

# Valuing race? Stretched Marxism and the logic of imperialism

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This article attempts to demonstrate the intimate interconnection between value and race in international law. It begins with an exploration of Marxist understandings of imperialism, arguing that they falsely counterpose race and value. It then attempts to reconstruct an account in which the two are understood as mutually constitutive.

## THE HAITIAN INTERVENTION—VALUE, LAW AND RACE?

In his 2008 article ‘Multilateralism as Terror: International Law, Haiti and Imperialism’,<sup>1</sup> China Miéville dissects the 2004 UN intervention in Haiti. In February 2004, President Jean-Bertrand Aristide, leader of the leftwing Fanmi Lavalas movement, was overthrown. Boniface Alexandre, Supreme Court Chief Justice, was appointed interim-President, and requested international support. In response, the Security Council passed Resolution 1529, which expressed deep concern for ‘the deterioration of the political, security and humanitarian situation’. Acting under Chapter VII of the UN Charter, the Security Council authorised a multinational ‘peacekeeping force’ which could ‘take all necessary measures’ to ‘support the constitutional process under way in Haiti’ and ‘maintain public safety and law and order and to protect human rights’. Pursuant to the Resolution, the United Nations Stabilisation Mission in Haiti (MINUSTAH) was created.

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1 C Miéville, ‘Multilateralism as Terror: International Law, Haiti and Imperialism’ 19 *Finnish Yearbook of International Law* (2008) 63.

For the international legal community, Miéville notes, this intervention was unexceptional. In the wake of the 2003 invasion of Iraq, Haiti seemed to be a model of good practice: a multilateral intervention ‘with the full backing of the UN Security Council’.<sup>2</sup> Miéville insists that behind this veneer of legality lies a host of problems. In the ‘officially sanctioned story’ Aristide was ‘yet another brutal tinpot Dictator’ who had been overthrown by a mass movement and voluntarily fled.<sup>3</sup> Miéville argues that ‘[t]his is a risible misrepresentation.’<sup>4</sup> Aristide was expelled from Haiti by the US marines and forced into exile. His crime was not acting as a dictator, but rather being the central figure in Lavalas, ‘the popular movement that . . . represented a significant threat to the power of the (US-supported) Haitian elite’.<sup>5</sup>

For Miéville, the 2004 coup was an attempt by the Haitian elite to topple a popular left-wing figure, with the support of the US, France and Canada.<sup>6</sup> This elite included the very judiciary endorsed by the UN. On this reading, far from ‘restoring order’, the UN intervention *legitimised* the coup, by providing political and military support for the regime established in its wake.<sup>7</sup> During the intervention there were thousands of politically-motivated murders carried out by anti-Lavalas organisations, sheltered by the UN. MINUSTAH itself ‘occupied and attacked pro-Lavalas slums . . . in the name of ‘anti-gang’ activity . . . leading to arbitrary mass arrests and many civilian deaths’.<sup>8</sup> This culminated in MINUSTAH’s killing of Emmanuel Dread Wilme, popular Lavalas militant and alleged ‘gang leader’.

Miéville uses the intervention to illustrate that ‘multilateralism’ is in no way inimical to imperialism. In the Haitian case, he argues, powerful imperialist states were able to use international law to further their own interests. Miéville holds that the motivation for the coup was the fact that the Aristide regime had passed a raft of progressive social legislation, which had strengthened the Haitian working class, in particular increasing the minimum wage in Haiti’s textile sector, threatening the cheap labour that was the lifeblood of North American textile companies. One of the first moves of the post-coup regime

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2 Ibid 73.

3 Ibid 77.

4 Ibid.

5 Ibid.

6 Ibid 78-79.

7 Ibid 70.

8 Ibid 80.

was to cut the minimum wage.<sup>9</sup> In this way, a key function of international law in this instance was to ‘maximize profit’ through propagating ‘instability’ and ‘unleashing’ ‘murderous violence’.<sup>10</sup>

Miéville’s account is a perfect demonstration of the interconnection between value and violence. Since the late 19th century, scholars, militants and activists have sought to make sense of this connection through the concept of ‘imperialism’.<sup>11</sup> Over the past decade, such theorising has made a resurgence in international legal scholarship. It has been self-identified critical and radical scholarship that has been at the forefront of the resurgence. Most prominent have been those influenced by the Marxist tradition, and by postcolonial scholarship under the umbrella of Third World Approaches to International Law (TWAIL).

Miéville’s discussion of Haiti is an exemplary illustration of how Marxists have approached the question of imperialism. Marxists have foregrounded the role of *value* in their accounts of imperialism, arguing that imperialism is above all an economic process linked with the expansion of capitalist social relations. In the case of Haiti, the intervention served both the interests of a particular section of the North American capitalist class—the textile sector—and ‘more generally underscore[ed] the preferred contemporary dynamics of capital-in-general towards outsourcing, privatization and the race to the bottom’.<sup>12</sup>

Whilst Miéville makes a convincing case for the centrality of capitalist accumulation to the 2004 intervention, there is an obvious absence from his account. Haiti’s population is almost entirely black. Those states that Miéville charges with helping to foment the coup—and certainly most of their chief representatives—are white. Despite this, within Miéville’s account there are only two references to racism.<sup>13</sup> In both cases, he argues that the ‘media’ had misrepresented the Haitian situation by mediating its reporting through racist stereotypes. This misrepresentation was vitally important in *legitimizing* the intervention. This raises a question. Was it *just* the media that reproduced racial stereotypes? How was international law involved here?

Miéville notes that the international legal community was largely silent on the intervention; despite the fact that an issue ‘informed by bread-and-butter international law problematics such as intervention, sovereignty, the UN and

9 Ibid 87.

10 Ibid 89.

11 A Colás, *Empire* (Polity Press, 2006).

12 Miéville (2008) 88.

13 Ibid 76, 79.

multilateralism . . . should obviously be of central interest'.<sup>14</sup> Miéville contends that such a silence is due to the fact that the intervention was a 'rebuke' to the international lawyers' commitment to multilateralism. There is something to this. However, this fails to account for why the 'factual' story about Aristide has been so readily accepted. Here, the 'racist reporting' alluded to by Miéville seems key. By reproducing racialised stereotypes about the propensity towards violence of black Haitians, the violence of the intervention was able to be hidden.

Perhaps, more importantly, one of the key manoeuvres of MINUSTAH was to cast political Lavalas activists as 'gang members' and 'armed bandits'. On this basis, UN attacks on these activists could be justified in the name of repressing criminal activity.<sup>15</sup> The attempt to cast political activism or resistance as 'gang activity' or 'terrorism' is a classic racialised trope.<sup>16</sup> As Antony Anghie and Makau wa Mutua have noted, the law on the use of force constitutes certain people as legitimate targets for military intervention by casting them in roles—the 'savage' or the 'uncivilised'—which draw upon and reinforce established, racialised tropes about non-Europeans.<sup>17</sup>

Race, therefore, constitutes a remarkable absence from Miéville's analysis. This article argues that Miéville's analysis is symptomatic of a wider trend within Marxist international legal scholarship. These scholars have tended to present their accounts of imperialism as a process driven by the expansion of capitalist value as opposed to work in the postcolonial tradition that emphasises racial and cultural factors. Consequently, the two most prominent radical strands in thinking about imperialism in international law frequently talk past each other.

This article contests this opposition, through exploring the Marxist tradition itself. It begins by exploring how the Marxist tradition has understood imperialism. It argues that contemporary Marxist accounts have erected an overly rigid division between value and race. It then questions this division, demonstrating that the tradition of Third World Marxism, as represented by Frantz Fanon, provides a 'stretched Marxist' alternative in which race and value are seen as co-constitutive. Finally, the article returns to Haiti, deploying this

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14 Ibid 81.

15 Ibid.

16 I McClaurin, *Black Feminist Anthropology: Theory, Politics, Praxis, and Poetics* (Rutgers UP, 2001) 112.

17 M Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' 42 *Harvard International Law Journal* (2001) 201; A Anghie, 'The War on Terror and Iraq in Historical Perspective' 43 *Osgoode Hall Law Journal* (2005) 45.

framework to illustrate how race and accumulation came together to ultimately produce the 2004 intervention.

## IMPERIALISM AND VALUE

The starting point for Marxist accounts of imperialism is Marx's political economic writings. Although these writings never directly addressed imperialism, they provided a description of the dynamics of capitalist value which have undergirded explanations of its expansion. Marx discussed these matters in his writings on 'primitive accumulation'.<sup>18</sup> Primitive accumulation described the process through which capitalism's preconditions were established. For Marx this was a twofold process, involving the 'historical origins of . . . wage labor, as well as . . . the accumulation of the necessary assets in the hands of the capitalist class to employ them'.<sup>19</sup> The former case concerned the enclosure of common land, which deprived feudal peasants of any way of surviving outside of wage labour.

In the latter case, Marx was concerned with how capitalists gained sufficient material wealth to begin production. Here capitalists were forced to plunder resources from all over the globe. Thus, the dawn of capitalist production was marked by the 'discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the indigenous population of that continent, the beginnings of the conquest and plunder of India, and the conversion of Africa into a preserve for the commercial hunting of blackskins'.<sup>20</sup> Equally, 'the colonies provided a market for the budding manufactures' and 'the treasures captured outside Europe flowed back to the mother country'.<sup>21</sup>

In this way, early European expansion was driven by the imperative to obtain reserves of resources. However, such expansion did not involve fundamentally transforming those non-European territories. The impetus for social transformation was instead to be found in the logic of mature capitalism. In order to compete with their rivals, Marx argued, individual capitalists would constantly have to invest in productive technologies, and then undercut their rivals on price. But this meant that in order to secure the same profit levels, capitalists would need to constantly increase production.<sup>22</sup>

18 K Marx, *Capital: A Critique of Political Economy*, vol. 1 (Penguin, 1990) 873-943.

19 D Harvey, *A Companion to Marx's Capital*, vol. 1 (Verso Books, 2010) 291.

20 Marx (1990) 915.

21 Ibid 918.

22 Ibid 436.

As a result, ‘the need of a constantly expanding market for its products chases the bourgeoisie over the whole surface of the globe’ creating a world market in the process.<sup>23</sup>

Marx’s reflections on the world market, however, suggest a situation in which capitalism ‘diffuses’ evenly out from Europe.<sup>24</sup> This could not fully account for the uneven distribution of wealth between different countries, or the scramble for colonial territory. Writing in the period leading up to the First World War, and in the shadow of the ‘Scramble for Africa’, a number of Marxist theorists of imperialism—amongst them Nikolai Bukharin, Rudolf Hilferding, Vladimir Lenin and Rosa Luxemburg—sought to understand this new terrain. They argued that as capitalism matured it became increasingly prone to crisis. In particular, it was subject to falling profit rates,<sup>25</sup> the production of too much capital to be invested domestically (overaccumulation),<sup>26</sup> and a lack of effective demand for its products owing to the impoverishment of the domestic working class.<sup>27</sup>

All of these tendencies added impetus for capitalists to expand beyond their own national borders. Since less advanced capitalist countries have lower levels of labour productivity, investing capital abroad, either in the form of loans or in the form of directly building up businesses, generates higher profit rates.<sup>28</sup> Labour in less advanced capitalist countries can also be exploited at higher rates and be subject to greater discipline or coercion.<sup>29</sup> On this basis, mature capitalism was no longer simply premised on the export of commodities to the world market, but the export of capital.<sup>30</sup> This export of capital also required the export of *capitalism*. In order to expand, foreign labour would need to be ‘freed’ by breaking up pre-capitalist social relations. Moreover, given the relative permanence of invested capital, these investments required

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23 K Marx & F Engels, ‘Manifesto of the Communist Party’, in R Tucker (ed.), *The Marx-Engels Reader* (WW Norton & Company, 1978) 469, 476.

24 JM Blaut, *Geographical Diffusionism and Eurocentric History* (Guilford Press, 1993) 8-26.

25 K Marx, *Capital: A Critique of Political Economy*, vol. 3 (Penguin Classics, 1993) 317-78.

26 R Luxemburg, *The Accumulation of Capital* (Routledge, 2003) 11.

27 A Shaikh, ‘An Introduction to the History of Crisis Theories’, in Union for Radical Political Economics (ed.) *U.S. Capitalism in Crisis* (Economics Education Project of the Union for Radical Political Economics, 1978) 219.

28 VI Lenin, *Imperialism, the Highest Stage of Capitalism: A Popular Outline* (Foreign Languages Press, 1970) 97; NI Bukharin, *Imperialism and World Economy* (Merlin Press, 1972) 98-100.

29 Luxemburg (2003) 343-46.

30 Lenin (1972) 73-76.

‘protection’, in the form of direct colonisation, or through other forms of control.<sup>31</sup> All of this required the coercive power of the capitalist state.

For the ‘classical’ theorists of imperialism, then, capitalism’s endless drive to expand required that pre-capitalist societies be forced to submit to its logic. At the same time, the wealth that was realised in these territories was only reinvested to facilitate *greater* profits, with the bulk of the profits flowing back to Europe. For Bukharin and Lenin, this created an ‘international division of labour’ characterised by ‘a few consolidated, organised economic bodies (“the great civilised powers”) . . . and a periphery of undeveloped countries with a semi-agrarian or agrarian system’.<sup>32</sup> Even after capitalist social relations were fully implanted into this ‘periphery of undeveloped countries’, the advanced powers intervened to maintain the conditions of profitability.

These theorists emphasised both the territorial nature of imperialism and the struggle between capitalist states for these territories. At the close of the Second World War, and with the wave of decolonisation, these emphases gave way. In the mid-to-late 20th century, Marxists began to focus more closely upon the effect that imperialism had on the dominated territories themselves. Under the rubric of ‘neo-colonialism’<sup>33</sup> these Marxists argued that the international division of labour had systematically underdeveloped the global periphery.<sup>34</sup> This was so both in terms of its legacy—because European powers had focused on narrow extractive industries<sup>35</sup>—and because the structure of the world economy continued to transfer value away from peripheral states.<sup>36</sup> Contemporary imperialism is thus characterised primarily through forms of economic dependence, with political and military interventions focused on combating threats to the imperialist system and creating the conditions for continued profitability.

In the Marxist tradition, then, one can find a very specific understanding of imperialism, rooted in the nature of value under capitalism. The logic of competition compels capitalists to constantly expand. However, this soon comes up against a number of ‘limits’. Imperialism is the attempt to come to terms with these limits, operating as, what David Harvey calls, a ‘spatial

31 Ibid 101.

32 Bukharin (1972) 74.

33 K Nkrumah, *Neo-Colonialism: The Last Stage of Imperialism* (Panaf, 1971).

34 S Amin, *Unequal Development: An Essay on the Social Formations of Peripheral Capitalism* (Monthly Review Press, 1976); P Baran, *The Political Economy of Growth* (Monthly Review Press, 1962); W Rodney, *How Europe Underdeveloped Africa* (Howard University Press, 1982).

35 F Fanon, *The Wretched of the Earth* (Grove Press, 1963) 148–56.

36 S Amin, *Imperialism and Unequal Development* (Monthly Review Press, 1977) 108.

fix' to the contradictions of capitalist accumulation.<sup>37</sup> Imperialism is thus a 'historical solution worked out at the "political" level in response to the fundamental contradictions of the corresponding globally dominant mode of production'.<sup>38</sup>

## IMPERIALISM'S INTERNATIONAL LAW

Although there are references to international law in the major Marxist texts on imperialism, they tend to be relatively slim, with law seen as a kind of adjunct to the inevitable unfolding of an economic logic.<sup>39</sup> Nonetheless, this understanding of imperialism has been central to the attempts of Marxist jurists to systematically analyse international law. Of these jurists, the most famous and influential has been Evgeny Pashukanis. Pashukanis attempted to put forward a 'general theory' of law, concerned with the 'basic... most abstract juridic concepts' which would be 'equally applicable to any branch of law'.<sup>40</sup> Pashukanis argued that it was only possible to distinguish law from rules in general if law was understood as a *specific* social relationship. This firstly required demarcating the specific features of the legal form, and secondly analysing the historical and material conditions under which this form came about.<sup>41</sup> Pashukanis located these conditions within the phenomenon of commodity exchange. In every exchange of commodities, each owner must recognise the other as a mutual proprietor with an equal right to ownership.<sup>42</sup> When disputes arise within commodity exchanges they must be regulated and resolved, but such regulation has to recognise and uphold the formal, abstract equality of the individuals involved. This is law: a form of social regulation between abstract, formally equal subjects.<sup>43</sup>

Thus, for Pashukanis, there is a structural link between law and capitalism. Prior to capitalism, commodity exchange did exist, but it was scattered. Correspondingly, law existed at the margins of social life, intertwined with

37 D Harvey, *The Limits to Capital* (Verso, 1999) 413-39.

38 A Rasulov, 'Writing About Empire: Remarks on the Logic of a Discourse' 23 *Leiden Journal of International Law* 23 (2010) 449, 469.

39 VI Lenin, 'A Caricature of Marxism and Imperialist Economism', in MS Levin (ed.), *V.I. Lenin, Collected Works, vol. 23* (Progress Publishers, 1964) 28, 48.

40 EB Pashukanis, 'The General Theory of Law and Marxism', in P Beirne & R Sharlet (eds), *Pashukanis, Selected Writings on Marxism and Law* (Academic Press, 1980) 37, 39.

41 Ibid 58.

42 Marx (1990) 178.

43 Pashukanis, 'General Theory' (1980) 67.



other forms of regulation.<sup>44</sup> It was only with the rise and spread of capitalism that law assumed a central role in society. However, Pashukanis did not simply state that ‘more exchange’ leads to ‘more law’. Capitalism is not simply an ‘exchange society’ but rather one built upon the exploitation of labour power. Under capitalism proper, everyone becomes a commodity owner because even members of the working class own their labour power.

With ‘the full development of bourgeois relations’, value becomes increasingly abstract and less concentrated in specific activities. In particular, labour becomes associated with ‘socially useful labour in general’.<sup>45</sup> In this development, exchange value becomes ‘the embodiment of social production relationships which stand above the individual’.<sup>46</sup> This increasing abstraction sets the material conditions for the fully-fledged emergence of the legal form. The legal subject emerges as an entirely abstract category, divorced from particular legal rights, enabling ‘man to be transformed from a zoological being into an abstract and impersonal subject of law, into a juridic person’.<sup>47</sup> This legal subject is ‘the abstract commodity owner elevated to the heavens’.<sup>48</sup>

The formal, abstract equality that Pashukanis ascribed to the legal form very closely resembles one of the key elements of international law: sovereignty. Pashukanis argued that ‘sovereign states co-exist and are counterposed to one another in exactly the same way as are individual property owners with equal rights’,<sup>49</sup> since the territory of a state is functionally its private property and states engage directly in exchange.<sup>50</sup> Since capitalism was only generalised through imperialism, international law is also intimately connected with imperialism. Following Lenin, Pashukanis argued it was necessary to understand international law as ‘*the legal form of the struggle of the capitalist states among themselves for domination over the rest of the world*’.<sup>51</sup> Imperialist states are able to act through international law, using it to articulate their interests, with international law serving to ‘concretize’ economic and political relationships.<sup>52</sup>

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44 Ibid 80-81.

45 Ibid 81.

46 Ibid 77.

47 Ibid.

48 Ibid 81.

49 EB Pashukanis, ‘International Law’, in Beirne & Sharlet (eds) (1980) 168, 176.

50 Ibid.

51 Ibid 169.

52 Ibid 181.

In this way, international law both expresses inter-imperialist rivalries and enables advanced capitalist states to dominate the global periphery. Pashukanis noted that the strictures applied to protect ‘bourgeois property’ in Europe did not apply to colonial wars, where local populations were liquidated ‘without regard for age and sex’.<sup>53</sup> The class structure of international law was thus revealed in the concept of ‘civilisation’, which allowed imperialist states to relate with each other, while the rest of the world was ‘considered as a simple object of their completed transactions’.<sup>54</sup>

For Pashukanis, this imperialism was wholly compatible with formal legal equality, since ‘in principle . . . states have equal rights . . . in reality they are unequal in their significance and their power’.<sup>55</sup> It is this insight that Miéville has used to explore the relationship between imperialism and international law. Miéville argues that violence and commodity exchange are intrinsically inter-linked, since private ownership necessarily ‘implies the exclusion of others’.<sup>56</sup> One can only ‘own’ something insofar as one is able to stop others from taking it, or seek redress if they do. Logically, therefore, coercion is implied ‘*in the very nature of commodity exchange and production*’.<sup>57</sup> This coercion is law, since the violence that secures ownership is simultaneously the vindication of legal rights.<sup>58</sup> Domestically, this violence is frequently, although not exclusively, exercised by the state. However, at the level of international law ‘[t]here is no state to act as final arbiter of competing claims’ and as a result ‘[t]he means of violence remains in the hands of the very parties disagreeing over the interpretation of law’.<sup>59</sup> In the uneven system of imperialism, powerful imperialist states are able to resolve legal disputes to their advantage.<sup>60</sup> Thus, for Miéville, ‘without imperialism there could be no international law’, since it provides the violence that makes international law a reality.<sup>61</sup>

According to the commodity-form theory, therefore, there are deep structural connections between international law and value. On the ‘ontological

53 Ibid 172.

54 Ibid.

55 Ibid 178.

56 C Miéville, ‘The Commodity-Form Theory of International Law: An Introduction’ 17 *Leiden Journal of International Law* (2004) 271, 287.

57 C Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Brill, 2005) 127.

58 S Marks, ‘International Judicial Activism and the Commodity-Form Theory of International Law’ 18 *European Journal of International Law* (2007) 199, 204.

59 Miéville (2005) 292.

60 Ibid.

61 Ibid 293.

level', the international legal *form* is systematically generated by commodity exchange. Owing to this close connection, the *content* of international law is provided by the social relations of imperialism. Although the precise explanation of the commodity-form theory is not shared by all Marxist theorists of international law, they have built upon its basic insights.

BS Chimni holds that 'law and legal relations are reflective of the social relations which constitute a particular society'.<sup>62</sup> For Chimni, the international division of labour means that certain states and classes possess different levels of social power.<sup>63</sup> Dominant states and classes are able to pursue their interests through international law and international institutions.<sup>64</sup> As a result, Chimni argues, international law is 'a system of principles and norms arrived at primarily between states, and secondarily through a network of non-state entities, embodying particular class interests'.<sup>65</sup> These dominant class and state forces are able to use international law to pursue their projects of capitalist accumulation.<sup>66</sup>

Marxists have also understood international law as an ideological accompaniment to imperialism. Susan Marks, in particular, has argued that international law serves as ideology insofar as it establishes and sustains relations of domination.<sup>67</sup> She argues, for example, that 'democracy promotion' in international law acts as a form intervention into peripheral societies, designed to influence their behaviour and to contain any popular radicalism associated with social breakdown. The 'low intensity democracy' promoted by international law 'forestalls far-reaching structural change in peripheral and semi-peripheral regions' and so protects 'relatively low wage, low profit, less monopolized economic activities' as well 'expanding the reach of global

62 BS Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (Sage Publications, 1993) 218.

63 BS Chimni, 'An Outline of a Marxist Course on Public International Law' 17 *Leiden Journal of International Law* (2004) 1, 5.

64 BS Chimni, 'Third World Approaches to International Law: A Manifesto' 8 *International Community Law Review* (2006) 3, 26.

65 BS Chimni, 'Prolegomena to a Class Approach to International Law' 21 *European Journal of International Law* (2010) 57, 74.

66 As a Marxist Chimni believes that the class *struggle* is the driving factor, and that oppressed classes can also win legal victories. *Ibid* 77. He also stresses that capitalist accumulation is not the *only* factor in the determination of international law, which would 'represent crude economic determinism'. Chimni (2004) 7.

67 S Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (Oxford UP, 2003) 10.

markets and eliminating the remaining barriers to the transnationalization of capital'.<sup>68</sup>

Although there are a number of different possible ideological manoeuvres, contemporary theorists of ideology have stressed the role that international law plays in separating the *effects* of imperialism from imperialism itself. Tor Krever has analysed how international criminal law 'abstracts individuals from a concrete context' and so 'portray[s] the incidents at its centre as resulting from "rotten apples" and their bad behaviour'.<sup>69</sup> Susan Marks has argued similarly in respect of the discourse of human rights. The effect of this is to divorce poverty and violence from imperialism's *logic*, treating them instead as aberrations, which are pathological to capitalism's normal function.<sup>70</sup> International law's silence about 'systemic logics' is thus a 'silence about capitalism'.<sup>71</sup>

## FROM PRIMITIVE ACCUMULATION TO NEO-COLONIALISM

For contemporary Marxist scholars, then, international law serves as an ideological and structural field through which the social relations of imperialism are articulated.<sup>72</sup> As such, they have mapped international legal transformations onto capitalism's changing configurations.

As Chimni notes, the origin of international law 'is inextricably bound up with colonialism'.<sup>73</sup> The 'discovery' of gold in the Americas in the late-1400s provided the backdrop for the first articulation of a specifically 'international' law.<sup>74</sup> At the time, the European legal order was a feudal one, based on the *respublica Christiana*, with individual monarchs deriving their power from the Pope.<sup>75</sup> In 1493, Pope Alexander VI passed two Papal Bulls, granting the Spanish monarchy exclusive jurisdiction over the West Indies.<sup>76</sup> Feudal law

68 Ibid 57.

69 T Krever, 'International Criminal Law: An Ideology Critique' 26 *Leiden Journal of International Law* (2013) 701, 721.

70 S Marks, 'Exploitation as an International Legal Concept', in S Marks (ed.), *International Law on the Left: Re-Examining Marxist Legacies* (Cambridge UP, 2008) 281, 300.

71 Ibid 302.

72 A Rasulov, 'The Nameless Rapture of the Struggle: Towards a Marxist Class-Theoretic Approach to International Law' 19 *The Finnish Yearbook of International Law* (2008) 243.

73 Chimni (2004) 7.

74 Miéville (2005) 178.

75 Ibid 173.

76 D Castro, *Another Face of Empire: Bartolome De Las Casas, Indigenous Rights, and Ecclesiastical Imperialism* (Duke UP, 2007) 23.

was structured around the idea that ‘various polities were defined either as enemies or members of [the] *respublica [Christiana]*’.<sup>77</sup> Yet, these categories did not self-evidently apply to the natives. Thus, although the Spanish were given control over the West Indies, it was uncertain what relationship they would have with the native populations, triggering a debate among Spanish jurists.

The crucial figure in this regard was Vitoria.<sup>78</sup> Vitoria argued that, rather than the divine law of the Pope, it was *human* law which would govern who owned the New World. For Vitoria, this human law was represented by the ‘law of nations’ (*jus gentium*), the rules of which were ascertained by human reason. Crucially, Vitoria classed the natives as possessing reason, meaning that they could not be arbitrarily deprived of their property.<sup>79</sup> However, the natives were also *governed* by this *jus gentium*, the contents of which included the right to trade and the right to evangelise. Any prevention of this right could be met with violent force, which would represent a ‘just war’.

Miéville argues that Vitoria’s argument was determined by Spain’s colonial strategy, which ‘revolved around the brutal extraction of goods and bullion from America’.<sup>80</sup> Accordingly, as Neocleous states, ‘the question of *just war*, is shot through with the categories of the war on the commons and the language of enclosures’.<sup>81</sup> The early elaboration of international law was thus driven by the process of primitive accumulation, which involved simple ‘colonial plunder’ without any fundamental transformation of native societies.<sup>82</sup> Consequently, as Chimni has noted, ‘the nature of international economic relations in the period... did not require a doctrine of inequality of states to be posited’,<sup>83</sup> international law simply had to legitimate extraction.

In the mid-1600s, the rise of maritime-mercantile forces—specifically the Dutch and the English—led to a new configuration in the world economy.<sup>84</sup> This mercantilist system was organised around two key legal innovations: Maritime protectionism and East India Companies. In the former case,

77 Miéville (2005) 173.

78 Ibid.

79 A Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge UP, 2005) 20.

80 Miéville (2005) 178.

81 M Neocleous, ‘International Law as Primitive Accumulation; Or, the Secret of Systematic Colonization’ 23 *European Journal of International Law* (2012) 941, 957.

82 Miéville (2005) 207.

83 Chimni (1993) 227.

84 Ibid 224–25.

European mercantilist states established trade monopolies in their colonies.<sup>85</sup> These monopolies were not coupled with formal assertions of control over the colonies. Both the English and the Dutch mediated their rule through ‘East India Companies’. These were state-monopoly companies, imbued with a degree of international legal personality.<sup>86</sup> For Miéville, this configuration of European capitalism simply ‘did not necessitate a set of complex international legal structures’.<sup>87</sup> Although capitalist processes had advanced *within* England and Holland, on the international level they were still organised around trade and extraction: asserting control would represent an unnecessary burden.

However, all this changed with Britain’s industrial revolution in the 1760s which ‘rendered the mercantile system . . . anomalous, and underlined the need for large colonial monopoly markets’ to absorb the ‘flood of products pouring out of the new factories’.<sup>88</sup> The colonies, previously the source of simple tribute, needed to be transformed into markets for industrial manufacture, meaning that Britain needed to take greater control of its colonies.<sup>89</sup> Chimni argues that this need for social transformation created a necessity for the legal transformation of colonies into ‘objects’.<sup>90</sup>

These developments deepened in the mid-1800s, with the birth of imperialism proper. The scramble for colonies occasioned by European capitalist development created a new set of legal problems. For Miéville, this period was initially one of ‘ad-hoc legality’.<sup>91</sup> European capitalist states used various legal instruments to acquire footholds in the non-European world. They made treaties with tribal chiefs, established protectorates, and concluded unequal treaties with those they could not subjugate by force. The ad hoc nature of these developments put them at odds with natural law theory. Miéville argues that the legal positivists—who stressed state practice as the source of international law—provided ‘the tools necessary’ to legitimate this ad hoc practice.<sup>92</sup>

By emphasising the centrality of state will, the international legal positivists—James Lorimer, MF Lindley, Henry Wheaton and John Westlake—facilitated the new expansion of European capitalism. However, their solution

85 Ibid 225; Miéville (2005) 206-08.

86 G Baars, ‘Law(yers) Congealing Capitalism: On the (Im)possibility of Restraining Business in Conflict through International Criminal Law’, PhD Thesis (2012) University College London, 89.

87 Miéville (2005) 232.

88 Chimni (1993) 228.

89 Miéville (2005) 235.

90 Chimni (1993) 230.

91 Miéville (2005) 240.

92 Ibid 242.

also raised a dilemma. Insofar as European states concluded legal agreements with non-European societies, they appeared to endorse the idea that non-European societies possessed legal personality. This clashed with the need to subordinate and transform these societies. Accordingly, the chief theoretical dilemma of international legal positivism was ‘how to engage in international intercourse without spreading the bacillus of sovereignty’.<sup>93</sup> To do this, they engaged in the language of ‘civilisation’.<sup>94</sup>

In the positivist schema, international law was generated by and governed ‘civilised’ societies, who formed a Family of Nations. Only insofar as a territory adopted European-inflected social norms could it become a member of the Family of Nations and so be entitled to the protection of international law.<sup>95</sup> This operated as a continuum: ‘semi-civilised’ societies would be able to engage in limited legal contact, without being fully protected by the law, and ‘barbarous’ or ‘uncivilised’ societies would have no legal personality at all. Miéville argues that while these doctrines did not ‘finally answer the question of what legal capacity’ flowed from imperial treaties, they did ‘formalise...ad-hoc responses to the question’.<sup>96</sup> This, for Miéville, was precisely what they were designed for, to legitimate the particular practices of capitalist expansion.

The logic of this categorisation was such that many non-European societies ‘voluntarily’ sought to conform to the standard of civilisation. The Ottoman Empire, Japan and Siam were able to gain admission into the ‘Family of Nations’. In order to do this, they had ‘to guarantee basic rights—relating to dignity, property, freedom of travel, commerce and religion’. These rights all facilitated the movement of European capital.<sup>97</sup> Chimni thus reads the doctrine of civilisation as crucially linked to the consolidation of imperialist capitalism. It was able to ‘accommodate the rise of non-European great powers’ and force them to adopt capitalist social relations as well as providing ‘the ideological justification for declaring the barbarous and semi-civilised colonial world outside the pale of operation of the law of nations’.<sup>98</sup>

93 Ibid 243.

94 GW Gong, *The Standard of Civilization in International Society* (Oxford UP, 1984) 14-15.

95 M Koskenniemi, *The Gentle Civilizer of Nations the Rise and Fall of International Law, 1870-1960* (Cambridge UP, 2002) 86-88.

96 Miéville (2005) 245.

97 Anghie (2005) 86.

98 Chimni (1993) 233.

Of course, such a situation did not last. The anti-colonial movement, backed by the USSR, was able to turn international law against colonialism,<sup>99</sup> with the UN General Assembly declaring colonialism contrary to the Charter. However, for Marxists, imperialism is not exhausted by formal colonialism. Instead, '[f]aced with the collapse of the colonial system, monopoly capital devised new means to subordinate the economies of newly independent states.'<sup>100</sup>

Miéville argues that these 20th century developments were anticipated by the US treatment of Latin America. He notes that the US did not oppose the independent states that emerged from the Liberation Wars of the 18th and 19th centuries. Rather, in 1823 Secretary of State James Monroe adopted the 'Monroe Doctrine', which stated that the US would attempt to exclude European influence in the region. This was *not* coupled with an assertion of juridical control. Instead the US pioneered an 'imperialism of recognition'—it would only recognise those states with 'democratic' constitutions.<sup>101</sup> At the same time, the US was able to use its considerable economic and political power to influence policies of the countries in its 'backyard'. This was coupled with military interventions into recalcitrant states. In this way, Miéville argues, Latin America represented a kind of laboratory which set the scene for post-colonial imperialism.<sup>102</sup>

Marxist scholars have identified three key axes through which international law has continued to mediate the expansion of capitalist accumulation in the face of colonial independence. The first of these is international economic law. Chimni maintains that since the 1980s, capitalism has witnessed the birth of a 'global imperialism'. What is distinctive about this new configuration is that it is driven by the interests of an emergent *transnational* capitalist class composed of the owners and managers of transnational corporations and financial institutions, whose productive and investment activities take place across national borders.<sup>103</sup> He argues that this class aims to create 'a global economic space in which uniform global standards and norms are to be implemented by all states' so as to facilitate the global accumulation of capital.<sup>104</sup>

99 B Bowring, *Degradation of the International Legal Order: The Rehabilitation of Law and the Possibility of Politics* (Routledge-Cavendish, 2008) 30-38.

100 Chimni (1993) 236.

101 Miéville (2005) 239.

102 Ibid 238.

103 BS Chimni, 'International Institutions Today: An Imperial Global State in the Making' 15 *European Journal of International Law* (2004) 1, 8.

104 Chimni (2010) 71.



This transnational capitalist class has brought together a network of international institutions which constitute a ‘nascent global state’.<sup>105</sup>

The chief institutions responsible for implementing this programme are the IMF, the World Bank and the WTO. A number of Marxist scholars, both within and without the international legal discipline, have drawn attention to the key role that the IMF and World Bank played in spreading neoliberal economic policies throughout the Global South through the use of conditionalities.<sup>106</sup> In this model, debt-stricken countries in the Global South receive financial aid on condition that they reform their economies and open themselves up to global capital. As Krever has demonstrated, this also operates at a more subtle level, with the World Bank’s ‘legal reform’ and ‘good governance’ packages reproducing neoliberal ideology.<sup>107</sup> The WTO, with its emphasis on breaking down ‘barriers’ to trade and the creation of a global intellectual property rights regime, has also been crucial in this process.<sup>108</sup>

The second axis for modern imperialism has been military intervention.<sup>109</sup> As detailed above, Miéville has demonstrated the connection between military interventions and capital accumulation. Similarly, Neocleous reads the 2003 Iraq war as fundamentally structured around questions of primitive accumulation. He notes that immediately after the invasion a new Constitution was passed which committed Iraq to a programme of privatisation.<sup>110</sup> Chimni has argued that contemporary military interventions have been mounted ‘to quell the possibility of any challenge’ to the interests of powerful states.<sup>111</sup> He argues that humanitarian intervention and the war on terror in particular have served the role of legitimising interventions of the ‘Western power bloc’ (acting in the interests of the transnational capitalist class) ‘against third world states’.<sup>112</sup>

Humanitarianism has not simply undergirded military intervention, it has also served as a powerful axis for imperialism in its own right. As Marks has

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105 Chimni (2004) 2.

106 D Harvey, *A Brief History of Neoliberalism* (Oxford UP, 2005) 29; V Prashad, *The Poorer Nations: A Possible History of the Global South* (Verso, 2012) 50-57.

107 T Krever, ‘Quantifying Law: Legal Indicator Projects and the Reproduction of Neoliberal Common Sense’ 34 *Third World Quarterly* (2013) 131.

108 BS Chimni, ‘The World Trade Organization, Democracy and Development: A View from the South’ 40 *Journal of World Trade* (2006) 5.

109 R Knox, ‘Civilizing Interventions? Race, War and International Law’ 26 *Cambridge Review of International Affairs* (2013) 111.

110 Neocleous (2012) 960.

111 Chimni (2006) 19.

112 Chimni (2004) 14.

demonstrated, the language of human rights has enabled a series of *non-military* interventions within peripheral societies to transform them in ways more amenable to capitalist accumulation.<sup>113</sup> This process has been accelerated by the development of international criminal law, which has ‘operated to reproduce one-sided narratives of complex conflicts, demonizing some perpetrators as *hostis humani generis*, while legitimating military interventions in the name of humanity’.<sup>114</sup> The language of humanitarianism has also proved a powerful tool in co-opting and recasting resistance to imperialism in a language which effaces its root causes.<sup>115</sup>

## VALUE VS. RACE?

The above sketch was necessarily brief, missing out on much of the fine texture of Marxist historical descriptions, as well as some important historical periods. However, what it demonstrates is how contemporary Marxist scholars have understood the relationship between international law and imperialism. Essentially, they have examined different international legal arguments through the periodisation of capital’s expansion. As the character of this expansion has deepened, so too has international law’s reach. Once again, although these accounts demonstrate the importance of capitalist expansion to international law, race remains a glaring absence.

Yet, throughout the history of imperialism race is very prominent. Most obviously, imperialism has largely been characterised by white, European states expanding into and subordinating non-white, non-European societies. Although some rising powers are non-white and non-European, the contemporary division of labour has largely mirrored these historical patterns. These brute facts would seem to merit some mention in any account of imperialism.

These brute facts have also had distinct international legal implications. As the rest of this article will argue, many of the key moments described by Marxists as driven by capitalist expansion were also steeped in racism. Spain’s initial conquest of the Indies were premised—in part—upon the intrinsic superiority of Christian civilisation, as were other instances of colonial dispossession. All of the major European mercantilist powers (and the US) made huge profits through the slave trade and the sale of slave-produced

113 Marks (2003).

114 T Krever, ‘Dispensing Global Justice’ 85 *New Left Review* (2014) 67.

115 S Marks, ‘Human Rights and the Bottom Billion’ 1 *European Human Rights Law Review* (2009) 37; S Marks, ‘Human Rights and Root Causes’ 74 *The Modern Law Review* (2011) 57; Krever (2013).

goods, as permitted by international law.<sup>116</sup> Ideas of racial inferiority clearly also underlay the legal positivists' invocation of civilisation, particularly in their assumption that less-developed European polities were evidently civilised, whereas many territorially-bounded African Kingdoms were counted as uncivilised.<sup>117</sup> These ideas carried through into notions of the duty of European states to 'civilise' the rest of the world, as embodied in Article 6 of the General Act of the Berlin Conference (1885).<sup>118</sup> Even the early experiments in limited self-determination—the League of Nations Mandates and the UN Trust Territories—continued to embed notions of Europe's civilisational superiority.<sup>119</sup>

The victories of the anti-colonial movement made such *explicit* racism impossible. Yet, the three axes of modern imperialism described above all bear traces of racism. The prime target of international financial institutions remains peripheral countries, with these institutions drawing on racist stereotypes: branding their targets as 'lazy' and 'corrupt'.<sup>120</sup> Military interventions reproduce assumptions about the 'savagery' of non-European societies and their propensity towards violence.<sup>121</sup> 'Humanitarianism' is frequently racially coded. For example, many have remarked that the international criminal court has focused exclusively on African countries.<sup>122</sup> While Krever and Marks are surely correct to stress that the languages of international criminal law and international human rights law displace 'root causes' to focus on 'monsters', we might note that the ability to portray certain individuals as 'monsters' often relies on racial stereotypes about the propensity of black people towards violence.<sup>123</sup>

116 UO Umozurike, 'The African Slave Trade and the Attitudes of International Law Towards It' 16 *Howard Law Journal* (1971) 334.

117 M Mutua, 'Why Redraw the Map of Africa: A Moral and Legal Inquiry' 16 *Michigan Journal of International Law* (1995) 1113, 1125.

118 'General Act of the Conference of Berlin Concerning the Congo' 3 *American Journal of International Law Supplement: Official Documents* (1909) 7.

119 Anghie (2005) 115-96.

120 JT Gathii, 'Representations of Africa in Good Governance Discourse: Policing and Containing Dissidence to Neo-Liberalism' 18 *Third World Legal Studies* (1998) 65.

121 Mutua (2001).

122 Krever reflects, to some degree, on the racialised nature of ICC prosecutions (see Krever (2014) 94-95), however, he does not connect this to his wider analysis of international criminal law's ideological functions.

123 Marks argues in respect of Haiti that human rights law tends to treat Haiti's problems 'as a local dysfunction', but surely this also recapitulates racial stereotypes about black self-governance. See S Marks, 'Human Rights in Disastrous Times', in J Crawford & M Koskeniemi (eds), *The Cambridge Companion to International Law* (Cambridge UP, 2012) 309, 324.

In general, these issues are simply absent from much contemporary Marxist scholarship. In those instances where Marxist scholars do mention issues of race or racism, they tend to be understood as counterposed to processes of capitalist accumulation. Grietje Baars, for instance, insists that the language of the civilising mission was rhetoric used to ‘cover (up) the economic motivations of colonialism’. Instead, she argues, we should speak of a ‘capitalising mission’.<sup>124</sup> ‘Civilisation’ was a re-branding exercise, but the process ‘forever remain[ed] truly a “capitalising mission”’.<sup>125</sup> Similarly, Neocleous has argued that Anghie’s work ‘stars savages and races, but primitive accumulation fails to appear’.<sup>126</sup> He goes so far as to state that colonial confrontations were not concerned with ‘racial supremacy over “the other”’ but ‘with the violent enclosure of lands and resources for capital accumulation’.<sup>127</sup>

In contemporary Marxist scholarship, therefore, international law is seen as mediating the expansion of capitalist economic processes. When issues of race are mentioned they are seen as *competing* with economic explanations. This is most clearly seen in Miéville’s reflections on the language of ‘civilisation’. In his ‘counterintuitive materialist analysis’<sup>128</sup> Miéville argues that the real driving force for the development of the language of civilisation was the necessity of trading with the ‘semi-civilising’ powers. For him, civilisation arises in order to make sense of this situation, as an ad hoc rationalisation for the expansion of capitalism. Explicitly, he argues that civilisation must not be understood as a ‘discursive strategy for “othering”’.<sup>129</sup> He specifically bemoans Anghie’s invocation of the importance of ‘the other’ for the development of international law as a ‘modern-day banality’.<sup>130</sup>

In this respect, it is telling that both Miéville and Neocleous invoke Anghie’s work as a foil to their own explanations. Anghie is one of the pioneers of TWAIL scholarship, which has emphasised issues of race and culture as the driving force behind international law’s relationship to imperialism.<sup>131</sup> Viewed in this way, race and value are competing explanations. *Either* imperialism is

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124 G Baars, ‘From the Dutch East India Company to the Corporate Bill of Rights: Corporations and International Law’, in U Mattei & JD Haskell (eds), *Research Handbook on Political Economy and Law* (Edward Elgar, 2015) 276.

125 Baars (2012) 99.

126 Neocleous (2012) 944.

127 Ibid 954.

128 Miéville (2005) 243.

129 Ibid 248.

130 Ibid 247, note 101.

131 Anghie (2005) 6.

about value, and international law can be understood as articulating the requirements of capital accumulation, *or* imperialism is a cultural process of ‘othering’, with international law serving to manage ‘cultural difference’. This counterposing creates a degree of mutual antipathy between Marxist and TWAIL scholarship.<sup>132</sup>

Given this, it is fitting that the one figure who, in part, escapes from this problem is Chimni, who self-identifies as both a Marxist and a TWAIL scholar. Chimni argues that ‘[t]he category of “class” is not to be viewed in opposition to that of gender and race’. Instead class is ‘a complex unity which encompasses the gender and race divides’, which are ‘neither simply subsumed under the category of class nor are mere additions to it’.<sup>133</sup> He notes that insofar as international law is rooted in imperialism, ‘its racial past continues to haunt its present’.<sup>134</sup> Although such a perspective has not animated all of Chimni’s work, he does offer an extremely suggestive way forward. Crucial here is his argument—in respect of gender—that ‘in many respects colonialism and patriarchy represented two sides of the same coin’.<sup>135</sup> Here we can find the seeds of an account in which race and value are not opposed explanatory accounts, but are conceived of as part of the same process. This was the argument of the radical anti-colonial Marxists in the Third World, to whom this article now turns.

### THIRD WORLD MARXISMS

In part, the counterposition between race and value described above reflects an inattentiveness to the Marxist tradition itself. The Marxist tradition has a complex relationship with the anti-colonial and Third World movements. The Bolsheviks were the first political movement to put systematic opposition to imperialism at the heart of their political programme. The practical effects of this were important. During the interwar period, the ‘Third International brought emissaries from throughout the colonies, who now formed a single, unified front meeting European intellectuals on a formally equal footing.’<sup>136</sup>

132 JD Haskell, ‘TRAIL-Ing TWAIL: Arguments and Blind Spots in Third World Approaches to International Law’ 27 *Canadian Journal of Law & Jurisprudence* (2014) 383, 409-10.

133 Chimni (2010) 63.

134 *Ibid* 75.

135 *Ibid*.

136 T Brennan, ‘Postcolonial Studies between the European Wars: An Intellectual History’, in C Bartolovich & N Lazarus (eds), *Marxism, Modernity and Postcolonial Studies* (Cambridge UP, 2002) 185, 193.

This was central to the emergence of a ‘full-blown *culture* of anti-imperialism’.<sup>137</sup> This alliance continued into the Cold War, with the USSR providing support to the national liberation movements.<sup>138</sup>

At the same time, Marxist analysis became important in the national liberation movements themselves. The Chinese and Cuban Revolutions were by Communists or figures sympathetic to Communism. The Algerian Front de Libération Nationale (FLN) was strongly sympathetic to Marxism, consciously borrowing from the ‘era’s Marxist-Leninist tropes’.<sup>139</sup> Similarly, the struggle against Portuguese colonialism was led by organisations rooted in the Marxist tradition.<sup>140</sup> These movements engaged in various forms of solidarity, and came together in conferences and organisations with the aim of combining anti-colonialism with radical social transformation. Theoretically, these movements held to an understanding of imperialism rooted in the Marxist tradition. At the same time, however, they were confronted with a very different set of problems from metropolitan Marxists. In the words of Aimé Césaire, these Third World Marxists wanted ‘Marxism and communism be placed in the service of black peoples, and not black peoples in the service of Marxism and communism’, meaning that it had to be ‘rethought by us, rethought for us, converted to us’.<sup>141</sup>

As such, the Third World Marxists had to grapple with several distinct issues. Firstly, they were less concerned with the rivalries between imperial powers, than how their actions had played out in colonial and post-colonial societies.<sup>142</sup> This meant a focus on underdevelopment, and the cultural and political transformations that had followed in the wake of imperialism. Second, given that their underdeveloped societies were not traditionally considered as ‘objectively’ ready for revolution, they focused much more closely on ‘the significance of subjective conditions for the creation of a revolutionary situation’.<sup>143</sup> Finally, given the unevenness of capitalist development in the Third World, and the continuing existence of the international division of labour, they confronted a system marked by ‘racial domination . . . peripheral economies undergoing a volatile but uneven and incomplete process of modernization; simultaneous but discrete historical modes of production; the persistence

137 Ibid 191.

138 Bowring (2008) 38.

139 JK Byrne, ‘Our Own Special Brand of Socialism: Algeria and the Contest of Modernities in the 1960s’ 33 *Diplomatic History* (2009) 427, 430.

140 A Hughes, ‘The Appeal of Marxism to Africans’ 8 *Journal of Communist Studies* (1992) 4, 12.

141 A Césaire, ‘Letter to Maurice Thorez’ 28 *Social Text* (2010) 145, 150.

142 RJC Young, *Postcolonialism: An Historical Introduction* (Blackwell, 2001) 19.

143 Ibid 7.

of pre-modern practices and archaic social forms, discontinuous but coexistent with mechanization, industrialization and urbanization'.<sup>144</sup>

This situation produced a 'syncretic Marxism' that was 'distinguished from orthodox European Marxism by combining its critique of objective material conditions with detailed analysis of their subjective effects'.<sup>145</sup> In this tradition, questions of race and value were seen as mutually intertwined. This syncretic Marxism was present in a number of Marxists hailing from the non-European world—Amílcar Cabral, José Carlos Mariátegui, Mao Tse-tung to name but a few—but the most systematic and influential of these figures was undoubtedly Frantz Fanon.

## STRETCH-MARX

Fanon's biography is emblematic of this syncretic Marxism. Fanon was born in Martinique, then a colony of France, and was the descendant of African slaves. Participating in the Second World War he was shocked by the racial hierarchies of the French military.<sup>146</sup> After the war he became a psychiatrist, moving to Algeria in 1953 to practise. At the same time, he became increasingly involved in radical, anti-colonial politics, and was won over to the FLN's struggle, which he viewed as the vanguard of the anti-colonial movement.<sup>147</sup> In *Black Skin, White Masks* and *The Wretched of the Earth*, he put forward an understanding of race deeply rooted in the logic of capitalist value. In these texts, he insisted that the 'orthodox Marxist' understanding of the relationship between race and value could not adequately capture the reality of colonialism, since:

The originality of the colonial context is that economic reality, inequality, and the immense difference of ways of life never come to mask the human realities. When you examine at close quarters the colonial context, it is evident that what parcels out the world is to begin with the fact of belonging to or not belonging to a given race, a given species. In the colonies the economic substructure is also a superstructure. The cause is the consequence; you are rich because you are white, you are white because you are rich.<sup>148</sup>

144 B Parry, *Postcolonial Studies: A Materialist Critique* (Routledge, 2004) 83.

145 Young (2001) 7.

146 P Hudis, *Frantz Fanon: Philosopher of the Barricades* (Pluto Press, 2015) 18-19.

147 Ibid 82.

148 Fanon (1963) 40.

Some have read this quote as a wholesale repudiation of Marxism.<sup>149</sup> However, Fanon follows this statement up with another, namely that ‘Marxist analysis should always be *slightly stretched* every time we have to do with the colonial problem’.<sup>150</sup> The use of the term ‘slightly stretched’ should alert us that Fanon did not jettison the Marxist framework, but rather read Marxist categories through the experience of the Third World. Fanon did not argue that racism ‘explains’ the reality of colonialism or imperialism. In the earlier *Black Skin, White Masks*—usually taken as Fanon’s least Marxist text—he had explicitly disavowed such a position, arguing that ‘[t]he Negro problem does not resolve itself into the problem of Negroes living among white men but rather of Negroes exploited, enslaved, despised by a colonialist, capitalist society that is only accidentally white.’<sup>151</sup>

In this respect, Fanon held to the classical Marxist notion that imperialism was driven by the logic of expanding capitalist value. At the same time, he insisted that this explanation missed something vital about colonialism. Fanon’s argument boiled down to the fact that ‘in the colonial context’, race served a role in structuring the distribution of the political and economic benefits of imperialist exploitation.<sup>152</sup> It was by virtue of their race that white settlers gained access to the material benefits of colonial capitalism. At the same time, these settlers accrued a series of political and ideological benefits. These benefits extended across class lines, meaning that traditional Marxist notions of class could not be mechanically applied.

Vitaly, then, Fanon did *not* argue that race trumps value, or that race is more important than class. He was instead making the more subtle point that under the material conditions of imperialism, race will play a crucial role in organising and structuring social existence. What would have traditionally been considered by Marxists to be part of the ‘superstructure’ played a crucial role in the economic ‘base’. This was a ‘stretching’ of Marxism, because it would have to depart from the traditional Marxist schema. But this did not mean abandoning the historical materialist method. Instead it was necessary to deploy a materialist analysis of race *as a social form*. This analysis would first have to outline how race is socially produced. It would then reflect on the particular set of material conditions that allowed race to exert such a determining role in structuring imperialist social formations.

149 N Larsen, *Determinations: Essays on Theory, Narrative and Nation in the Americas* (Verso, 2001) 17.

150 Fanon (1963) 40 (emphasis added).

151 F Fanon, *Black Skin, White Masks* (Pluto Press, 1986) 202.

152 F Fanon, *Toward the African Revolution: Political Essays* (Grove Press, 1988) 36.



In *Black Skin, White Masks* Fanon argued that blackness was the result of a series of ‘aberrations of affect’, rooting the black man<sup>153</sup> ‘at the core of a universe from which he must be extricated’.<sup>154</sup> He traced how colonial relations produced a ‘Manichean’ psychic affect where white is ‘good’ and superior and black is ‘bad’ and inferior.<sup>155</sup> This Manichaeism was not simply felt on the part of the white colonial masters, but was psychologically internalised by black, subject peoples. Consequently, black people aimed to ‘become’ white by going to the metropolis and learning to be ‘civilised’.<sup>156</sup> This created a situation in which black individuals became *neurotic*.<sup>157</sup>

Crucially, for Fanon, the widespread and systematic nature of this ‘psychoexistential complex’ meant that it could not be explained from an individual psychological standpoint.<sup>158</sup> He argued that the ‘inferiority complex’ that he described was the ‘outcome of a double process’. This process was primarily an ‘economic’ one, which was then psychologically internalised by colonised populations.<sup>159</sup> For Fanon, the fact of blackness was not absolute. He noted that as ‘long as the black man is among his own, he will have no occasion, except in minor internal conflicts, to experience his being through others’.<sup>160</sup> It is only in relation to the white man that the black man is able to experience his status as a *black man*.<sup>161</sup> However, the mere ‘contact’ with a white man is not enough to induce a sense of inferiority. Instead the inferiority comes about because after the ‘white man has come . . . at a certain stage he [the black man] has been led to ask whether he is indeed a man’.<sup>162</sup> As a black man, one ‘begin[s] to suffer from not being a white man to the degree that the white man imposes discrimination on me, makes me a colonized native, robs me of all worth, all individuality, tells me that I am a parasite on the world, that I must bring myself as quickly as

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153 The use of the term *black man* follows Fanon here, but can—provisionally—be understood to blackness (and racial difference) more generally. There is not space in this article to address the rich literature which connects questions of value, race and gender, but see A Davis, *Women, Race, & Class* (Vintage, 1983).

154 Fanon (1986) 10.

155 *Ibid* 44–46.

156 *Ibid* 18.

157 *Ibid* 79.

158 *Ibid* 16.

159 *Ibid* 13.

160 *Ibid* 109.

161 *Ibid* 110.

162 *Ibid* 98.

possible into step with the white world'.<sup>163</sup> The 'inferiority complex' thus arises because the white man comes to the colony not as a generic 'other' but as *master*.<sup>164</sup>

Fanon, therefore, argued that the Manichean division into black and white arose because the Europeans had come to the rest of the world to exploit it economically. Impelled by the processes of capitalist accumulation to control colonised populations, they created a series of racial justifications for this control. Fanon's central point was that any country that 'lives, draws its substance from the exploitation of other peoples, makes those people inferior.'<sup>165</sup> This creation of inferiority was necessary for a number of reasons, all closely linked with the imperatives of capitalist accumulation.

Any system based on geographically-differentiated exploitation necessarily produces great concentrations of wealth in the hands of a minority. The nature of capitalist imperialism meant that only a small number of the native bourgeoisie would receive a share in this surplus value, with the majority flowing to the 'mother country' or to white settlers within the colonial territory.<sup>166</sup> By ascribing racial inferiority to the natives, it became possible to justify dispossessing them of their land, and withholding the benefits of exploitation from them. Racialisation was not simply needed to establish and justify European dispossession of non-Europeans, it was also vital in heralding the material transformations required by the export of capital. With the birth of imperialism, it became necessary to transform fundamentally-peripheral territories. Natives needed to be forcibly transformed into 'labourers' and capitalist social relations had to be implanted and intensified. This, however, came into conflict with the culture of the native inhabitants. Accordingly, the colonial situation required 'the destruction of cultural values'.<sup>167</sup> In order to fully carry through such a transformation, it was not enough 'to impose its rule upon the present and the future of a dominated country',<sup>168</sup> native culture had to be cast as *intrinsically* flawed throughout all its history.

These social transformations also required that the colonised themselves internalise the inferiority of blackness. The racial inferiority complex was promoted in such a way as to convince native populations that without European 'guidance', they 'would at once fall back into barbarism, degradation and

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163 Ibid.

164 Ibid 138, note 25.

165 Fanon (1988) 41.

166 Fanon (1986) 51.

167 Fanon (1988) 39.

168 Fanon (1963) 210.

bestiality'.<sup>169</sup> This was especially the case with native intellectuals, who were inculcated with European thought and social mores.

Fanon also maintained that race was deployed to manage the antagonisms thrown up by colonialism and imperialism. By destroying any sense of a 'national' culture, potential resistance to the colonial project is deprived of a key weapon.<sup>170</sup> Race also enabled colonial populations to be *stratified* and turned against each other, with a racialised hierarchy formed which would allow *some* natives to share in the benefits of imperialist exploitation, in what Fanon termed 'the racial distribution of guilt'.<sup>171</sup> This did not just operate at the level of the colonised. By structuring how value flowed in the colony (and internationally), racial categories were able to create *unity* amongst metropolitan populations.<sup>172</sup> This enabled the creation of a *cross-class* coalition that was united in its support of colonialism.

Ultimately, for Fanon, a 'colonial country is a racist country'.<sup>173</sup> This blunt assertion underscored his sophisticated 'stretched Marxist' argument, which suggested that under the material conditions of imperialism, race would become a central element in the 'economic base'. Processes of racialisation were accordingly present at key moments in the process of capital accumulation. Given this close connection between racialisation and the material logic of capitalism, Fanon paid detailed attention to how specific racialised forms were thrown up by the changing configurations of international capitalism.

Since race is a *social* relation, Fanon understood that its 'targets' were by no means fixed, but always varied according to which particular population was subject to exploitation.<sup>174</sup> Fanon also insisted that changes in regimes of accumulation and techniques of production would also give rise to different *forms* of racialisation. He explained that in the initial period of capitalist expansion, involving 'crude exploitation of man's arms and legs' and the mere plunder of resources, imperialism gave rise to '[v]ulgar racism in its biological form'.<sup>175</sup> However, with the 'evolution of techniques of production' racism evolved into

169 Ibid 211.

170 Ibid 237.

171 Fanon (1986) 103.

172 Fanon (1963) 313.

173 Fanon (1988) 40.

174 R Knox, 'Race, Racialisation and Rivalry in the International Legal Order', in A Anievas, N Manchanda & R Shilliam (eds), *Race and Racism in International Relations: Confronting the Global Colour Line* (Routledge, 2014).

175 Fanon (1988) 35.

‘more subtle forms’.<sup>176</sup> Since imperial powers could no longer simply exterminate native populations but needed ‘various degrees of approval and support’ and the ‘cooperation’ of the exploited, racism assumed a ‘more “cultivated” direction’.<sup>177</sup> Finally, aside from these more deep-rooted transformations, Fanon understood that racialised forms would change in line with conjunctural imperatives, particularly when they were challenged by anti-racist and anti-imperialist resistance.<sup>178</sup>

The crucial point, then, is that—for Fanon—race and value are not counterposed. Instead, at every moment of the process of capital accumulation, race is central. Race initially enters the scene to justify the dispossession of native inhabitants and legitimise the transfer of value from the periphery. The deep social transformations required for expanded capitalist accumulation are articulated in terms of racial categorisations. Finally, these racialised categories play a crucial role in governing peripheral territories and containing resistance of processes of capitalist accumulation.

## FANONIAN INTERNATIONAL LEGAL THEORY

Fanon’s analysis has important implications for how we understand the relationship between imperialism and international law. As previously described, those Marxists who subscribe to the commodity-form theory argue that there is a homology between the legal and commodity forms. Yet, if the commodity form is also closely linked with processes of racialisation, we would also expect to see a close link between race and the production of legal subjectivity.

As Brenna Bhandar has argued, the emergence of property is intrinsically linked with processes of racialisation. Following Pashukanis, Bhandar argues that capitalist property law is always centred around abstractions. Unlike pre-capitalist notions of ownership, private property is not necessarily based on actual possession or use, but is rather rooted in a ‘metaphysical’ idea of entitlement.<sup>179</sup> This metaphysical idea is dependent on the fact that certain people have the capacity or right to own and dispose of property, that is, they are legal subjects.<sup>180</sup> Thus, the idea of property as abstract entitlement only comes into

176 Ibid.

177 Ibid 37.

178 Ibid 44.

179 B Bhandar, ‘Property, Law, and Race: Modes of Abstraction’ 4 *UC Irvine Law Review* (2014) 203, 210.

180 B Bhandar, ‘Disassembling Legal Form: Ownership and the Racial Body’, in M Stone, I Wall & C Douzinas (eds), *New Critical Legal Thinking: Law and the Political* (Birkbeck Law Press, 2012) 112, 120.

being with the full development of capitalism. As Pashukanis himself put it, it was '[o]nly with the full development of bourgeois relationships' that law was able to 'obtain an abstract character.'<sup>181</sup> For Pashukanis, this only occurs when 'bourgeois civilization affirmed its authority over the whole globe'.<sup>182</sup> Yet, the way in which bourgeois civilisation affirmed its global authority was *through* a series of racialised categories, which cast the non-capitalist world as racially inferior and therefore in need of transformation. As a matter of historical fact, the emergence of abstract legal subjectivities was coterminous with the emergence of a series of racialised categories.<sup>183</sup>

Specifically, abstract notions of ownership emerged in the context of two racialised figures. The first of these were indigenous peoples, who were conceived of as lacking any notion of private property and so were able to be *dispossessed* of their common-land. The second were African slaves who, despite being living human beings, were nonetheless transformed into property because of their race. In this way, Bhandar argues, '[e]mergent forms of property ownership were constituted with racial ontologies of settler and native, master and slave.'<sup>184</sup> These categories were mutually constitutive, insofar as notions of abstract property were affirmed through the dispossession of natives and the ownership of slaves. At the same time, it was through legal argument that the particular statuses of the native and slave were solidified.

Thus, when Pashukanis argued that the legal subject represented 'the abstract commodity owner elevated to the heavens', he missed a crucial qualification: this abstract commodity owner was both white and European. Abstract formal equality obtained *between* these subjects only. As Fanon noted, the quality of being 'human'—or in this case being recognised as a legal subject—was defined as 'Western humanity as incarnated in the Western bourgeoisie'.<sup>185</sup>

Consequently, both race and law operate as 'modes of abstraction'.<sup>186</sup> Law abstracts from concrete entities and posits them as legal subjects. Race too abstracts individuals and societies from their concrete existence and inserts them into hierarchies based on supposed 'difference'.<sup>187</sup> These two abstractions were intertwined. Racial abstractions played a crucial role in determining the

181 Pashukanis, 'General Theory' (1980) 81.

182 Ibid 78.

183 B Bhandar & A Toscano, 'Race, Real Estate and Real Abstraction' 194 *Radical Philosophy* (2015) 8, 14.

184 Bhandar (2014) 212.

185 Fanon (1963) 163.

186 Bhandar (2014) 203.

187 RW Gilmore, 'Fatal Couplings of Power and Difference: Notes on Racism and Geography' 54 *The Professional Geographer* (2002) 15, 16.

distribution of legal benefits and subjectivities, with full legal subjectivity available to the white, European subject. At the same time, legal abstractions were central in defining and formalising these racial categories.<sup>188</sup> It is here that Fanon's insights as to the relationship between racism and capital accumulation become particularly important. Fanon identified a number of key 'moments' in the accumulation of capital in which racialisation played a central role. Each and every one of these moments is also *juridical*.

With this interdependence of law, race and value in mind, it becomes possible to think about how Fanon's stretched Marxism might help us make sense of international law's relationship to imperialism. In *Imperialism, Sovereignty and the Making of International Law*, Anghie famously argued that international law was governed by a 'dynamic of difference'. According to Anghie:

International lawyers over the centuries maintained this basic dichotomy between the civilized and the uncivilized, even while refining and elaborating their understanding of each of these terms. Having established this dichotomy, furthermore, jurists continually developed techniques for overcoming it by formulating legal doctrines directed towards civilizing the uncivilized world. I use the term 'dynamic of difference' to denote, broadly, the endless process of creating a gap between two cultures, demarcating one as 'universal' and civilized and the other as 'particular' and uncivilized, and seeking to bridge the gap by developing techniques to normalize the aberrant society. The dynamic is self-sustaining and indeed, as I shall argue, endless; each act of arrival reveals further horizons, each act of bridging further differences that international law must seek to overcome.<sup>189</sup>

Anghie's own explanation for *why* this dynamic recurs within international law is somewhat contradictory. At times he treats it as an inevitable feature of the discipline, with the management of 'cultural difference' operating transhistorically.<sup>190</sup> At other times though, this general pattern was a result of international law being 'profoundly shaped by . . . [the colonial] encounter, encoding within its disciplinary structures . . . the discriminatory features of cultural difference'.<sup>191</sup> It is the 'idealism' of this account that Marxists have tended to react

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188 CI Harris, 'Whiteness as Property' 106 *Harvard Law Review* (1993) 1707, 1715-44.

189 Anghie (2005) 4.

190 *Ibid.*

191 M Craven, 'Colonialism and Domination', in B Fassbender & A Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford UP, 2012) 862, 863.

against.<sup>192</sup> However, from the perspective of stretched Marxism it is possible to maintain Anghie's insights about the 'dynamic of difference', without adopting his particular explanatory mechanisms for its recurrence. In other words, it might be possible to formulate a *materialist* 'dynamic of difference'.

Reading Anghie in this light, one cannot help but notice a similarity between his description of the dynamic of difference and Marx's and Engels's rhetorical flourishes in the *Communist Manifesto*. There, they wrote that the 'need for a constantly expanding market for its products chases the bourgeoisie over the whole surface of the globe' and that it must 'nestle everywhere, settle everywhere, establish connexions everywhere'.<sup>193</sup> This class, they continued, was forced constantly to revolutionise production, leading to 'uninterrupted disturbance of all social conditions, everlasting uncertainty and agitation'.<sup>194</sup>

Almost all of the features Anghie ascribes to the dynamic of difference can be understood in the light of capital accumulation. The pressures created by capitalist competition mean that capitalists must constantly push beyond their boundaries, positing capitalism as the 'universal' model of social organisation which must replace all others. The 'techniques to normalize the aberrant society' are those which enable capitalists to penetrate and transform other social formations. However, the aim of capitalists is not 'development', but increased profits. Consequently, capitalists make use of 'non-capitalist' forms of organisation and exploitation. Moreover, colonial and neo-colonial expansion produces uneven economic development in a few key sectors and high concentrations of wealth amongst a narrow group of people.<sup>195</sup> All of this means that the 'normal' operation of imperialism in the peripheries always produces incomplete, hybrid economic systems characterised by extremely uneven development. Because of these low levels of 'development', outside intervention is needed to 'improve' them thus revealing 'further horizons' for intervention.

This also underscores the *endless* nature of the 'dynamic of difference'. One of the key lessons of the Marxist tradition is that capitalism *necessarily* needs endless accumulation. As Lenin put it, capitalists are compelled 'to seize the largest possible amount of land of all kinds in all places... taking into account potential sources of raw materials and fearing to be left behind'.<sup>196</sup>

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192 Haskell (2014) 409-10.

193 Marx & Engels (1978) 476.

194 Ibid.

195 Fanon (1963) 148-79.

196 Lenin (1972) 100.

We might say that the dynamic of difference is ‘as unbounded as the capitalist lust for profit’.<sup>197</sup>

Each element of Anghie’s ‘dynamic of difference’ can, therefore, be understood as underscored by the material foundation of capital accumulation. To be more precise, given the close connection between capital accumulation and racialisation, we can read Anghie as describing the process of capital accumulation from *one particular angle*. A Fanonian—or stretched Marxist—perspective, therefore, enables us to read Anghie’s work (and that in the TWAIL tradition more generally) and Marxist work in complementary ways. The dynamic of difference needs to be *historicised* and located within capitalist social relations, but we must understand those social relations as fundamentally structured by the dynamic of difference. International law, therefore, is deeply, indeed structurally, rooted in both capital accumulation and racialisation. It mediates and articulates the expansion of capital *through* racialising certain territories and societies. In so doing, it opens them up for the penetration of capital, and facilitates their control and management. As the particular character of capital accumulation changes, so too does the form of racialisation, which is constituted through international legal categories. Marxist jurists from the Third World have intuitively grasped elements of this, locating how international law has inserted peripheral territories into the global capitalist order.<sup>198</sup> However, none of these figures quite captured the dynamics of stretched Marxism, being largely inattentive to the *racialised* nature of capital accumulation.

## HAITI, RACE AND INTERNATIONAL LAW

Returning, then, to Miéville’s analysis of Haiti, we can now see how a ‘stretched Marxism’ can make better sense of both Haiti’s history and the 2004 intervention. The island now known as Haiti was originally inhabited by the Taino people, who named it ‘Ayti’. In 1492, Columbus landed on the island, naming it Hispaniola. Initially, the encounter was shaped by Spain’s dealings with the ‘Moors’, the Muslim peoples with whom the Spanish had been at war for centuries; a war which had been justified in the name of converting the heathen.<sup>199</sup> The Spanish, as the ‘superior civilisation’, justified their presence

197 R Hilferding, *Finance Capital: A Study of the Latest Phase of Capitalist Development* (Routledge & Kegan Paul, 1981) 335.

198 M Bedjaoui, *Towards A New International Economic Order* (UNESCO, 1979) 49-100; UO Umozurike, *International Law and Colonialism in Africa* (Nwamife, 1979).

199 Castro (2007) 19.



because of their duty to convert the heathen natives. The acquisition of the Indies was thus justified on racialised grounds, namely the inherent superiority of the Spanish. However, it soon became apparent that the Indians were not the Moors, leading to the debates described previously.

The Spanish Empire was primarily ‘a land-grabbing exercise chiefly concerned with the extraction of tribute and taxes from subject populations’.<sup>200</sup> Accordingly, the Spanish implemented the *encomienda* system. In this system, the natives were seen as ‘wards’ of the Spanish, who were to be civilised. A settler would become a trustee of a group of wards, and be entitled to lifetime rights to the product of native labour and tribute.<sup>201</sup> In exchange, the trustee would evangelise the population. In practice, the system was extremely brutal, involving forced labour. A number of Spanish ‘humanitarians’ opposed the system, notably Bartolomé de las Casas, a Dominican Friar who gained ‘notoriety as an ardent defender of the people indigenous to the Western Hemisphere’.<sup>202</sup>

Las Casas argued that labour conditions were too hard on the natives and verged upon slavery, which ran against their legal rights, in place of the *encomienda* system he proposed that the natives be protected by labour regulations. These suggested reforms clashed with the objective of Spanish accumulation, which aimed at maximising ‘Indian tribute and mineral wealth extracted through the *encomienda* system’.<sup>203</sup> Any slackening of the rate of exploitation of the natives would need to be compensated. To remedy this, Las Casas proposed ‘the importation of a limited quantity of slaves to recompense the settlers for their Indian labour supply’.<sup>204</sup> The ‘advantages’ of slavery were two-fold: first, slaves were naturally more suitable for difficult and menial labour.<sup>205</sup> Secondly, since they had been ‘justly’ enslaved, no legal problem would arise as to subjecting them to harsh discipline.

Although Las Casas’s proposals were not implemented in full, ‘as a direct result of his proposals, the Spanish Crown granted a licence to a Flemish courtier, Gouvenot, which gave him permission to import 4000 slaves... into the Indies’.<sup>206</sup> This presaged future developments in the region.

200 Colás (2006) 73.

201 Ibid 57.

202 J Anaya, *Indigenous Peoples in International Law* (Oxford UP, 2004) 10.

203 Colás (2006) 58.

204 S Wynter, ‘New Seville and the Conversion Experience of Bartolomé de Las Casas: Part One’ 17 *Jamaica Journal* (1984) 25, 27.

205 S Wynter, ‘New Seville and the Conversion Experience of Bartolomé de Las Casas: Part Two’ 17 *Jamaica Journal* (1984) 46, 47-49.

206 Ibid 49.

Although the associations between slavery and blackness had not yet fully solidified, the African coast provided the most ready source of slaves. These slaves were particularly 'efficient' at the production of sugar, the demand for which within Europe was rising. This created an expanding dynamic. African slaves proved effective at sugar production, which became more profitable. Accordingly, settlers clamoured to produce more sugar, which created a greater demand for slaves, who were primarily to be found in Africa, which buttressed the connection between slavery and blackness.<sup>207</sup>

Las Casas's arguments represented, however inadvertently, the logical outcome of the *juridical* arguments that played a key role in constituting Spanish accumulation in Hispaniola. Given the religious and political complexities of feudal Europe, and the necessity for extracting wealth, wholly dispossessing or exterminating the native population was not a possibility. As such, the natives were granted some limited legal personality, but subjected to regimes of 'trusteeship' and governed by a law of nations which universalised Spanish practices. As a result, they were *partially* racialised, whilst retaining limited legal subjectivity. However, these legal arguments clashed with the imperatives of Spanish accumulation, which demanded harsh labour discipline. Las Casas articulated a legal solution to this quandary: protect the natives by supplementing their labour with a group of people who were without legal personality, and could, therefore, be subjected to the harshest forms of labour discipline. Although not fully conceived of in racial terms, Las Casas provided the basic building blocks for an argument in which accumulation could be guaranteed through a racialised hierarchy.

### Towards revolution

In the 1620s, the French and British also began to occupy areas of Hispaniola. Under the 1697 Treaty of Ryswick, the Spanish ceded the West of the Island to the French, who named it Saint-Domingue. These legal titles were, of course, based upon the idea that Aytí's native inhabitants had no title to the land themselves.

When Las Casas made his initial recommendations, the racial character of slavery had not yet fully solidified. Although Africans made up the bulk of slaves, slavery was at that point organised along *religious* lines.<sup>208</sup> It was only in the mid-1600s that the association between blackness and slavery was fully

207 R Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492-1800* (Verso, 1998) 137.

208 Wynter, 'New Seville Part Two' (1984) 47.

concretised.<sup>209</sup> There are numerous reasons for this, but two are pertinent. First, black populations were easier to manage, severed as they were from their homes and social connections.<sup>210</sup> Secondly, there was a real fear that the forms of unfree labour in which black and white workers commonly engaged in generated *unity* between these populations. In this way, ‘the turn to racial slavery was a response to sharp social divisions among settlers and sought to create an ersatz unity among whites, indeed by creating “white” itself as a social and legal category’.<sup>211</sup>

By the late 1600s, slavery had been consolidated firmly through the law. In the French case, this was achieved by the 1685 *Code Noir*, a decree passed by King Louis XIV. Although nominally presented as *protecting* slaves, the Code was crucial in formalising the racial character of slavery. As is evident from the name, the Code fully associated slavery with ‘Negroes’. It also formalised the hereditary nature of slavery (Article XIII) and the slave’s status as property by depriving slaves of the ability to buy or sell goods (Articles XVIII and XIX). The Code underscored the inferior legal status of enslaved blacks and—in consequence—also defined the privileges of free (white) men. This was matched by a series of Articles forbidding ‘carrying any offensive weapons or large sticks’ (Article XV) and preventing ‘slaves who belong to different masters from gathering’ in large numbers (Article XVI). The racialised categories of slavery were thus also used to manage the possibility of slave resistance.

Over the 1700s, more than 800,000 slaves were imported to Saint-Domingue.<sup>212</sup> By 1789, the population stood at 450,000 black slaves, 28,000 free blacks and mulattoes and 40,000 white settlers. Very rapidly, Saint-Domingue became central to the French economy: it produced a huge amount of high quality sugar and coffee for export.<sup>213</sup> The comparatively low cost of reproducing slave labour, and the intensive nature of the sugar and coffee plantations, meant that racialised slavery was key to high profits.<sup>214</sup>

209 H Scott, ‘Was There a Time before Race? Capitalist Modernity and the Origins of Racism’, in C Bartolovich & N Lazarus (eds), *Marxism, Modernity and Postcolonial Studies* (Cambridge UP, 2002) 167, 171.

210 *Ibid.*

211 DR Roediger, *How Race Survived US History: From Settlement and Slavery to the Obama Phenomenon* (Verso, 2010).

212 A Appiah & HL Gates, *Africana: The Encyclopedia of the African and African American Experience* (Oxford UP, 2005) 128.

213 CLR James, *The Black Jacobins: Toussaint L’Ouverture and the San Domingo Revolution* (Vintage, 1989) 27–61.

214 A Anievas & K Nisancioglu, *How the West Came to Rule: The Geopolitical Origins of Capitalism* (Pluto Press, 2015) 163–68.

As such, France's position in the global economy was dependent upon a form of racialised labour discipline, constituted and maintained by juridical relations, on both the domestic and international scale.<sup>215</sup> The argument tentatively advanced by Las Casas was systematised by the French.

There had always been periodic slave uprisings in Saint-Domingue, but in 1791, under the shadow of the French Revolution, a revolution began. Black slaves rose up, eventually demanding the abolition of racialised slavery.<sup>216</sup> Recognising the close connection between race and value, the white settlers argued that 'there can be no agriculture in Saint-Domingue without slavery'.<sup>217</sup> They sensed that any concession to the uprising could prove fatal to the institution of slavery itself, with 'the slaves who have hitherto remained loyal' also turning to violence to gain the same benefits.<sup>218</sup>

The dynamic of the French Revolution made it increasingly difficult to maintain this attitude. The French masses 'were striking at royalty, tyranny, reaction and oppression of all types, and with these they included slavery'.<sup>219</sup> With the abolition of the Monarchy and the declaration of a Republic, the new National Convention would deliberate under these circumstances. The Commissioners dispatched to Haiti had not yet heard of such developments, and so continued to advocate for slavery. This led Touissant L'Ouverture, the chief figure in the slave revolution, to declare support for the Spanish in their war with the French.

Recognising the importance of gaining the support of the black army, in 1793, a General Emancipation decree was issued, abolishing slavery in the North. Then, in February 1794, the Convention abolished slavery in all of France's colonies. L'Ouverture and the newly-freed slaves went over to the side of the French. Emboldened by this success, in 1801 L'Ouverture proclaimed a new constitution—sent to France—abolishing slavery and all racial distinctions. At the same time, however, it asserted the 'French-ness' of the colony, by, for example, making Catholicism the official religion.<sup>220</sup>

These concessions were not enough, Napoleon had come to power in France, smothering much of the emancipatory nature of the Revolution.

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215 Umozurike (1971) 340-41.

216 James (1989) 85-117.

217 C Fick, *The Making of Haiti: The Saint Domingue Revolution from Below* (University of Tennessee Press, 1990) 154.

218 Ibid 147.

219 James (1989) 120.

220 P Kaisary, 'Hercules, the Hydra, and the 1801 Constitution of Toussaint Louverture' 12 *Atlantic Studies* (2015) 393, 401.

In particular, he sought to restore slavery to France's colonies, recognising it as a key element of French prosperity and to this end he sent an army to Saint-Domingue to restore its colonial status.<sup>221</sup> By 1803, the French forces were defeated and in January 1804 Jean-Jacques Dessalines declared a new independent state of Haiti.

### Post-revolutionary recognition

The first challenge that the newly-independent Haiti faced was its isolation. As with any new state, Haiti could only survive insofar as it made formal legal contacts with other states and was recognised by those states as an independent entity. Having just fought a war to prevent independence, France was unlikely to recognise Haiti. This was not simply bitterness or pride. Although Haiti had been the 'jewel of the Caribbean', it was not France's only colony; France had colonies in—*inter alia*—Grenada Guiana and Martinique, both of which relied on racialised slave labour. Following the logic of the planters in Saint-Domingue, the French realised that a successful Haiti would become a beacon to those colonies. During 'the crucial first months and years of Haitian independence, French agents attempted to rupture established networks of trade'.<sup>222</sup> The ultimate aim of this policy was to force the new republic back under the 'protection' of France and demonstrate the folly of anti-colonial slave rebellions.<sup>223</sup>

During their struggle for independence, the slaves had made tentative contacts with the British. The British, who were at war with the French, saw that the loss of Saint-Domingue would be a great blow to their enemies, and so gave limited military aid.<sup>224</sup> Thinking this might also hold true in the aftermath of independence, some elements of the new Haitian government approached Britain. However, the British government did not wish to acknowledge fully Haiti's new status; instead they explored 'ways that Haiti could remain independent from France but not entirely independent of foreign influence and control'.<sup>225</sup> The British attempted to sign a commercial treaty that would have given some limited recognition to Haiti, whilst allowing the 'British Empire to dictate domestic and foreign policy'.<sup>226</sup> The treaty was refused.

221 James (1989) 269.

222 J Gaffield, *Haitian Connections in the Atlantic World: Recognition after Revolution* (University of North Carolina Press, 2015) 57.

223 L Dubois, *Haiti: The Aftershocks of History* (Macmillan, 2012).

224 James (1989) 365.

225 Gaffield (2015) 91.

226 *Ibid* 92.

By 1807, 'while the British government happily let their merchants trade with Haiti, they refused to recognize Haiti's independence'.<sup>227</sup> There was an obvious reason for this: although Britain had abolished the slave *trade*, it continued to maintain slavery in its colonies. Any recognition of Haitian independence would 'send a message to their own population that an antislavery revolt was acceptable'.<sup>228</sup>

It was for this reason too that the US refused to recognise Haiti. In theory, the US should have eagerly endorsed Haitian independence. Both were states that had thrown off their former colonial masters, and the US and Haiti had a long history of semi-legal trade during French colonial rule.<sup>229</sup> However, the US was a slave power. Even more than in Britain or France, slave labour was crucial to the US's global economic position.<sup>230</sup> Moreover, given its status as an immigrant nation, the construction of 'whiteness' took on a crucial role in the US. Any wholesale recognition of Haiti could threaten both the US's economic position and its political cohesion.

As such, the US was marked by a deep ambivalence towards Haiti. For two years after independence there was a booming trade between the US and Haiti. However, in February 1806, partly under pressure from the French and partly because of Haiti's status as a black republic, the US Congress outlawed trade with Haiti<sup>231</sup> (over the objections of numerous US merchants, who saw plentiful business opportunities in Haiti<sup>232</sup>). After the ban was lifted, trade increased. By the 1820s, Haiti's exports to the US were worth \$2 million a year, with Haiti providing 'one-third of all the coffee consumed in the United States'.<sup>233</sup> Yet, recognition was still not forthcoming. The US Congress remained worried that recognition would ultimately threaten the position of the slave-holding Southern States.<sup>234</sup>

Race and value were deeply intertwined. On the one hand, the imperative to trade clearly motivated advanced capitalist powers to deal with Haiti. At the same time though, there was no 'pure' sphere of the economy. The major powers' economic positions were built upon regimes of legalised racial

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227 Dubois (2012) 71.

228 Ibid.

229 Ibid 137.

230 W Johnson, *River of Dark Dreams* (Harvard University Press, 2013) 5-12.

231 Gaffield (2015) 124.

232 Ibid 127.

233 Dubois (2012) 138.

234 J Esquirol, 'Latin America', in Fassbender & Peters (eds) (2012) 553, 561.

hierarchies, as embodied in slavery, but also more generally in colonial occupations. To recognise Haiti, and contribute to its success, threatened to turn it into an example which might undermine those racial hierarchies, and thus threaten their profits. This was mediated through international law: there was a minimal form of contact, through trade treaties, but a withholding of full recognition.

France eventually acknowledged that isolating Haiti was a lost cause. In 1825, Charles X issued a Royal Ordinance, addressed to ‘the French part of Saint-Domingue’ recognising its independence. The legal form of this agreement—a Royal Ordinance addressed to a subject of France, not a treaty between two nations—was not accidental. Haiti was essentially addressed as a wayward colony, which was being *granted* independence. However, recognition came with a catch. Under the first Article of the Ordinance, Haiti was to open itself up to trade from all nations, with an equal tariff for all, apart from France, which would only pay half the standard rate. The second, most controversial, Article demanded that Haiti pay 150 million francs to compensate for the loss of slave property occasioned by the revolution.<sup>235</sup>

In agreeing to compensate for the loss of slave property, the Haitian government necessarily recognised both the *legality* and *legitimacy* of the racialised slave trade. Here, then the relationship between race and value—as mediated through the law—had come full circle. France was willing to recognise Haiti’s independence, and open it up to processes of further capitalist expansion, provided the Haitians accepted the legitimacy of racialised slave property by compensating for its loss. In order to repay the indemnity, Haiti was forced to take a loan from a French bank. The ‘terms of the loan were highly disadvantageous: the Haitian government required to repay 30 million francs over 25 years at an annual interest rate of 6 per cent’ with the bank charging an additional 20 per cent just for the loan.<sup>236</sup>

In this way, the racialised debt regime had the perverse effect of further bonding Haiti to its former colonial master. Haiti was placed in a position of profound weakness in the global economic order and forced to invite in as much French capital as possible. Whilst Miéville is right to stress that imperialism can articulate itself ‘*in the recognition of formally independent postcolonial states*’, in Haiti’s case this imperialism of recognition was articulated through racialised categories.

235 Dubois (2012) 99.

236 Ibid 102.

### The US occupation

Even after France recognised Haiti's independence, the US continued to refuse to do so. Despite the Monroe Doctrine, Haiti's status as a black republic meant that throughout the 1800s, such recognition was not forthcoming.<sup>237</sup> It was only in 1862, with the secession of the South, that the US government finally recognised Haiti's independence, in part because it believed that Haiti could serve as a bulwark against the Spanish-controlled Dominican Republic. This signalled the beginning of open US interest in Haiti.

The Haitian state was increasingly burdened by debt. Although Haiti had paid off the initial indemnity, in 1883, it had been forced to take out further loans to stave off default. In 1909, the Haitian National Bank had been bought out by two US banks, with US capital increasingly penetrating Haiti's economy.<sup>238</sup> Yet, US capital did not bring relief. By transforming the Haitian countryside and disrupting peasant agriculture, it created greater levels of social and political instability. This instability was amplified by the poor economic situation brought about by the necessity of constantly paying off debt.

Haiti's situation was dire, and US policymakers feared Haiti might default on its debts. Haitians, the US argued, lacked the ability to engage in effective self-governance and needed tutelage from the US.<sup>239</sup> Indeed, Woodrow Wilson, in a 1914 speech to the Associated Press, declared that the US had been 'obliged by circumstances' to shoulder the burden of trusteeship for Latin America.<sup>240</sup> Consequently, Wilson's approach to Haiti, and other nations of Latin America and the Caribbean, prefigured his later advocacy of the League of Nations Mandate System. At the same time, it precisely echoed those same racialised assumptions deployed by the Spanish in their initial occupation of Hispaniola.

All of this came to a head in 1915, when President Vilbrun Sam was killed. In the aftermath, the US deployed its marines in Haiti for 'preservation of order and the protection of the legations'.<sup>241</sup> The intervention and subsequent occupation were justified under three international legal arguments: 'first, preservation of national order; second, protection of US diplomatic and economic legations, foreign capital and property; third, infringement of the Monroe

237 Esquirol (2012) 561.

238 M Renda, *Taking Haiti: Military Occupation and the Culture of US Imperialism, 1915-1940* (University of North Carolina Press, 2001) 100.

239 Dubois (2012) 213.

240 Renda (2001) 92.

241 PH Douglas, 'The American Occupation of Haiti I' *Political Science Quarterly* (1927) 228, 241.



Doctrine because of French “intervention”.”<sup>242</sup> The legal justifications were explicitly undergirded with racialised notions of trusteeship. For example, Philip Marshall Brown—then Associate Editor of the *American Journal of International Law*—argued, somewhat paradoxically, that the occupation guarded ‘against the cession of territory by Haiti to any foreign government, or the impairment of its independence’.<sup>243</sup> As ‘a responsible member of the family of nations’, he stated, the US had to act ‘as an elder brother’.<sup>244</sup> Elsewhere, Brown argued that too strict a reading of the prohibition on intervention in relation to Haiti ignored the fact that ‘[c]ertain peoples in a retarded stage of political development cannot reasonably be held to rigid interpretations of . . . international law’ and that it was up to the US to help Haiti fulfil its legal obligations.<sup>245</sup>

The first act of the occupation was to ensure its candidate (Philippe Dartiguenave) won in new elections. Upon victory, he signed the ominously titled ‘Treaty Between Haiti and the United States Regarding the Finances, Economic Development and Tranquillity of Haiti’, which put the occupation on a firmer international legal basis.<sup>246</sup> Under Article II, a ‘General Receiver’ (nominated by the US) would be appointed who, under Article IV, would ‘collate, classify, arrange and make full statement of all the debts of the Republic’ and report monthly to both the Haitian and US governments (Article VII). This General Receiver took control of all customs revenues (Article III) and was mandated to use those revenues to (in order of priority): pay the salaries of those employed by the Receivership; service Haiti’s debt; and maintain the constabulary. To these concerns with debt were also added concerns with security: the Haitian government committed never to cede any land to a foreign power (Article XI) and was instructed to establish a constabulary ‘organized and officered by Americans, appointed by the President of Haiti, upon nomination by the President of the United States’ (Article X). In effect,

242 J Leininger ‘Haiti, Conflict’ in *Max Planck Encyclopaedia of Public International Law* (2008), available at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1293> (last visited 8 January 2016).

243 PM Brown, ‘The Armed Occupation of Santo Domingo’ 11 *American Journal of International Law* (1917) 394, 398.

244 *Ibid* 399.

245 PM Brown, ‘International Responsibility in Haiti and Santo Domingo’ 16 *American Journal of International Law* (1922) 433, 434.

246 ‘Treaty Between Haiti and the United States Regarding the Finances, Economic Development and Tranquillity of Haiti’ 10 *American Journal of International Law Supplement: Official Documents* (1916) 234.

‘the United States was to take control of Haitian customs houses and the state treasury’.<sup>247</sup>

When opposition to the treaty began to arise the US declared martial law, proclaiming the need to ‘preserve fundamental human rights’. Anti-US newspapers were shut down and ‘false propaganda’ was banned. The US-controlled treasury refused to pay officials until the agreement was signed. Under intense pressure, the Haitian Senate ratified the agreement.<sup>248</sup> In this way, the Haitian populace was deemed as (racially) unfit to manage their own affairs. This set the space for an intervention explicitly designed to reshape the Haitian economy under the rubric of promoting ‘good government’ in Haiti.<sup>249</sup> The occupation achieved these objectives with aplomb, US capital flooded into Haiti, building railroads and re-establishing agricultural monoculture.<sup>250</sup> At the same time, US military dominance in Haiti was achieved by the creation of the Gendarmerie, a Haitian military and police force which was ‘officered by marines and molded in the image of the Marine Corps’.<sup>251</sup>

However, the Haitian Constitution still stood in the way of full social and economic transformation. The anti-colonialism of the Haitian Revolution was embedded in a constitutional clause which forbade foreign ownership. Any removal of this clause was strongly resisted by the Haitian opposition. In response, the US military dissolved the Assembly at gunpoint, and put the new constitution to a highly dubious referendum, which duly passed.<sup>252</sup> Under this new regime, the role of foreign capital grew apace, particularly in the sectors of sugar and banana cultivation. In order to contain resistance to the occupation, the US imported its Jim Crow laws of racial segregation into the occupation.<sup>253</sup> Once again, a legally sanctioned regime of racial hierarchy was employed to manage the Haitian populace, in which all Haitians were coded as ‘black’ and therefore inferior.<sup>254</sup> Any resistance was dealt with harshly by the Gendarmerie, which was justified by the supposed savagery of the Haitian populace.<sup>255</sup>

247 Dubois (2012) 213.

248 Ibid 219-22.

249 Ibid 244.

250 Ibid 267.

251 Renda (2001) 10.

252 M Largey, *Vodou Nation: Haitian Art Music and Cultural Nationalism* (University of Chicago Press, 2006) 55.

253 H Schmidt, *The United States Occupation of Haiti, 1915-1934* (Rutgers UP, 1971) 138.

254 V Kaussen, *Migrant Revolutions: Haitian Literature, Globalization, and U.S. Imperialism* (Lexington Books, 2007) 73-74.

255 Renda (2001) 138.

Even after Haiti was recognised as a sovereign state, therefore, it suffered from the *legacy* of the formalised racism of the slave trade. This came in the form of debt, which had integrated Haiti into a cycle of debt dependency which drew the Haitian state closer to France and later the US, leading to further levels of political and economic instability. This instability then combined with racialised ideas about the uncivilised and incompetent nature of Haiti, which enabled US military intervention, which itself opened Haiti up for further rounds of capital accumulation.

### Racialised interventions

The US only left Haiti in 1934. The lopsided focus of Haitian development on primary commodities, as well as continued debt dependence, meant that Haiti suffered heavily in the Great Depression.<sup>256</sup> In the following years, Haiti was marked by constant political turmoil until the 1957 election of François Duvalier, who imposed a brutal regime. Duvalier was initially opposed by the US, but found favour as a bulwark against ‘communism’. He was succeeded by his son, who continued to rule until he was ousted by a popular uprising in 1986.

The US occupation and its aftermath set the pattern for Haiti’s future. While the more overt racism of the period could no longer operate, a tight nexus of racialised stereotypes and debt-dependency continued to allow global capital into Haiti. This is particularly evident in the role that international financial institutions (IFIs) have played in Haiti following the end of the Duvalier dictatorships. During the 1980s, Haiti’s main economic strength—exports in agricultural commodities—had fallen. Haiti lacked the productive advancements necessary to compete on the global scale, as competitors flooded the market and depressed global prices.<sup>257</sup> This left Haiti in a perilous economic state, requiring the help of IFIs.

The IFIs—deploying the same explanations they had applied to Africa—attributed Haiti’s lack of competitiveness to currency problems and a lack of openness to trade. They believed Haiti could ‘export their way out of poverty by specializing in primary commodity production, which was supposedly their area of comparative advantage’.<sup>258</sup> Haiti was forced to float its currency on the market, leading to a plunge in the value of the Haitian gourde causing massive inflation. Since wages had stagnated, this led to a massive decline in the real wages of Haitian workers.

256 F Senauth, *The Making and the Destruction of Haiti* (AuthorHouse, 2011) 31.

257 J Gros, ‘Indigestible Recipe: Rice, Chicken Wings, and International Financial Institutions: Or Hunger Politics in Haiti’ 40 *Journal of Black Studies* (2010) 974, 980.

258 *Ibid.*

The IMF also made Haiti ‘open its market by adopting some of the lowest tariff regimes in the Caribbean’.<sup>259</sup> This led to a flood of imports of heavily-subsidised US rice. Similarly, US chicken exports ‘destroyed the traditional Haitian poultry industry’.<sup>260</sup> Haiti’s free-range reared chickens could not compete in price or speed with the US’s industrially produced ones. At the same time, Haiti’s lack of productive advancements, as well as a lack of global demand, meant that farmers were not able to simply switch to new cash crops. All of this was coupled with a huge fall in customs duties, which had historically been a primary source of revenue for the Haitian state.<sup>261</sup> By pushing down wages, these interventions created a labour force suited for the labour-intensive textile market. But these industries, of necessity, must keep down their wages. Moreover, they are either directly owned by capitalists from advanced states, or are tightly integrated into their supply chains. Consequently, all profits flowed *out* of Haiti.

However, the IFIs are incapable of admitting that Haiti’s problems might be caused by the institutions themselves, let alone the global economy.<sup>262</sup> Instead, in the words of a 2002 World Bank report, ‘poor governance’ ‘is the greatest impediment to effective development assistance in Haiti’ and ‘a major determinant of Haiti’s high poverty levels’.<sup>263</sup> The report continues that the ‘government was overwhelmed by the diverse, complex procedures of donors’.<sup>264</sup> These ‘human resource constraints’ allow ‘opportunities for corruption’.<sup>265</sup> Here, the Bank relies on a language that is highly reminiscent of the US in its occupation, stressing the inability of Haitians to self-govern and understand the complexities of modern life. This racialised language was crucial in enabling international control over Haiti’s economy, opening it up further to global capital.

Haiti’s history thus perfectly captures the close relationship between racialisation, capital accumulation and the law. At every stage of Haiti’s relationship with global capitalism, the law racialised it in particular roles, with these roles changing in step with the patterns of global accumulation. Spanish jurists

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259 Ibid 981.

260 Ibid 983.

261 Ibid 984.

262 Marks (2012).

263 World Bank Operations Evaluation Department, ‘Haiti: Country Assistance Evaluation’, Report No. 23637, 12 February 2002, available at [http://ieg.worldbank.org/Data/reports/haiti\\_cae.pdf](http://ieg.worldbank.org/Data/reports/haiti_cae.pdf) (last visited 8 January 2016) 4.

264 Ibid.

265 Ibid 21.

justified practices of primitive accumulation through racialising the natives of Aytí, and positing Spanish civilisation as inherently superior. The limits of this model—which lay in the inability to fully exploit the natives—were solved through articulating a racialised hierarchy through the law, in which the black slave could be worked as hard as necessary. This became the foundation of French prosperity in Saint-Domingue.

When Haiti managed to overturn this hierarchy, it remained fundamentally isolated on the world stage, since all of the major capitalist powers owed their economic position to racialised slave labour. When Haiti was finally recognised by France, compensation for the racialised slave trade tied Haiti further to processes of capitalist accumulation. Race continued to structure the relationship of global capital to independent Haiti. The legal justifications for the 1915 US invasion—which opened Haiti up to US capital—were undergirded by racialised notions of trusteeship, and Haiti's inability to self-govern. When resistance to these processes flared up, it was managed through the imposition of racial hierarchies—as with the *Code Noir* and Jim Crow Laws—or delegitimised through the use of racial stereotypes about violence and instability. In the modern era, this racism has assumed more 'cultivated' forms, but the IFIs continue to rely on those same racialised assumptions about Haitian incompetence and corruption to legitimate keeping Haiti open to global capital.

In this way, the 2004 intervention is a perfect recapitulation of Haiti's preceding history. Haiti's transformation into a low wage, textile-driven economy was achieved by mobilising racialised stereotypes about laziness and corruption. Just as in 1915, the influx of foreign capital contributed massively to political instability. When the UN stepped in, it reproduced, almost completely, the language of the US in its 1915 intervention—appealing to Haitians' inability to self-govern and the need to restore 'law and order'. Any resistance was delegitimised by deploying racialised stereotypes. Profit maximisation was underscored and undergirded by racialisation.

## CONCLUSION

In 1966, the First Solidarity Conference of the Peoples of Africa, Asia and Latin America, better known as the Tricontinental, was held in Havana. Bringing together radical Third-World governments, national liberation movements and assorted revolutionaries, the Tricontinental represented 'a radical anti-imperialism located firmly in the socialist camp'.<sup>266</sup> On a 1965 visit, its chief organiser, the Moroccan revolutionary Mehdi Ben Barka—who was murdered

266 Young (2001) 213.

later that year—declared that the conference aimed to ‘blend the two great currents of world revolution: that which was born in 1917 with the Russian Revolution, and that which represents the anti-imperialist and national liberation movements of today’.<sup>267</sup>

This article has attempted to reproduce this spirit in international law. It has argued that separating out ‘value’ and ‘race’ when understanding the relationship between international law and imperialism is unsustainable. Instead, it has attempted to draw on radical Third World Marxist traditions to articulate a ‘stretched Marxism’, in which processes of racialisation are understood as part and parcel of the logic of capital accumulation. It has illustrated this by charting the complex interrelationships between value, race and law that played out over Haiti’s history. By drawing on the common ancestry between those scholars influenced by the Marxist tradition, and those who draw inspiration from postcolonialism, it is hoped that stretched Marxism can contribute to a wider conversation between the two most important currents in contemporary debates about imperialism and international law.

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267 Cited in M Barcia, “Locking Horns with the Northern Empire”: Anti-American Imperialism at the Tricontinental Conference of 1966 in Havana’ 7 *Journal of Transatlantic Studies* (2009) 208, 209.