

SYMPOSIUM ON RACE, RACISM, AND INTERNATIONAL LAW

LOOKING TO THE HORIZON: THE MEANINGS OF REPARATIONS FOR UNBEARABLE CRISES

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Harms that arise from climate catastrophes deepen already unbearable forms of racial oppression.¹ Both can be traced to accumulative ways of life that justified slavery and colonialism, which shifted into new forms of hegemony under liberal international law. A growing response has been to demand reparations. However, the meanings of reparations are vast and sometimes counterintuitive. This essay reflects on reparations claims emanating from the Caribbean, as one place where race and ecology converge. The Caribbean was forged by Indigenous genocide, the enslavement of African peoples, and the indentured labor of Asian peoples. Today, descendants in the region face subordination under liberal international law and climate catastrophes. Such conditions reveal that reparations are foremost a horizon of transformation away from accumulative ways of life that spread from Europe to the world, structuring the present reality. “Reparations” also refers to immediate justices that meet the demands of those who are harmed, because this prefigures the horizon of transformation by disrupting imperialism. These qualities dispel racializing critiques from the First World that reparations are irrational, or constitute politics separate from law. Reparations can enact legal relations that are meaningful to those “on the bottom,”² and emancipatory for everyone, when communities and social movements define them.

The Caribbean Reparations Claims

The Caribbean Community is advancing reparations claims for racial and ecological injustices. The Caribbean is a fulcrum of anti-imperial thought that has generated many such worldmaking programs for international law.³ These radical programs have responded to slavery and colonialism that coalesced on the territories. Nonetheless, liberatory visions do not solely respond to hegemony, but are inspired by self-assured traditions of abolition, independence, Pan-Africanism, and regional solidarity.

I later explore how calls for reparations from the Caribbean enliven such traditions. It suffices here to introduce two claims being made. One seeks redress from European states for slavery and colonialism through a regional body founded in 2013, the Reparations Commission.⁴ The Commission issued a ten-point plan for

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¹ Sylvia Wynter & Katherine McKittrick, *Unparalleled Catastrophe for Our Species? Or, to Give Humanness a Different Future: Conversations*, in SYLVIA WYNTER: ON BEING HUMAN AS PRAXIS 19–24, 60, 65–66 (Katherine McKittrick ed., 2015).

² Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. CIV. RTS.–CIV. LIB. REV. 323 (1987).

³ ADOM GETACHEW, *WORLDMAKING AFTER EMPIRE: THE RISE AND FALL OF SELF-DETERMINATION* (2019).

⁴ CARICOM, *Communiqué, 34th Meeting of the Conference of Heads of Government* (July 8, 2013).

comprehensive measures, including an apology, institutions of health and education, technology transfer, an Indigenous rehabilitation program, and canceling sovereign debt.⁵ Since the 1990s, the region has also been advocating for structural transformation to prevent further climate change and to compensate those suffering related harms. This second approach to reparations is being negotiated through the international regime on climate change, where in 2022 a Third World coalition including the Caribbean succeeded in establishing a fund for “loss and damage,”⁶ as the compensatory aspect of demands to halt escalating catastrophes.

These two framings of reparations—for ecological and racial injustices—are not being discussed together in international legal scholarship. However, the climate reparations claim is rooted in the understanding that ecological harms arise from imperial relations that ground the broader appeal. Looking outward from the Caribbean reveals that these reparations claims are indissociable, which provides insights into meanings of reparations.

Europeans began colonizing territories that would become the Caribbean in the fifteenth century. The region was forged of Indigenous genocide to facilitate the mass production of raw commodities, which relied on the labor of enslaved Africans, removed from kin and community. Peoples also migrated to the Caribbean from Asia to access (indentured) work. The commodities that resulted were destined for Europe and settler colonies to be refined and sold across a transnational economy. The Caribbean was therefore integral to processes of globalization linking the prosperity of Europeans and settler descendants to racialized peoples toiling under empire. As the historian Eric Williams diagnosed, these processes were accumulative, fueling capitalism and the Industrial Revolution.⁷ The ascendancy of coal, then oil, into the nineteenth century advanced capital accumulation as industry and conquest expanded. Simultaneously, the reliance on fossil fuels increased greenhouse gases and launched the contemporary global extractive economy.⁸

These structural conditions spread accumulative ways of life from Europe to the world. Yet a global reach does not imply everyone is complicit. Take the extractive economy, which is dominated by corporations, supported by First World governments and post-colonial elites.⁹ Beyond the horrors of extractive operations on Indigenous, Afrodescendant, and other local communities, there is broad consensus that related harms from climate instability oppress formerly and still colonized peoples, first and foremost.¹⁰

Capital accumulation and ecological damage, then, are intimately bound to one another and to racial ideologies. As the modern age unfolded, Europeans and their descendants progressively identified as “white” in contradistinction to peoples racialized for social reproduction.¹¹ In the Caribbean, Indigenous peoples were killed for land, African peoples were dehumanized into property, and Asian peoples were awarded sufficient legal personality for indentured servitude.

Descendants carry these histories in living memory. Wherever one looks, the past endures in racial thinking and institutional practices. At a structural level, formal abolition and independence in an unequal world re-entrenched racial disparities under facially neutral laws of liberalism. Particularly detrimental to the Caribbean have been

⁵ CARICOM Reparations Commission, [Ten-Point Plan for Reparatory Justice](#).

⁶ UNFCCC, Decision (2022) [forthcoming].

⁷ ERIC WILLIAMS, [CAPITALISM AND SLAVERY](#) (1944).

⁸ Sarah Riley Case & Julia Dehm, *Redressing the Historical Responsibility for the Unjust Precarities of Climate Change in the Present*, in [DEBATING CLIMATE LAW](#) 170 (Benoit Mayer & Alexander Zahar eds., 2021).

⁹ Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, [Global Extractivism and Racial Equality](#), UN Doc. A/HRC/41/54 (2019).

¹⁰ Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, E. Tendayi Achiume, [Ecological Crisis, Climate Justice and Racial Justice](#), UN Doc. A/77/2990 (2022).

¹¹ CEDRIC ROBINSON, [BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION](#) (1983).

sovereign debt as well as the international law on climate change, which permits high emitters of the Global North and the Global South to defer action through voluntary standards.¹²

Sovereign debt in the Caribbean began with the indemnity that France imposed on Haiti to compensate slave-owners and colonists for “expropriated” property following the Haitian Revolution.¹³ Further Caribbean nations were indebted upon independence to financial institutions dominated by the First World. The debilitating storms and rising tides caused by climate change only worsened Caribbean debt. Caribbean peoples therefore embody centuries of racial imperialism in their waters, lands, infrastructure, health, education, and overall wellbeing. The Caribbean is at a juncture of unbearable crises—crises of racial oppression, of poverty, of COVID, of storms, of flooding.¹⁴

The Meanings of Reparations

The Chair of the Reparations Commission, Professor Hilary Beckles, explains that calls for reparations in the Caribbean respond to this juncture of crises: “The injustices of the past now collide with the climate crisis of today. . . . Reparatory justice [is] therefore the common demand.”¹⁵ Yet, there are many meanings attributed to the term “reparations,” which cuts across international law, communities, and social movements. Appeals to reparations may defer to hegemonic law or come from within self-determined coalitions who claim that international law has facilitated imperialism and must adapt.

Historically, international law facilitated slavery, colonialism, and the rise of the extractive economy. Following formal abolition and decolonization, overt imperial practices shifted into new forms of oppression under liberal international law. At the same time, liberal international law erected barriers *against* reparations for historical injustices that persist in present-day racial and ecological discrimination.

Barriers include the prohibition against applying law retroactively (the “intertemporal principle”). In theory, one state could be entitled to “reparation” for an internationally wrongful act of slavery, colonialism, and contribution to climate change. However, because these practices were lawful for centuries, interpretations of the intertemporal principle could deny a wrong. The victim/wrongdoer binary under international law also makes intergenerational harms difficult to establish. Climate reparations face an additional barrier because the applicable “no-harm” doctrine, which prohibits damage to other states, requires foreseeability. Given equivocal climate science until the 1980s, foreseeability could likewise preclude redress for historical injustices.¹⁶

These barriers reflect liberal theories that equate “justice” with “fairness” among peoples from an ostensibly neutral position.¹⁷ Western doctrines based on false objectivity, however, turn *racialized* peoples into expendable subjects. Hence, international lawyers who support reparations are working to dismantle barriers by “decolonizing” international law. Some argue that non-retroactivity does not apply to structural legacies,¹⁸ or to crimes against

¹² [Paris Agreement to the UN Framework Convention on Climate Change](#), Art. 4, Dec. 12, 2015, UNTS 3156.

¹³ James Gathii, *Sovereign Debt as a Mode of Colonial Governance: Past, Present and Future Possibilities*, JUST MONEY (2022).

¹⁴ On “conjunctures,” see Doreen Massey & Stuart Hall, *Interpreting the Crises: Doreen Massey and Stuart Hall Discuss Ways of Understanding the Current Crisis*, 44 SOUNDINGS 57 (2010).

¹⁵ Report of the Working Group of Experts on People of African Descent, [Environmental Justice, the Climate Crisis and People of African Descent](#), para. 42, UN Doc. A/HRC/48/78 (2021).

¹⁶ [Riley Case & Dehm](#), *supra* note 8.

¹⁷ [Matsuda](#), *supra* note 2.

¹⁸ Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, [Reparations for Racial Discrimination Rooted in Slavery and Colonialism](#), para. 32, UN Doc. A/74/321 (2019).

humanity.¹⁹ Efforts have been made to expand state responsibility beyond interstate relations to include redress for peoples who have suffered gross human rights violations.²⁰ The 2001 Durban Declaration against Racism, Racial Discrimination, Xenophobia and Related Intolerance offers principles condemning the legacies of slavery and colonialism. Moreover, Third World advocates have embedded principles relating to “loss and damage” and “common but differentiated responsibilities and respective capabilities” across the international law on climate change.

However, First World governments deny the legality of reparations in each context, leading to rhetoric that reparations are mere “politics.” Examples of First World denials include the embargo on reparatory language in the Durban Declaration,²¹ and a clause accompanying the Paris Agreement which states that provisions on “loss and damage” do not imply liability.²²

Of course, international law requires progressive development, and to call a legal argument “political” is an obfuscating technique that has long been used against racialized peoples.²³ Similar racializing discourses coming from the First World include skepticism about monetary reparations, which are said to be unnecessary and non-quantifiable. First World states insist that “aid” fulfills monetary purposes across domains from institutional “capacity building” to “humanitarian relief” following climate catastrophes. Whereas First World states supported compensation for colonists and slaveowners, their critiques imply that racialized peoples who demand reparations need patronage.

I suggest these racializing critiques do not reflect all meanings of reparations. First World critiques are best understood as *distractions* used across racial and ecological contexts to legitimize the expendability of non-white peoples. Take claims emanating from communities that result in negotiated agreements, which often include monetary transfers and actions to memorialize harms. Such processes yield immediate justice when communities have agency over them, by interrupting hegemonic narratives about the past and its legacies, and by redistributing authority to those “on the bottom” in undeniably legal form. Agreements, such as Britain’s reparations to Mau Mau freedom fighters, are therefore transgressive in the instance, while adding to a chorus of reparations that resonates worldwide.

Indeed, as Robin Kelley emphasizes, reparations are “never entirely, or even primarily about money,”²⁴ as First World critiques imply. Reparations can be structural and forward-looking: “part of a broad strategy to radically transform society—redistributing wealth, creating a democratic and caring public culture, [and] exposing the ways capitalism and slavery produced massive inequality.”²⁵ Vasuki Nesiiah adds that reparations refuse and disrupt hegemony.²⁶ They redistribute authority and meaning-making across law, economics, cosmology, and ecology, with a view to ending racial capitalism. Not only do reparations address the plight of oppressed peoples, they

¹⁹ Makau Mutua, *Reparations for Slavery: A Productive Strategy?*, in [TIME FOR REPARATIONS: A GLOBAL PERSPECTIVE](#) 25 (Jacqueline Bhabha, Margareta Matache & Caroline Elkins eds., 2021).

²⁰ UNGA, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), UN Doc. A/RES/60/147 (2006).

²¹ [Reparations for Racial Discrimination Rooted in Slavery and Colonialism](#), *supra* note 18, para. 45.

²² Maxine Burkett, [Reading Between the Red Lines: Loss and Damage and the Paris Outcome](#), 6 *CLIMATE LAW* 118, 124 (2016).

²³ *See, e.g.*, [South West Africa \(Eth. v. S. Afr.\)](#), 1966 ICJ Rep. 6 (July 18).

²⁴ ROBIN D. G. KELLEY, [FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION](#) 114 (2002).

²⁵ *Id.* at 129.

²⁶ Vasuki Nesiiah, [A Double Take on Debt: Reparations Claims and Regimes of Visibility in a Politics of Refusal](#), 59 *OSGOODE HALL L.J.* 153, 158 (2022).

construct a future free of imperialism for everyone.²⁷ Hence, the New International Economic Order is often cited as an effort toward reparatory justice.²⁸

This brings me to the viewpoint of social movements. African and Afrodescendant peoples, especially, have long engaged in reparations movements to articulate *emancipatory* law. Black communities began calling for reparations after abolition, then Pan-African and Black Power movements carried the tradition forward. Of late, movements for Black lives have increasingly engaged the international human rights system on eradicating systemic racism.²⁹ Meanwhile, local reparations are underway.³⁰

From this perspective of social movements, the indemnity that France extorted from Haiti is not equivalent to the reparations that Aristide demanded before a coup d'état. Although scholars use the term “reparations” for both, Haiti’s call has an *inverse* relationship to France’s odious debt! Haiti’s appeal looked to peoples still harmed by slavery and colonialism, who aim to reset human relations.

Strikingly, my examples illustrate that social movements and community demands *align with* initiatives to formulate emancipatory international principles and guidance on reparations. International remedies now include the repatriation of land, care and social services, truth-telling and, overall, ceasing the harm,³¹ which implies comprehensive transformation. The Reparations Commission of the Caribbean thus refers to international sources, such as the Durban Declaration, while locating its claim in the “global reparations movement.”³²

Reparations for Unbearable Crises

If Caribbean reparations claims for slavery and colonialism enliven Pan-African and anti-colonial movements under international law, the region’s demand for climate justice does as well. Caribbean nations began advancing a reparatory framework to prevent and redress climate change during the 1990s with an alliance of island nations. The Alliance of Small Island States first brought together Caribbean, African, Indian Ocean, and Pacific islanders vulnerable to climate instability. Yet there was already comradery among them owing to histories of slavery and colonialism.

Transatlantic and Pacific slave trades connected islands across a global economy. African islands were ports along the slave route or plantation sites, and Pacific islanders toiled on Australian plantations linked to transnational networks. Islanders collaborated on achieving independence, some participating in the Sixth Pan-African Congress and the New International Economic Order program. Crucially, the first Chair of the Alliance was Robert Van Lierop, a former NAACP lawyer, born in Harlem, of Caribbean parents, who was a galvanizing figure across Pan-African and Pacific liberation struggles.

When Caribbean nations joined forces with island states against climate injustices, they had a Pan-African and anti-colonial ethic. From the outset, however, the First World would not entertain discourses of reparations. Because this crisis requires urgent international solidarity, the Alliance deferred to palatable terms, such as “loss and damage,” for thirty years.

Although “reparations” is unspeakable in the climate regime, the rooting of Caribbean demands in slavery and colonialism resounds. During the 2022 climate negotiations, the Prime Minister of Barbados, Mia Motley,

²⁷ OLÚFĒMI TÁÍWÒ, [RECONSIDERING REPARATIONS](#) (2022).

²⁸ *Id.* at 73–74.

²⁹ E. Tendayi Achiume, *Transnational Racial (In)Justice in Liberal Democratic Empire*, 134 HARV. L. REV. F. 378 (2021).

³⁰ For instance, the University of Glasgow compensated the University of the West Indies for entanglements in slavery.

³¹ [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), *supra* note 20.

³² CARICOM Reparations Commission, [The Global Reparations Movement](#).

delivered a telling speech that evoked ecological *and* colonial reparations. She proclaimed, “[t]his world looks still too much like it did when it was part of an imperialistic empire. . . . Yes, it is time for us to revisit Bretton Woods! . . . The things that are facing us today are all interconnected.”³³

Motley emphasized the human capacity for transformation, referencing the abolition of slavery. She then presented structural changes needed to alleviate climate injustices: drastically reducing emissions, subverting economic hegemony, taxing fossil fuel companies, and redressing harm. These ambitions recall and supplement the reparations being sought in the Caribbean Community’s ten-point plan, which includes debt cancellation.

However, there is much work ahead. Although in 2022 a Third World coalition including the Caribbean pressured First World states into conceding a fund for “loss and damage,” the design will determine its success. The year before, Caribbean nations began organizing with island states to request advisory opinions of the International Court of Justice and the International Tribunal on the Law of the Sea to clarify state responsibility regarding climate change. Meanwhile, demands to prevent further catastrophes remain unanswered, as do the demands of the Reparations Commission.

Conclusion

Whatever the outcomes, reparations claims from the Caribbean are meaningful for refusing hegemonic international law.³⁴ This essay reflected on such meanings of reparations considering the conjuncture that Caribbean peoples face and their “common demand” across international fora. The meanings of reparations include immediate justice for subordinated peoples who claim them, including compensation for harm and structural transformation (dismantling the extractive economy, canceling sovereign debt. . .).³⁵ This is because immediate justice prefigure an emancipatory horizon of reparations that repudiates imperialism in all forms.

The philosopher Sylvia Wynter proposes that today’s “unparalleled catastrophe for our species” necessitates “far-reaching transformation.”³⁶ Unbearable ecological crises overlay unbearable racial crises, arising from entangled historical injustices that compel us to live otherwise. The way out, Wynter counsels, must generate a new knowledge of “we,” a new narrative of “human,” away from the accumulative ways of liberal “*homo oeconomicus*.”³⁷ For reparations to be meaningful under international law, we must therefore ask whether they approach this “horizon of humanity,”³⁸ premised not on exploitation, but on anti-imperial principles.

³³ [Prime Minister of Barbados](#), World Leaders Summit, 27th Conference of the Parties to the UNFCCC (Nov. 7, 2022).

³⁴ [Nesiah](#), *supra* note 26, at 180.

³⁵ [TÁIWÒ](#), *supra* note 27.

³⁶ [Wynter & McKittrick](#), *supra* note 1, at 18, 24.

³⁷ *Id.* at 24.

³⁸ *Id.*