also patterns of exclusion and tokenization of Palestine and Palestinians in the pages of *AJIL*. But the central argument they advance is that race and colonialism are conjoined concepts, neither of which can be properly understood in isolation from the other. They situate this argument in an analysis of the now-repudiated UN General Assembly Resolution 3379, recognizing Zionism as a form of racism and racial discrimination, and in analysis of ongoing debates regarding Israel and the crime of apartheid. For Erakat, Li, and Reynolds, Zionism is both a racializing as well as a colonial project, which, they argue, vests Jewish nationality with rights to “land, citizenship, employment, life, and housing” that are systematically and continuously dispossessed from Palestinians. They also argue that the growing international legal analysis of the apartheid system in Palestine fails to situate it within the context of settler colonialism or Zionism, thereby obscuring the centrality of the right to self-determination of Palestinians, and how ending apartheid is impossible without decolonization, reparations, or redistribution.

Writing from the backdrop of their experiences as part of their work within the UN’s anti-racism efforts, Tendayi Achiume of UCLA School of Law and Gay McDougall of Fordham University School of Law examine the state of this architecture, while highlighting the ways in which the United Nations remains a prominent site for transnational contestation and even reproduction of racial injustice and inequality.¹⁹ They highlight the 2001 World Conference Against Racism and its outcome document, the Durban Declaration and Programme of Action, as a normative and institutional inflection point within the UN system—a historic attempt to center decolonial, anti-racist, intersectional, structural, and historically informed approaches to fighting racial injustices. They argue that the Durban Declaration has largely been neglected by international legal scholars, and within the UN by members of the Western Europe and Other States Group, who have also actively used opposition to the Declaration to block progressive efforts to dismantle contemporary and historic racial imperial projects. They draw a throughline from the Durban Conference to the 2020 special session of the Human Rights Council

¹⁷ Christopher Gevers, *Slavery and International Law*, 117 *AJIL* UNBOUND 71, 73. (2023).

¹⁸ Noura Erakat, Darryl Li & John Reynolds, *Race, Palestine, and International Law*, 117 *AJIL* UNBOUND 77 (2023).

¹⁹ E. Tendayi Achiume & Gay McDougall, *Anti-Racism at the United Nations*, 117 *AJIL* UNBOUND 82 (2023).

and reflect on how global antiracism protests have resulted in material shifts in the UN's anti-racism architecture, as well as backlash.

As the threat of future global pandemics looms large, Matiangai Sirleaf of the University of Maryland School of Law traces the role of race and racism in the development of global public health law, and the primacy of “white health” to the origins and present of the global public health regime.²⁰ She traces the use of tropical medicine in colonial subjugation and expansion, and links it to the imperatives of racial capitalism. She also examines the role of international agreements in the nineteenth and twentieth centuries that founded a “global” health regime that in fact prioritized Western interests. She connects this history to the contemporary operation of the World Health Organization, which, she notes, obscures the ongoing role of racism in global health. Sirleaf argues that the persistence of racial and colonial logics in the governance of global public health have been manifest in the response to the COVID-19 pandemic, but also posits ongoing efforts to draft an international treaty for pandemic preparedness and response as a possible opportunity to reshape the relationship between race and global health.

A symposium of this nature could never be exhaustive in its examination or even representation of the relationships among race, racism, and international law. Our ambition as co-editors, however, is that it serves to illustrate the centrality of these relationships to international law broadly, a field that has treated them as peripheral, at best. We hope it inspires similar and sustained efforts to carry these themes forward.

We dedicate the symposium to Professor Henry J. Richardson III, and the towering and tireless contributions he has made to the field.

²⁰ Matiangai Sirleaf, *White Health as Global Health*, 117 AJIL UNBOUND 88 (2023).