"Unwhitening the World": Rethinking Race and International Law

Christopher Gevers

ABSTRACT

International law was invented in 1789 when Jeremy Bentham introduced the term to replace the outmoded "Law of Nations." Since then, international lawyers have spent a lot of time thinking about whether international law is in fact *law*, and little or no time considering how international law is *international*, or what international actually means. In this Article, I want to suggest that, with the reinvention of international law in the late nineteenth century, the term international came to incorporate elements of both the terms world and global: as an imaginary, a *world* international lawyers lived inside (and produced), and a *global* perspective they took of (and used to take from) its Others.

In particular, I aim to show that this "international" was a *racial* imaginary—a White International (or "White World" in W.E.B. Du Bois's terms)—that emerged from and reinforced Global White Supremacy. This White World was consecrated as the de jure international order with the founding of the League of Nations after World War I, and the sociopolitical system of Global White Supremacy (or "Racial Contract" in Charles Mills's terms) underpinning this "international" survived its formal demise with decolonization.

The whiteness of this "international"—both historically and in the present—has been rendered invisible to most international lawyers, however, in part because of the current conceptualization of race by both mainstream and critical accounts of the discipline. In order to begin to unwhiten it, Part I of this Article rereads existing historical and theoretical accounts of the discipline, arguing that aside from the racial aphasia that characterizes the mainstream, critical scholarship is prone to either *over*particularize, or *under*historicize, the role that race has and continues to play.

Part II of this Article then reconsiders the reinvention of international law in the late nineteenth century, arguing that it was only thinkable and possible because of the racial imaginary—the "White World" or the "international"—that its founders (that is, the Men of 1873) assumed and reproduced, one that was based on a particular biological conceptualization of race. It aims to show how, paraphrasing W.E.B. Du Bois, the Men of 1873 discovered that they were white and international, and, by that token, wonderful, at the same time.

In Part III, this Article turns to the Black Internationalist fiction of W.E.B. Du Bois and George Schuyler to show how, in *Dark Princess* and *The Black Internationale: Story of Black Genius Against the World*, respectively, these scholars not only recognized this "white international" as a sociopolitical system of Global White Supremacy, but they also set out to map its conditions of making and unmaking. This Article ends by considering how Black Internationalist fiction more generally might be read for what Charles Mills calls "alternate clocks and maps of global racial resistance" and as tools for unwhitening both the international and the world.

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> This is exactly how the music called jazz began, and out of the same
> necessity: not only to redeem a history unwritten and despised, but to
> checkmate the European notion of the world. For until this hour,
> when we speak of history, we are speaking only of how Europe saw—
> and sees—the world.
>
> But there is a very great deal in the world which Europe does not, or
> cannot, see. . . .[1]
>
> —James Baldwin

INTRODUCTION

International law was invented in 1789 when Jeremy Bentham introduced the term to replace the outmoded "Law of Nations." Since then, international lawyers have spent a lot of time thinking about whether international law is in fact *law*, and little or no time considering how international law is *international*, or what *international* actually means (this, after all, was Bentham's actual neologism).[2] Martti Koskenniemi's celebrated history of the discipline describes it as the emergence, in the late nineteenth century, among white men of "a *sensibility* about matters *international*," without defining either term.[3] A recent encyclopedia-like collection on *Concepts for International Law: Contributions to Disciplinary Thought*, which aims to consider international lawyers' "contemporary sensibilities regarding legal concepts," contains no entry for the term "international" among the sixty-odd concepts discussed (nor "race," for that matter).[4]

Samera Esmeir recently sketched out the emergence and morphology of the term "international," from Bentham's "initial coinage" in 1789—as "a legal term that corresponds to the physical conception of the world as the material surface of the earth upon which sovereign states exists in interrelationship to one another"—to the "new international imaginary" that emerged in the latter half of the

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1. James Baldwin, Of the Sorrow Songs: The Cross of Redemption (1979), *reprinted in* The Cross of Redemption: Uncollected Writings 145, 147 (Randall Kenan ed., 2010) (emphasis omitted).

2. As Bentham told his readers: "The word *international*, it must be acknowledged, is a new one; though, it is hoped, sufficiently analogous and intelligible. It is calculated to express, in a more significant way, the branch of law which goes commonly under the name of the *law of nations*. . . ." Jeremy Bentham, An Introduction to the Principles of Morals and Legislation 326 n.1 (Oskar Piest ed., Hafner Publ'g Co. 1948) (1789).

3. Martti Koskenniemi, The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960, at 2 (2004) (emphasis added).

4. *See* Concepts for International Law: Contributions to Disciplinary Thought at v, 20 (Jean d'Aspremont & Sahib Singh eds., 2019).

nineteenth century.[5] This new "international"—which encompassed both "new institutions and gatherings of multiple nations" and the "Eurocentric order of the world"—eventually "came to constitute a separate zone of political life with its own rules and institutions," and *internationalism* became "a vision of world order."[6] Along the way, as Esmeir shows, the term international, as "an adjective with specific juridical beginnings," became "intimately related to the concept of *the world* in its multiple dimensions, overlapping with or even occasionally supplanting it, while never fully replacing it," such that "becoming *of the world* require[d] becoming international."[7]

Writing a little over a century ago, W.E.B. Du Bois also recognized the emergence of this new sociopolitical imaginary in the West. For Du Bois, however, the choice was not between this new "international" and the older "world," but between two worlds: the "White World" and "the darker world" to which "[m]ost men belong."[8] In this Article, I want to suggest that, with the "reinvention" of international law in the late nineteenth century, the term international came to incorporate elements of both the terms world and global: as a sociopolitical imaginary and an "instituted perspective,"[9] a *world* international lawyers lived inside (and produced),[10] and a *global* perspective they took of (and used to take from) its Others. In particular, I aim to show that this "international" was a *racial* imaginary—a White International (or "White World" in Du Bois's terms)—that emerged from and reinforced Global White Supremacy.[11] This White World was

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5. Samera Esmeir, *On Becoming Less of the World*, 8 Hist. Present 88, 88, 90–91 (2018).

6. *Id.* at 88–90; *see also* Koskenniemi, *supra* note 3, at 515 (referring to the emergence of a "vision of a single social space of 'the international'").

7. Esmeir, *supra* note 5, at 90, 98 (emphasis added). As Esmeir shows, the term international "gained a socialist revolutionary itinerary" along the way, as it shifted from adjective to noun (for example, the First, Second, and Third Internationals), became an 'ism' or a practice (that is, internationalism) that was applied to multiple other domains (such as "commerce, agriculture, [and] transport"), and offered new political strategies for the Ottoman Empire to relate to the West. *Id.* at 89–90.

8. W.E. Burghardt Du Bois, *Of the Culture of White Folk*, 7 J. Race Dev. 434, 443–44 (1917) (emphasis omitted).

9. Sanjay Krishnan, Reading the Global: Troubling Perspectives on Britain's Empire in Asia 5 (2007).

10. On international law, "White Worlds," and "worldmaking," see Christopher Gevers, *International Law, Literature and Worldmaking*, *in* Routledge Handbook of International Law and the Humanities 191 (Shane Chalmers & Sundhya Pahuja eds., forthcoming 2021).

11. Throughout this Article I use the term Global White Supremacy as it is employed by Charles Mills in order to refer to the sociopolitical system that "encompasses de facto as well as de jure white privilege and refers more broadly to the European domination of the planet that has left us with the racialized distributions of economic, political, and cultural power that we have today." Charles W. Mills, *Revisionist Ontologies: Theorizing White Supremacy*, *in* Blackness Visible 97, 98 (1998) [hereinafter Mills, *Revisionist Ontologies*]; *see also* Charles

consecrated as the de jure international order with the founding of the League of Nations after World War I, when—as Walter Rodney later pointed out— "everywhere in the world white people held power in all its aspects—political, economic, military and even cultural."[12]   The League of Nations was partly founded by Jan Smuts, an architect of apartheid, and as in South Africa, the sociopolitical system of Global White Supremacy underpinning this international survived its formal demise with decolonization.[13]

The whiteness of this international—both historically and in the present— has, however, been rendered "conceptually invisible"[14] to international lawyers in part because of the current conceptualization of race by both mainstream and critical accounts of the discipline. In order to begin to unwhiten it, Part I of this Article rereads existing historical and theoretical accounts of the discipline, arguing that aside from the "racial aphasia"[15] that characterizes the mainstream, critical scholarship is prone to either *over*particularize, or *under*historicize, the role that race has and continues to play. Part II of this Article then reconsiders the reinvention of international law in the late nineteenth century, arguing that it was only thinkable and possible because of the racial imaginary—the "White World" or the "international"—that its founders (that is, the Men of 1873) assumed and reproduced, one that was based on a particular biological conceptualization of race. It aims to show how, paraphrasing W.E.B. Du Bois, the Men of 1873 discovered that they were white and international, and, by that token, wonderful, at the same time.[16]

In Part III, this Article turns to the Black Internationalist fiction of W.E.B. Du Bois and George Schuyler to show how these scholars not only recognized this

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W. Mills, *White Supremacy as Sociopolitical System: A Philosophical Perspective*, *in* WHITE OUT: THE CONTINUING SIGNIFICANCE OF RACISM 35 (Ashley "Woody" Doane & Eduardo Bonilla-Silva eds., 2003) [hereinafter Mills, *White Supremacy*].

12.   WALTER RODNEY, THE GROUNDINGS WITH MY BROTHERS 10 (Asha T. Rodney & Jesse J. Benjamin eds., Verso 2019) (1969).

13.   *See generally* Gevers, *supra* note 10. In 1930, Jan Smuts explicitly recognized the changes brought about by the League of Nations to the "status of the international," and set out the common origins of the Mandates system and the policy of segregation in South Africa (that would later become known as apartheid). J.C SMUTS, *Democracy*, *in* AFRICA AND SOME WORLD PROBLEMS 149, 154 (1930); *see Native Policy in Africa*, *in* SMUTS, *supra*, at 71, 88–92. On the continuities between apartheid and post-apartheid South Africa, see generally CONQUEST, CONSTITUTIONALISM AND DEMOCRATIC CONTESTATIONS: SOUTH AFRICAN PERSPECTIVES (Joel M. Modiri ed., 2019).

14.   *See* Mills, *White Supremacy*, *supra* note 11, at 39.

15.   Debra Thompson, *Through, Against and Beyond the Racial State: The Transnational Stratum of Race*, 26 CAMBRIDGE REV. INT'L AFFS. 133, 146 (2013).

16.   *See* W.E.B. Du Bois, *The Souls of White Folk*, INDEPENDENT (N.Y.), Aug. 18, 1910, at 339, *reprinted in* 2 THE COMPLETE PUBLISHED WORKS OF W.E.B. DU BOIS 25, 25 (Herbert Aptheker ed., 1982).

"white international" as a sociopolitical system of Global White Supremacy, but they also set out to map its conditions of making and unmaking through fiction (in *Dark Princess* and *The Black Internationale: Story of Black Genius Against the World*, respectively).[17] It will end by considering how Black Internationalist fiction more generally might be read as "alternate clocks and maps of global racial resistance" and as tools for unwhitening both the international and the world.[18]

I.   RETHINKING "RACE" AND INTERNATIONAL LAW

Within mainstream international legal scholarship, as with other mainstreams, the subject of race is often met with "silence and evasion."[19] Despite the acceptance of the role of European colonialism in shaping the field, race remains largely unspoken about within the centerground of international law. Although the aforementioned 2019 collection, *Concepts for International Law*, draws on a diverse collection of scholars (geographically, theoretically, and generationally), it contains no entry for race among the sixty-odd concepts discussed.[20]   When the subject of race does make an appearance within mainstream scholarship (usually as individual racism), a proper appreciation of international law's longstanding and intimate association with race (and, in particular, with Global White Supremacy as a "multidimensional system of domination")[21] is evaded through the adoption of an account of race that is

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17. For a discussion of the production of White Worlds through fiction, see Gevers, *supra* note 10.
18. Charles W. Mills, *Unwriting and Unwhitening the World*, *in* RACE AND RACISM IN INTERNATIONAL RELATIONS 202, 209 (Alexander Anievas et al. eds., 2015).
19. TONI MORRISON, PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION 9 (Vintage Books 1993) (1992). On the politics of this evasion, see FRANK FÜREDI, THE SILENT WAR: IMPERIALISM AND THE CHANGING PERCEPTION OF RACE (1998).
20. *See* CONCEPTS FOR INTERNATIONAL LAW: CONTRIBUTIONS TO DISCIPLINARY THOUGHT, *supra* note 4, at v. It does, however, contain entries on "Civilization," "Ethnicity," and "Imperialism," on which see discussion below. *Id.*
21. Mills, *White Supremacy*, *supra* note 11, at 42.

depoliticized,[22] *dehistoricized*,[23] and *domesticated*.[24]   This much is hardly surprising. I want to suggest, however, that even critical international legal scholarship is prone to two misreadings which, in effect, minimize the role that race plays in international law. As such, it is not only necessary to rethink race in international law (that is, to place race back on our "research agendas"),[25] but to rethink "race" generally (that is, to reconceptualize how we understand "race" and its articulations).[26]

The first misreading of the role that race plays in international law is one that *over*particularizes it, both empirically and conceptually, thereby reducing it to the individual prejudices (or problematic theories) of one or two aberrant international lawyers, usually of the past (such as James Lorimer).[27] This move to

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22.   A depoliticized account of race separates race and politics and, as Robbie Shilliam put it, places racialized identities "under a harmless social science of ethnic categorization," which "depoliticize[s] the meanings of the sufferers' cultural complexes and complexions, extricate[s] them from inherited hierarchies of power and thus segregate[s] them from the inherited and living struggles against (post-/neo-) masters." Robbie Shilliam, *Race and Research Agendas*, 26 Cambridge Rev. Int'l Affs. 152, 153 (2013); *see also* Mills, *White Supremacy*, *supra* note 11, at 39–42.

23.   Race is dehistoricized when modern racism and systems of racial domination are delinked from the West, or European colonialism, which were their very conditions of possibility. As Frank Füredi has shown, this dehistoricizing shift was an explicit project of the West from the 1950s onward, as the problem of racism was "[e]ternali[zed]" (such that it was "a problem for which everyone [bears] responsibility," thereby "implicat[ing] everyone and no one in particular"). Füredi, *supra* note 19, at 225–26.

24.   When race is domesticated, race and racial domination are understood as operating in distinct domestic spheres, separated off from one another; as opposed to being understood transnationally or globally, such that while "its manifestations may most obviously and perhaps prominently be domestic in application, they are simultaneously globally textured." Debra Thompson, *Through, Against and Beyond the Racial State: The Transnational Stratum of Race*, 26 Cambridge Rev. Int'l Affs. 133, 146 (2013). I have argued elsewhere that this state-centrism continues to determine how "the global" is imagined, politically and intellectually; as a result, in a number of fields this "territorial trap" continues to make it difficult to think of race internationally. Christopher Gevers, *To Seek With Beauty to Set the World Right: Cold War International Law and the Radical 'Imaginative Geography' of Pan-Africanism*, *in* International Law and the Cold War 492, 508 (Matthew Craven et al. eds., 2020).

25.   Robbie Shilliam, *Race and Research Agenda*, 26 Cambridge Rev. Int'l Affs. 152, 153 (2013).

26.   I use the term "articulation" in the sense Stuart Hall develops and deploys it to analyze "racially-structured social formations" as connoting both the "joining up" of race and racism with things that are connected but not the same (such as class or economic relations), yet which are "articulated into a complex unity"; as well as how race is "giv[en] expression to" at the political and ideological level. Stuart Hall, *Race, Articulation and Societies Structured in Dominance*, *in* Sociological Theories: Race and Colonialism 305, 305, 321, 328 (1980).

27.   This is a familiar move, as Mills points out. *See* Mills, *Revisionist Ontologies*, *supra* note 11, at 97 ("[W]hen racism in European thought *is* mentioned, the discussion is usually limited to the writings of marginal theorists such as Arthur de Gobineau; the biases in the views of the central figures in the pantheon are not examined.").

both particularize and exceptionalize Lorimer's racism—and by doing so exculpate international law historically and theoretically—is evident in a *European Journal of International Law* symposium titled "Through a Glass, Darkly: Reflections on James Lorimer's International Law."[28] In his contribution to the issue, Martti Koskenniemi set out to illustrate "the idiosyncratic character of James Lorimer's . . . conception of international law," which set him apart from his liberal contemporaries and the traditions that preceded him and emanated "[i]n various ways . . . from his hierarchical and deeply racist view of human communities."[29] According to Koskenniemi, Lorimer's racist and elitist views were to be distinguished—perhaps radically—from what "most of his [liberal] contemporaries were thinking—or at least what they were saying—about the nature and future of international law."[30]

The claim that Lorimer's racist views were not widely shared is difficult to sustain, even if one takes a narrow (liberal) definition of racism as being the speech, thought, and actions of aberrant individuals.[31] Such views were arguably so widely shared among Lorimer's contemporaries at the time that they did not need to be expressed. In his study on how the Western racial imagination evolved in international relations, Frank Füredi notes that "until the late 1930s, racial thinking was an accepted part of the intellectual climate" and the "principle of Western racial superiority [that] guided the informal and formal actions of white diplomats and politicians" was "part of the self-knowledge of the Anglo-American political elites and . . . passed for common sense."[32] If this holds true for international lawyers, then racist views were not part of what Lorimer's contemporaries were saying about "the nature and future of international law" because such views went *without* saying.[33]

More fundamentally, this overparticularization is theoretical, reducing the role of race to *racism*, that manifests in the prejudiced thoughts and actions of

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28. Symposium, *Through a Glass, Darkly: Reflections on James Lorimer's International Law*, 27 Eur. J. Int'l L. 409 (2016); *see also* Jennifer Pitts, Boundaries of the International 171–72 (2018) (noting that "[Lorimer's] international thought was overtly racist").

29. Martti Koskenniemi, *Race, Hierarchy and International Law: Lorimer's Legal Science*, 27 Eur. J. Int'l L. 415, 415–16 (2016).

30. *Id.* at 416.

31. *See* Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation*, 62 Am. Socio. Rev. 465, 467 (1996) (criticizing the prevailing theories of race and racism in social sciences that conceptualized racism "as a psychological phenomenon to be examined at the individual level" (emphasis omitted)).

32. Füredi, *supra* note 19, at 5.

33. Koskenniemi, *supra* note 29, at 416.

individuals.[34] Such approaches miss the wood for the trees, in a sense, by failing to view race in structural terms,[35] as part of a "multidimensional *system* of domination" (political, moral, cultural, economic, and epistemological)[36] for which individual racist ideas, values, and attitudes (racism) are "an ideological accompaniment."[37] One way to map the articulations of race structurally—as a "power structure of formal or informal rule, socioeconomic privilege, and norms for the differential distribution of material wealth and opportunities, benefits and burdens, rights and duties"[38]—is through Charles Mills's reworking of the classic "social contract" as a "*racial* contract" (one for which not all "white" people are signatories, but of which all white people are beneficiaries).[39] For Mills, this racial contract—in which, unlike in international law, race is conceptualized as political, global, and historically-specific—both explains theoretically, and details historically, "the European domination of the planet that has left us with the racialized distributions of economic, political, and cultural power that we have today."[40] While acknowledging that "no single act literally corresponds to the drawing up and signing of a contract," Mills identifies a series of global, historical events that "can be seen, not just metaphorically but close to literally, as its conceptual, juridical, and normative equivalent."[41] Notably, all of the examples Mills gives of literal "racial contracts" implicate international law (and, as discussed below, late nineteenth century international lawyers in particular).[42]

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34.   Pitts, for example, acknowledges that Lorimer's "overt" racism might have been "more widely shared," but concludes that "[t]he equivocal nature of the term 'race' in this period makes it difficult to determine whether given instances are intended to indicate biological difference." PITTS, *supra* note 28, at 173 & 262 n.104.

35.   *See generally* Bonilla-Silva, *supra* note 31.

36.   Mills, *White Supremacy*, *supra* note 11, at 42 (emphasis added).

37.   MILLS, *Revisionist Ontologies*, *supra* note 11, at 100.

38.   CHARLES W. MILLS, THE RACIAL CONTRACT 3 (1997).

39.   According to Mills:

> The Racial Contract is that set of formal or informal agreements . . . between the members of one subset of humans, henceforth designated by (shifting) "racial" . . . criteria . . . as "white," . . . to categorize the remaining subset of humans as "nonwhite" . . . subpersons, so that they have a subordinate civil standing in the white or white-ruled polities, and . . . the general purpose of the Contract is always the differential privileging of the whites as a group . . . the exploitation of [nonwhite] bodies, land, and resources, and the denial of equal socioeconomic opportunities to them.

> *Id.* at 11.

40.   MILLS, *Revisionist Ontologies*, *supra* note 11, at 98.

41.   MILLS, *supra* note 38, at 20–21.

42.   As examples of literal racial contracts, Mills cites:

> [P]apal bulls and other theological pronouncements; European discussions about colonialism, "discovery," and international law; pacts, treaties, and legal decisions; academic and popular debates about the humanity of nonwhites; the

For Lorimer's nineteenth century contemporaries, then, racist views also went without thinking, as their common racial contract was not just political, moral, cultural, and economic, it was epistemological, setting the terms upon which its signatories interpreted, or misinterpreted, the world.[43]   When conceptualized in structural terms, racism is no longer seen as "a mental quirk, as a psychological flaw"[44] on the part of Lorimer and others, but as the byproduct of "an invented delusional world, a racial fantasyland, a 'consensual hallucination'" that they shared as signatories to the racial contract.[45] In other words, a White World.

The second possible misreading of the role that race plays in international law is one that understands it structurally but ahistorically (or, more often, *under*historically), and thereby risks the conflation of race with other forms of difference (often cultural or economic), losing sight of how, as Siba Grovogui points out, "race is *differently* different from other forms of difference in post-Enlightenment moral thought."[46] For example, in his seminal text *Imperialism, Sovereignty and the Making of International Law*, Antony Anghie demonstrates how international law has been animated by the "dynamic of difference" from the sixteenth century to the present, in terms of which "a gap is postulated between European and non-European peoples" so that international legal doctrines and institutions can intervene to bridge the gap.[47] In Anghie's masterful retelling of the history and theory of international law, the postulated difference underpinning this dynamic is at times cultural, racial, or economic (or some combination thereof). While, as Anghie acknowledged, this broad revisionist account courted generality in order to reveal the underlying dynamic of difference that structures international law, the risk for readers is the permanent conflation of these differences and a failure to pay sufficient attention to shifts between and within

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establishment of formalized legal structures of differential treatment; and the routinization of informal illegal or quasi-legal practices effectively sanctioned by the complicity of silence and governmental failure to intervene and punish perpetrators. . . .

   Id.
43.   *See id.* at 17–18.
44.   Frantz Fanon, Toward the African Revolution 38 (Haakon Chevalier trans., Monthly Rev. Press 1967) (1964) ("The habit of considering racism as a mental quirk, as a psychological flaw, must be abandoned.").
45.   Mills, *supra* note 38, at 18 (quoting William Gibson, Neuromancer (1984)).
46.   Siba N'Zatioula Grovogui, *Deferring Difference: A Postcolonial Critique of the 'Race Problem' in Moral Thought*, in Postcolonial Theory and International Relations 106, 120 (Sanjay Seth ed., 2013).
47.   Antony Anghie, Imperialism, Sovereignty and the Making of International Law 4, 40 (2005).

them.[48] A tendency toward such a misreading is evident in the shorthand history of international law and its unspecified Others, in which the non-European "savage" becomes the "uncivilized," then the "non-sovereign," then the "undeveloped," then the "unlawful combatant," and so on.

In particular, this misreading results in two problematic conflations of race with other types of difference. The first conflation is of assertions of *racial* difference and *cultural* difference, or the adoption of "an approach to race that affords primacy to cultural variables" (as opposed to "corporeal markers of identity"),[49] and in doing so reduces it to the assertion of mere difference in group identity ("attitudes and beliefs, religion, language, 'lifestyle'");[50] often resulting in the "horizontalization/depoliticization of race into ethnicity."[51] International law's "race problem" is, in the most benign version of this reading, simply European ethnocentricism (and the remedy lies in the personal realization that French food is "ethnic" too).

The second conflation is of assertions of racial difference and economic difference, thereby collapsing international law's relationship with race into the story of (economic) imperialism. In these accounts, race is again minimized through the "subsumption of racial structures under the 'logic' of capitalist economic relations,"[52] and the adoption of "an economism that fails to do theoretical justice to race, with race being seen as irrelevant to the ontology of the liberal individual or the class membership of workers and capitalists."[53] Here, the risk is losing sight of how—at different times and in different ways—the concept of race and racial formations have been central to global capitalism and

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48.   As Anghie noted in the opening pages of *Imperialism, Sovereignty and the Making of International Law*:

> [T]he relationship between colonialism and international law over many decades . . . is a large one. . . .
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>   My hope, however, is that the sketch of this large subject that I have offered here might suggest new lines of research and make some contribution towards the writing of alternative histories of the discipline. . . .

Id. at 12.

49.   MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES 21–22 (3d ed. 2015).
50.   *Id.* at 22.
51.   Shilliam, *supra* note 22, at 155.
52.   Hall, *supra* note 26, at 309. Hall notes that, in such accounts, "social divisions which assume a distinctively racial or ethnic character [are] attributed or explained principally with reference to economic structures and processes." *Id.* at 306.
53.   MILLS, *Revisionist Ontologies*, *supra* note 11, at 99. For an account that thinks against this conflation, see Robert Knox, *Valuing Race?: Stretched Marxism and the Logic of Imperialism*, 4 LONDON REV. INT'L L. 81, 81–126 (2016).

imperialism[54] and, equally, how capitalism and imperialism have been central to modern race-thinking and racial formations globally.[55]

In this Article, I focus primarily on the first conflation: the misreading (or *reading down*) of assertions of racial difference as cultural difference (or the conflation of biological racism and cultural racism), which raises a number of problems, both historical and theoretical. For one, it is historically revisionist, as it reads the modern (social scientific) understanding of race that came to prominence in the mid-twentieth century backward, while glossing over the politics of this shift.[56] More fundamentally, it overlooks the fact that, for much of modern international law's history (and particularly important parts thereof), race was employed to denote a biological difference, what Frantz Fanon labeled the "vulgar, primitive, over-simple racism purported to [reside] in biology."[57] Here, the line drawn between Europe and its Others (or the most benighted of them), was more than mere cultural difference: it was "overall negation."[58] This negation was absolute and had distinct consequences, not only for Europe's Others, but for its White Selves as well. In particular, for those racialized as Black people (and polities)—unlike some of Europe's *other* Others—negation placed them not in the zone of nonrecognition, but in what Fanon called the "zone of nonbeing": a location below not only the Self but the Other as well.[59]

Crucially, when international lawyers asserted cultural difference between Europe and a particular Other, assimilation into the Family of Nations for the latter was notionally possible through meeting the "standard of civilization": by demonstrating that, metaphorically speaking, they too wore breeches.[60] For those

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54. As Paul C. Taylor puts it: "[P]erhaps the most successful racializing institution in history [transatlantic slavery] prepared the way for today's global economy. . . ." PAUL C. TAYLOR, RACE: A PHILOSOPHICAL INTRODUCTION 24 (2d ed. 2013).

55. *See generally* CEDRIC J. ROBINSON, BLACK MARXISM (2d ed. 2000). Robinson uses the term "racial capitalism" to describe how "[t]he development, organization, and expansion of capitalist society pursued essentially racial directions," and argues that the "social, psychological, and cultural origins of racism and nationalism both anticipated capitalism in time and formed a piece with those events that contributed directly to its organization of production and exchange." *Id.* at 2, 9.

56. *See* OMI & WINANT, *supra* note 49, at 21.

57. *See* FANON, *supra* note 44, at 32.

58. *Id.* at 31.

59. FRANTZ FANON, BLACK SKIN, WHITE MASKS, at xii (Richard Philcox trans., Grove Press 2008) (1952). As Lewis Gordon puts it: "Since racism is a denial to an Other attributes of the self and even those of another self—in other words, even of being an Other—the resulting schema is one of location below, in the zone of nonbeing." LEWIS R. GORDON, WHAT FANON SAID: A PHILOSOPHICAL INTRODUCTION TO HIS LIFE AND THOUGHT 69 (2015) (emphasis omitted).

60. Gerry Simpson, *Something to Do With States*, *in* THE OXFORD HANDBOOK OF THE THEORY OF INTERNATIONAL LAW 564, 573 (Anne Orford & Florian Hoffmann eds., 2016) ("States that

Others for whom racial difference denoted the "natural, biological . . . carving of humanity at its actual ontological joints,"[61] however, there was no route out of the zone of nonbeing through recognition: the standard of civilization was not a threshold but a ceiling.[62] In fact, such recognition remained contingent even for those "Black Republics" who exceptionally were recognized as states in the nineteenth century (Haiti, Ethiopia, and Liberia), whose international personhood was unthinkable in the West even when it happened and remained so well into the twentieth century.[63]

It is these *different* differences—between orders of thought and ordering of Others—that risk being overlooked, or insufficiently considered, when the story of international law and race is subsumed into the story of international law and the discourse of difference generally. Ultimately, tracing the (ongoing) articulation of race in international law requires, to paraphrase Stuart Hall, "a difficult effort of theoretical [and historical] clarification, through the Scylla of a reductionism which must deny almost everything to explain something, and the Charybdis of a pluralism which is so mesmerized by 'everything' that it cannot explain anything."[64] Rereading the role of race in international law in a manner that pays attention to its structural dimensions, as well as its historical specificities,[65] opens up new connections, such as the historical coincidence of whiteness and internationalness or, paraphrasing Du Bois, the way that international lawyers discovered that they were both white and international, "and, by that token, wonderful" at the same time.[66]

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failed to wear breeches or come up to standard—John Westlake had said that they lacked 'good breeding'—became more susceptible to intervention, discipline, and general loss of status.").

61.   Mills, *White Supremacy*, *supra* note 11, at 38.

62.   As W.E.B. Du Bois noted in 1910, underpinning the recent "discovery of personal whiteness" was not "the obvious proposition: 'I am white and you are black,' but the astonishing declaration, 'I am white and you are nothing.'" Du Bois, *supra* note 16, at 25. Similarly, as Fanon put it: "We hope we have shown that the master here is basically different from the one described by Hegel. For Hegel there is reciprocity; here the master scorns the consciousness of the slave. What he wants from the slave is not recognition but work." FANON, *supra* note 59, at 195 n.10.

63.   *See generally* MICHEL-ROLPH TROUILLOT, SILENCING THE PAST: POWER AND THE PRODUCTION OF HISTORY 70–107 (1995); ADOM GETACHEW, WORLDMAKING AFTER EMPIRE: THE RISE AND FALL OF SELF-DETERMINATION (2019).

64.   Hall, *supra* note 26, at 343. Hall adds that the risk of such "plural explanations" is that they "lack an adequate theorization, and . . . in the end are descriptive rather than analytic." *Id.* at 308.

65.   As Cedric Robinson points out: "[R]acial regimes do possess history, that is, discernible origins and mechanisms of assembly. But [they] are unrelentingly hostile to their exhibition. This antipathy exists because a discoverable history is incompatible with a racial regime . . . ." CEDRIC J. ROBINSON, FORGERIES OF MEMORY AND MEANING, at xii (2007).

66.   Du Bois, *supra* note 16, at 25.

II.   THE RISE OF THE "WHITE INTERNATIONAL"

The (re)invention of international law in the late nineteenth century coincided with the rise of biological "race-thinking"[67] generally and, in particular, "an explicit biological discourse on international relations."[68] These assertions of racial difference had consequences for both Europe's Others and its whitened Selves (and States), as "whiteness and blackness evolved in a forced intimacy of loathing in which they determined each other by negation and self-recognition."[69] Indeed, as Michel-Rolph Trouillot notes, this "poetics and politics of otherness" had been part of the West's "geography of imagination" since the so-called Age of Discovery, when Europe created itself and its Other: "a Janus, of whom the Savage was only the second face. The first face was the West itself. . . . "[70] This process, however, reached something of an apotheosis in the late nineteenth century, with "[t]he proliferation of ideas of whiteness . . . and the intensity they assumed within imperial cultures,"[71] on both sides of the Atlantic. As Du Bois put it in 1905, "white and civilized have become [so] synonymous in every-day speech . . . [that] men ha[ve] well-nigh forgotten where civilization started."[72]

These poetics of otherness were written in the "poetics of blood,"[73] as the biological conception of "race" of the period prioritized the "corporeal markers of identity and difference" along with "questions of descent, kinship, and ancestry"[74] (unlike the cultural conceptions that would come later). John Westlake, perhaps the most influential of the Men of 1873 and later the honorary President of their

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67.   I use the term "race-thinking" as defined by Paul C. Taylor as the practice of "assigning generic meaning to human bodies and bloodlines," and in particular the "specific and specifically located kind of race-thinking that we find in the modern West" (or "capital-R Race-thinking," in Taylor's typology). TAYLOR, *supra* note 54, at 16, 19, 26.

68.   FÜREDI, *supra* note 19, at 26. According to Hannah Arendt, "race-thinking, with its roots deep in the 18th century, emerged during the 19th century simultaneously in all Western countries," and by the end of the century "writers who treated political topics used the terms of biology and zoology as a matter of course." Hannah Arendt, *Race-Thinking Before Racism*, 6 REV. POL. 36, 36, 67 (1944).

69.   MILLS, *supra* note 38, at 58. As Toni Morrison puts it, in discussing the making of whiteness in the American literary imagination, in the "construction of blackness and enslavement could be found not only the not-free but also, with the dramatic polarity created by skin color, the projection of the not-me." MORRISON, *supra* note 19, at 38 (emphasis omitted).

70.   MICHEL-ROLPH TROUILLOT, GLOBAL TRANSFORMATIONS: ANTHROPOLOGY AND THE MODERN WORLD 7–8, 18 (2016) (footnote omitted).

71.   BILL SCHWARZ, THE WHITE MAN'S WORLD 166 (2011).

72.   W.E. Burghardt Du Bois, *Atlanta University*, *in* FROM SERVITUDE TO SERVICE 155, 196–97 (1905).

73.   SCHWARZ, *supra* note 71, at 170.

74.   OMI & WINANT, *supra* note 49, at 22.

Institut,[75] declared in 1904 that "[t]he international society which develops international law . . . is composed of all the states *of European blood*, that is of all the European and American states except Turkey, and of Japan."[76] Even Liberia's provisional acceptance into international society—as a state established by "men *of other blood*" who had learned "European institutions . . . on civilised soil" and taken them back to Africa—was a result of its recognition exceptionally (and begrudgingly, one suspects, on Westlake's part) "as the *equivalent* of European blood."[77] In order to tell the story of the coproduction of racial whiteness and international law, however, we must turn to Westlake's often overlooked predecessor in the Whewell Chair, Henry Sumner Maine.

In *The Gentle Civilizer of Nations*, Martti Koskenniemi tells us, somewhat obliquely, that despite their political differences, the Men of 1873—the group of European lawyers who founded the *Institut de droit international* and reinvented the discipline of international law—were "anything but averse to giving legal recognition to *cultural* difference between Europe and the rest of the world."[78] Koskenniemi, however, is quick to downplay any broader theorization on the part of these international lawyers of this "[c]ultural consciousness,"[79] noting that "[m]ost were content with generalizations such as Lorimer's threefold classification (civilized/barbarian/savage) and simply assumed European modernity as the natural end-point of development everywhere."[80] Simply accepting Lorimer's generalizations was, presumably, distinguishable from accepting the science of races (and the ideas of Charles Darwin and Herbert Spencer) that underpinned them. Similarly, while they adopted an "evolutionary framework [which] suggested that non-European communities were not only different but inferior in the sense of being more primitive," it mattered that "[n]one of the lawyers . . . developed a detailed theory about that difference or how the evolutionary process would work in the future."[81]

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75.   As Lassa Oppenheim put it in 1914: "Most of the living international jurists of England were, at one time or another, his pupils. In a sense it may even be said that every living jurist is his pupil, for his works have been studied by every jurist, British and foreign." L. Oppenheim, *Editor's Introduction* to The Collected Papers of John Westlake on Public International Law, at x (L. Oppenheim ed., 1914); *see also* Pitts, *supra* note 28, at 154 (noting that Westlake "dominated the field" of international law).

76.   John Westlake, 1 International Law 40 (1st ed. 1904) (emphasis added).

77.   *Id.* at 46 (emphasis added).

78.   Koskenniemi, *supra* note 3, at 70 (emphasis added).

79.   *Id.* (emphasis omitted).

80.   *Id.* at 75.

81.   *Id.* Recently, Jennifer Pitts has made a similar distinction, noting the "vague or poorly theorized [distinctions] between civilized and barbarous, or improving and stationary societies" on the part of the Men of 1873, and labelling Maine's account "unusually thoroughly theorized." Pitts, *supra* note 28, at 165 & 161.

None except one, it seems, as Koskenniemi proceeds to note that Henry Sumner Maine "sketch[ed] a theory of legal development" with an "evolutionary outlook."[82] But Koskenniemi quickly assures his readers that "[t]here is no evidence that Maine's *Ancient Law* that came out only two years after the *Origin of Species*, was influenced by Darwin or Spencer" and suggests instead that its "evolutionary outlook can perhaps better be accredited to the historical school and its enthusiastic reception to a Zeitgeist that looked for assurance about evolution being on the side of the West."[83] In order to further minimize Maine's importance, Koskenniemi adds that, "Maine's influence in the field [of international law] remained negligible." Having particularized Lorimer, and sidelined Maine, *The Gentle Civilizer of Nations* set outs a somewhat benign account of the role of difference in the shared "conscience-consciousness" of the Men of 1873, in which it is not only read down as cultural difference, but in which culture is read down as individual character or personal virtue (that is, "projections of what the men of 1873 valued in each other as persons and colleagues").[84]

Koskenniemi's efforts to downplay Darwin and Spencer's influence on Maine (and then Maine's influence on the Men of 1873) are telling, and problematic (but not unique).[85] For one, it is quite unlikely that Maine did not interact with Spencer, if not before *Ancient Law* was published then certainly from the mid-1860s when they were both members of the elite circle that "nodded to each other across the reading room of the Athenaeum"[86] (the whites only gentlemen's club in London both visited daily for a period), as their evolutionary

82. KOSKENNIEMI, *supra* note 3, at 75.
83. *Id.* (emphasis omitted). Notably, Koskenniemi cites J.W. Burrow's *Evolution and Society* in this regard, *id.* at n.305, who placed distance between Maine and Darwin by pointing out that "the lectures that . . . contain the substance of *Ancient Law*" were completed by 1853, before *On the Origin of Species* was published, J.W. BURROW, EVOLUTION AND SOCIETY 139 (1966). Burrow himself, however, proceeded to acknowledge that this "does not preclude the possibility that Maine, like Spencer, may have been influenced by the ideas of evolutionary biology." *Id.* at 139–40. Nor, one might add, does it preclude the possibility of Maine being influenced by Spencer, who started publishing his social evolutionary theories in 1851 as a subeditor at *The Economist*.
84. KOSKENNIEMI, *supra* note 3, at 76–77; *see also id.* at 80 ("Qualities of personal character, cultivated by tradition and learning constituted the framework through which the men of 1873 identified the legal *conscience* of which they felt they were the organ."). Later on, Koskenniemi asked: "What after all was this conscience but a set of unanalyzed prejudices about good manners?" *Id.* at 97 (emphasis omitted).
85. See, for example, THE VICTORIAN ACHIEVEMENT OF SIR HENRY MAINE (Alan Diamond ed., 1991), and the contributions by Alan Diamond, *id.* at 1, George Feaver, *id.* at 28, John W. Burrow, *id.* at 55, Krishan Kumar, *id.* at 76, Edward Shils, *id.* at 143, J.D.Y. Peel, *id.* at 179, and Bernard S. Jackson, *id.* at 256.
86. STEFAN COLLINI, PUBLIC MORALISTS: POLITICAL THOUGHT AND INTELLECTUAL LIFE IN BRITAIN, 1850–1930, at 21 (1991).

ideas grew in influence in a "post-Darwinian milieu."[87] As Frederick Pollock noted in 1903 of "the transformation of political science" forty years prior: "*Ancient Law* and *The Origin of Species* [sic] were really the outcome, in different branches, of one and the same intellectual movement—that which we now associate with the word Evolution" (even if, he added, "[t]his identity of spirit was not perceived at the time," and has been concealed since, one might add).[88] As Peter Fitzpatrick notes, Maine was undoubtedly among the social (and legal) theorists influenced by Spencer (despite the subsequent attempts to limit the latter's influence on social thought), and for whom "demiurgic forces of progression create and sustain the link between modern European identity and what this identity is thus negatively derived from."[89] Moreover, Fitzpatrick argues that when it came to "stories of the progression of society [as] intimately tied to and even told in terms of the progression of law," Maine was "the most persistently influential of the lawyer-scholars."[90]

In particular, two related ideas which underpin "much of Maine's social thought,"[91] and his contributions to modern international law in particular, were themselves constructed upon the assertions of biological racial difference made possible by the thought of Darwin and Spencer.[92] The first was the founding distinction Maine drew between so-called progressive societies and their Others: the former were, "by a marvellous fate," those societies populated by the "progressive races" of "western Europe" (or, the "Western world"), and the latter were "primitive" races (who remained, as a general rule, "stationary") or outright barbarians.[93] The second was the idea that the progression of societies,

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87. George W. Stocking, Jr., Victorian Anthropology 128 (1987).

88. Frederick Pollock, *The History of Comparative Jurisprudence*, 5 J. Soc'y Compar. Legis. 74, 79 (1903).

89. *See* Peter Fitzpatrick, The Mythology of Modern Law 98–101 (1992).

90. *Id.* at 101.

91. Burrow, *supra* note 83, at 159.

92. In this respect, Fitzpatrick argues that nineteenth century race science "can only be separated in retrospect from evolutionary thought" (including that of Darwin, who "did not see the racial theories of Spencer or even of Knox as something different to his work"). Fitzpatrick, *supra* note 89, at 97.

93. Henry Sumner Maine, Ancient Law 15, 21–22, 74 (Beacon Press 1963) (1861). As Daniel Bonilla Maldonado points out, Maine's Others were further divided into two groups: Europe's primitive Indo-European Other (that is, India) and "the rest of the world, that is also the space of barbarianism" ("sometimes concretized in China . . . or in Africa"). Daniel Bonilla Maldonado, The Legal Barbarians: Identity, Modern Comparative Law and the Global South (forthcoming 2021). The latter of which is perhaps what Maine in 1884 referred to as "savage or extremely barbarous races . . . of greater antiquity," evidence of which had emerged "since his work was first published." Maine, *supra,* at iii–iv. In any event, whether this difference was expressed as one of kind or degree, it was always to the same effect. *See* Fitzpatrick, *supra* note 89, at 97.

when it happened,[94] was evolutionary (not simply historical)[95] such that "[t]he study of races in their primitive condition afford[ed] . . . some clue to the point at which the development of certain societies has stopped,"[96] and "by investigation of the practices and ideas of *existing savage races, . . . earlier stages of human society* disclose themselves."[97] Together, these two related ideas relied on and reproduced social evolutionary (mis)readings of Darwin by: (1) treating sociocultural institutions (including law) as "exemplifying an isomorphic relation to biology"[98] (or, as Maine put it, as "inherited"),[99] and (2) presuming "an inherent progress to evolution, which meant that some groups within a species could be interpreted as living at an earlier stage of development, while another was at a later stage."[100]

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94. According to Maine:
> The difference between the stationary and progressive societies is . . . one of the great secrets which inquiry has yet to penetrate. . . . It may further be remarked that no one is likely to succeed in the investigation who does not clearly realise that the stationary condition of the human race is the rule, the progressive the exception. And another indispensable condition of success is an accurate knowledge of Roman law in all its principal stages.
> MAINE, *supra* note 93, at 22–23.

95. Fitzpatrick argues that the transformation of "separation between peoples in space into separation and gradation in time" is a condition of possibility of "Occidental accounts of the origin and progress of society." FITZPATRICK, *supra* note 89, at 101.

96. MAINE, *supra* note 93, at 22.

97. HENRY SUMNER MAINE, *The East, and the Study of Jurisprudence, in* VILLAGE-COMMUNITIES IN THE EAST AND WEST 1, 16 (7th ed., John Murray 1913) (1871) (emphasis added). According to Maine, observing "phenomena of usage and legal thought" of so-called primitive societies (and races) in the present, revealed "fragments" of "phenomena of the same kind which the Western World may be shown to have exhibited at periods here belonging chronologically to the Past." *Id.* at 13.

98. Lewis R. Gordon, *Race Theory, in* 3 ENCYCLOPEDIA OF POLITICAL THEORY 1133, 1137 (Mark Bevir ed., 2010).

99. MAINE, *supra* note 93, at 112 (criticizing Montesquieu for, in his comparison of the "manners and institutions" of "civilized" Europe and its Others, "pay[ing] little or no regard to the inherited qualities of the race, those qualities which each generation receives from its predecessors, and transmits but slightly altered to the generation which follows it"). In 1871 Maine explained the application of "Modern Theories of Race" to India as follows:
> A great number of the bodies of custom observable in India are strikingly alike in their most important features, and leave no room for doubt that they have somehow been formed on some common model and pattern. After all that has been achieved in other departments of enquiry, there would be no great presumption in laying down, at least provisionally, that the tie which connects these various systems of native usage is the bond of common race between the men whose life is regulated by them.
> MAINE, *supra* note 97, at 14. On "inheritance" and race-thinking, see Arendt, *supra* note 68, at 62, 65.

100. Gordon, *supra* note 98, at 1137. Gordon notes: "Thus, the appeal to racial hierarchies took the form of asserting the primitiveness (earlier stage) of one group versus the more developed stage of another racial group." *Id.*

As such, despite Koskenniemi's assertion to the contrary, Maine was both a general and specific influence on the emerging field of international law.[101] Not only was his legal thought influential on British international lawyers during the "British Age" in international law,[102] more importantly, his "Comparative and Historical Methods"[103] were essential to the rise of international law narrated in Koskenniemi's *The Gentle Civilizer of Nations.* Long before race officially enters the narrative (with Lorimer's racism), *The Gentle Civilizer of Nations* tells the story of the reinvention of international law in the late nineteenth century by a group of European lawyers who forged a "radical break" from international law's "old-fashioned" past (and their conservative contemporaries).[104] Notably, Henry Sumner Maine is a central figure in *this part* of the story, which centers on the founding of the *Institut de droit international* in 1873, which sought "[t]o favour the progress of International Law by seeking to become the organ of the legal conscience of the civilised world."[105] One of the founding Men of 1873 was Swiss lawyer Johann Caspar Bluntschli, whose "historical and organic" (we might say evolutionist) understanding of law was shared by both his continental colleagues and their British counterparts, and was "expressly related to international law by the leading British historian Sir Henry Sumner Maine."[106] Far from being peripheral, Casper Sylvest argues that this "evolutionary-progressive"[107] understanding of international law, which drew heavily on Maine, did not just reinvent the discipline but redeemed it by taking the place of natural law as "the

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101. According to Jennifer Pitts, Maine's "historicist program . . . not only profoundly influenced British jurisprudence generally but also significantly shaped the emerging discipline of international law." PITTS, *supra* note 28, at 156.

102. *See generally* WILHELM G. GREWE, THE EPOCHS OF INTERNATIONAL LAW 425–572 (Michael Byers trans., Walter de Gruyter 2000) (1984). George Feaver argues that *Ancient Law*, for lawyers and historians at the time, was "viewed . . . with much the same sort of enthusiasm as natural scientists had received Darwin's *Origins of Species* [sic]." GEORGE FEAVER, FROM STATUS TO CONTRACT 43 (1969).

103. MAINE, *supra* note 97, at 2.

104. KOSKENNIEMI, *supra* note 3, at 19.

105. Article 1(1), Statute of the *Institute of International Law* (1873). Koskenniemi cited the French text, which is authoritative. *See* KOSKENNIEMI, *supra* note 3, at 41.

106. KOSKENNIEMI, *supra* note 3, at 46.

107. CASPER SYLVEST, BRITISH LIBERAL INTERNATIONALISM, 1880–1930, at 66 (2009). Sylvest proceeds to illustrate the "hidden hand" of Maine's ideas in the work of W.E. Hall, T.J. Lawrence, and John Westlake in particular. *See id.* at 81–82, 86–87; *see also* Walter Rech, *International Law, Empire, and the Relative Indeterminacy of Narrative*, *in* INTERNATIONAL LAW AND EMPIRE 57, 58 (Martti Koskenniemi et al. eds., 2016) ("The narrative of progress established itself as a defining component of international legal argument around the mid-nineteenth century, as philosophical and scientific discourses were spreading progressive and evolutionary ideas across law and the social sciences."). On "progress" and histories of international law, see generally THOMAS SKOUTERIS, THE NOTION OF PROGRESS IN INTERNATIONAL LAW DISCOURSE (2009).

strongest extra-legal foundation for international law," while offering "intellectual reassurance, scientific respectability and . . . a crucial sense of direction."[108] As such, in their common "evolutionary outlook," Maine and the Men of 1873 were not simply caught up in "the historical school and . . . a Zeitgeist that looked for assurance about evolution being on the side of the West,"[109] but rather, they embraced and relied on what Peter Fitzpatrick calls the "white mythology" of modern law. Notably, in the progressive evolutionism of its late nineteenth century variant, this white mythology was articulated to (and through) biological race-thinking, and the "link between progression and the individual [was] mediated in terms of race."[110]

Equally important was the role of Maine's thought in bringing the Men of 1873 together in the first place (as aspirant "Comparative Lawyers"),[111] and keeping them together long enough to reinvent international law, by grounding their shared "juridical conscience."[112] In Koskenniemi's account, what held these Men of 1873 together was a "social conception of law": not only of a society of European states, but of European societies, which shared a common "conscience-consciousness" that it was the job of international lawyers to "articulate and represent."[113] According to Koskenniemi:

> For Maine—as for the men of 1873—international law did not emerge from legislation by sovereigns. Its essence did not lie in the presence of effective sanctions but in the "law-abiding sentiment" that lay behind it, that is to say, in the civilized consciousness-conscience of which the body of liberal jurists was a collective representative. . . . Westlake was

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108. SYLVEST, *supra* note 107, at 72.
109. KOSKENNIEMI, *supra* note 78, at 75 (emphasis omitted).
110. FITZPATRICK, *supra* note 89, at 96.
111. The Institut emerged out of its members' interest in comparative law—and the Revue de droit international et de législation comparée (the "first international law journal," KOSKENNIEMI, *supra* note 3, at 14)—a field of which Henry Sumner Maine is considered either the "founder," or "forefather." *See* Raymond Firth, *Preface to the Beacon Paperback Edition* of MAINE, *supra* note 93, at xxv, xxv; Veronica Corcodel, *The Governance Implications of Comparative Legal Thinking: On Henry Maine's Jurisprudence and Liberal Imperialism*, *in* PRIVATE INTERNATIONAL LAW AND GLOBAL GOVERNANCE 92, 93 (Horatia Muir Watt & Diego P. Fernández Arroyo eds., 2014).
112. KOSKENNIEMI, *supra* note 3, at 54.
113. *Id.* at 47 ("The double meaning of *conscience* is exploited to merge a romantic sensibility with Enlightenment rationalism. On the one hand, as 'conscience,' it looks beyond the vicissitudes of diplomacy towards the moral sentiments of European societies, a normative-psychological dictum about the deepest feelings about right and wrong in (civilized) contemporaries. On the other hand, as 'consciousness,' it separates the true from the false, knowledge from superstition . . . [and] merges individual (subjective) understanding with that which is (objectively) true for everybody.").

express about this. Not a sovereign but a *society* was the precondition
of [international] law.[114]

"[F]or Maine—as for the men of 1873," however, this society was founded in
negation and articulations of biological race-thinking. John Westlake would
describe it with remarkable candor—on the eve of his election as President of the
Institut de droit international—as "the international society of the white race"
(in a passage from *Chapters on the Principles of International Law* that,
understandably, never gets cited).[115] This white society consisted principally of
Western European states and empires, and their "revolting spawn"[116] (that is, the
United States, the Boer Republics, and other settler colonies). The place of
biological race-thinking in constituting this White International was made explicit
by Westlake in 1904 (the year that the *Institut* won the Nobel Prize), when he
declared that "international society" was "composed of all the *states of
European blood*, that is of all the European and American states except Turkey,
and of Japan."[117]

If the Men of 1873 fancied themselves the collective representatives of a
juridical conscience, it was one that was not only limited to white European
"progressive" societies (and men), but also constituted by its absence (or, more
accurately, its negation) in racialized, "myth-ridden"[118] Others (which Maine's
"Comparative and Historical Methods" purported to disclose).[119] Ultimately, if
one "place[s] race at center stage rather than in the wings of theory,"[120] the
consciousness that brought and held the Men of 1873 together was not an

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114. *Id.* at 48–49.

115. JOHN WESTLAKE, CHAPTERS ON INTERNATIONAL LAW 198 (Cambridge, Cambridge Univ. Press
      1894). Westlake also refers to international law as "the rules which are internationally
      recognised between white men," and as the rules of "the fully sovereign states of the white
      society." *Id.* at 143, 190.

116. To borrow a phrase from GERALD HORNE, THE APOCALYPSE OF SETTLER COLONIALISM 7 (2017).

117. WESTLAKE, *supra* note 76, at 40 (emphasis added). In 1910, Westlake modified this definition
      of "the international" as "composed of Europe, all nations outside Europe but of European
      blood, and Japan." John Westlake, *The Native States of India*, 26 LAW Q. REV. 312 (1910),
      reprinted in THE COLLECTED PAPERS OF JOHN WESTLAKE ON PUBLIC INTERNATIONAL LAW, *supra*
      note 75, at 620, 622. On Westlake's shifting significations of race, see generally Gevers, *supra*
      note 10.

118. FITZPATRICK, *supra* note 89, at ix.

119. MAINE, *supra* note 97, at 2. These two methods operated in tandem, along the lines of what
      Antony Anghie termed the "dynamic of difference," where the gap disclosed by comparison
      (racial, historical) did not only authorize the normalization of the aberrant Other, but also the
      stabilization of whitened, European Selves. ANGHIE, *supra* note 47, at 4. Efforts to restrict
      Maine's thought to "progressive societies" or "European civilization," or separate its
      "evolutionary narrative" and "dichotomization of human societies" lose sight of this. *See,
      e.g.*, PITTS, *supra* note 28, at 162.

120. MILLS, *Revisionist Ontologies*, *supra* note 11, at 98.

"elusive" "sensibility about matters international," or "a matter of feeling, and of intuition, that was impossible to articulate,"[121] it was whiteness (and it was, at times, plainly articulated). This was part of the broader "*consciousness of white solidarity* [that] informed diplomatic affairs" at the time,[122] and of the "sudden, emotional conversion" that W.E.B. Du Bois (in 1910) said had left some "painfully conscious of their whiteness."[123]

This elusive sensibility, then, was neither banal racism[124] nor benign ethnocentrism;[125] rather, the Men of 1873 inhabited a shared (social, moral, and epistemological) White World and imagined a (juridico-political) White World order, and through their new profession and political projects sought to bring it into being. After all, ostensible political differences notwithstanding, none of the Men of 1873 left any doubt as to the fact that their "international society" was founded on racial contract—or, as Westlake succinctly put it "the rules which are internationally recognised between white men"[126]—in terms of which:

> "[N]onwhite" [states, societies, and persons] . . . have a subordinate civil
> standing in . . . white or white-ruled . . . and the moral and juridical rules
> normally regulating the behavior of whites in their dealings with one
> another either do not apply at all in dealings with nonwhites or apply

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121. KOSKENNIEMI, *supra* note 3, at 2, 88. In fact, just about all that held them together in Koskenniemi's account, politically and jurisprudentially, was this "particular sensibility . . . [a] set of attitudes and preconceptions about matters international." *Id.* at 2.

122. FÜREDI, *supra* note 19, at 29 (emphasis added). "The sense of race contributed to a sense of coherence and provided an outlook through which global affairs were interpreted, understood and regulated. It also led to the emergence of the so-called white consensus: an informal etiquette for the conduct of international affairs." *Id.* at 236.

123. Du Bois, *supra* note 16, at 25 (noting that this "discovery" was "a nineteenth and twentieth century matter, indeed").

124. By which I mean racism in the individualized and dehistorical sense—as it is often used today—which "has the theoretical disadvantage of making it possible for everybody to be 'racist,' . . . thereby deflecting attention from the massive power differentials actually obtaining in the real world between nonwhite individuals with bigoted ideas and institutionalized white power." MILLS, *Revisionist Ontologies*, *supra* note 11, at 99–100.

125. It is worth noting that Westlake explicitly rejected this gentle reading of what civilization meant (that is, of being a question of personal character and good manners), noting that "what . . . we mean by it . . . ha[s] nothing here to do with the mental or moral characters which distinguish the civilised from the uncivilised individual, nor even with the domestic or social habits, taking social in a narrow sense, which a traveller may remark." WESTLAKE, *supra* note 115, at 141. As is the fact that, for Westlake and his colleagues, only "people of European race" were capable of such "complex life," *id.*, whereas their Others were—as Fanon put it—"[i]mprisoned in . . . overwhelming objectivity," GORDON, *supra* note 59, at 49; *see also* MAINE, *supra* note 97, at 14.

126. WESTLAKE, *supra* note 115, at 136, 143.

> only in a qualified form (depending in part on changing historical circumstances and what particular variety of nonwhite is involved). . . .[127]

In the end, it mattered little whether the Men of 1873's shared "consciousness-conscience" was arrived at or articulated through Lorimer's vulgar "science of races," Maine's more sophisticated and respectable evolutionary ideas and comparative methods, or simply assumed as a matter of "educated common sense."[128] Indeed, if this sensibility remained "elusive," and the grounds of "civilizational" difference were simultaneously "overdetermined" and "undertheorized"[129] by the Men of 1873, it should come as no surprise: The racial contract "prescribes for its signatories an inverted epistemology, *an epistemology of ignorance*," which produced "the ironic outcome" that these Men of 1873 were "unable to understand the world they themselves ha[d] made."[130]

One scholar who was able to see the contemporaneous rise of whiteness and the international was W.E.B. Du Bois, who in 1905 noted the coincidence of the "world problems of the color line" resulting from the "tendency of the great nations of the day . . . [toward] territorial and political expansion", and the "foolish modern magic of the word 'white.'"[131] Du Bois extended this diagnosis in his 1910 essay on "The Souls of White Folk," noting that the "discovery of personal whiteness among the world's peoples is a very modern thing," as "the world, in sudden emotional conversion, has discovered that it is white, and, by that token, wonderful."[132] Moreover, Du Bois pointed out, both man and nation were coming to believe this "extraordinary dictum . . . [was] manifest daily," noting: "Do we sense somnolent writhings in black Africa, or angry groans in India, or triumphant 'Banzais' in Japan? 'To your tents, O Israel!'—these nations are not white. Build warships and heft the 'Big Stick.'"[133]

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127. MILLS, *supra* note 38, at 11. Even when it applied to benefit nonwhites. See MK discussion of Fiore on p. 55–56.

128. KOSKENNIEMI, *supra* note 3, at 104.

129. PITTS, *supra* note 28, at 176 & 165.

130. MILLS, *supra* note 38, at 18 (emphasis omitted); *see also* Charles W. Mills, *Global White Ignorance*, *in* ROUTLEDGE INTERNATIONAL HANDBOOK OF IGNORANCE STUDIES 217, 217 (Matthias Gross & Linsey McGoey eds., 2015) (noting how Global White Supremacy produces a "cognitive economy that would systematically darken the light of factual and normative inquiry").

131. Du Bois, *supra* note 72, at 195–97 (arguing that "the most significant fact of the opening century . . . [is] that the Negro problem in America is but a local phase of a world problem," and that "[t]he policy of expansion . . . simply means world problems of the color line").

132. Du Bois, *supra* note 16, at 25.

133. *Id.* at 26.

If international lawyers were, as Maine insisted, a "race of law-creat[ors],"[134] then the Men of 1873 were race-creators as well (or white world-makers in both senses of the term).[135] The rise of racial whiteness and this international sensibility toward the end of the nineteenth century was not coincidental, it was coproduced: To be white was to be international, and vice versa. What Du Bois rhetorically described as a "sudden emotional conversion" was in fact a project;[136] the White Internationalism of the Men of 1873 was part and parcel of this production of racial whiteness as a "global social reality,"[137] or what Fanon labeled its "sociogeny."[138]

W.E.B. Du Bois was by no means the only scholar to note the contemporaneous rise of whiteness and the international. Later on, the enigmatic journalist and novelist George Schuyler chronicled the rise of this "White Internationale" in a 1938 essay on "The Rise of the Black Internationale."[139] In that essay Schuyler recounted what he considered the "most momentous" period in human history, beginning in 1863, including "such cruelty, such conquests, such persecution and oppression, such exploitation as humanity never dreamed before."[140] Most importantly, the period had witnessed "the steady decline in the power and prestige of people of color world over," as "'[s]cience' justified the stealing, exploitation and oppression by 'proving' to white satisfaction the 'inferiority' of [people of color]," which led to "the resultant rise of the White Internationale and the gradual rise of the Black Internationale in opposition."[141]

Du Bois and Schuyler were not unique in seeing this White Internationale for what it was: a sociopolitical system of Global White Supremacy. What sets Du Bois and Schuyler apart for present purposes, however, is that they turned to fiction to map the contours of the White Internationale and both dreamed their "freedom

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134. MAINE, *supra* note 93, at 14.
135. *See generally* Gevers, *supra* note 10.
136. Du Bois, *supra* note 16, at 25. On the coproductive role of international law and literature in this project, see Gevers, *supra* note 10.
137. CHARLES W. MILLS, BLACKNESS VISIBLE, *supra* note 11, at xiv; *see also* MILLS, *supra* note 37, at 109–10 (noting that "differential racial experience generates an alternative moral and political perception of social reality").
138. FANON, *supra* note 59, at xv. As Gordon explains it, Fanon's concept of sociogeny "pertains to what emerges from the social world, the intersubjective world of culture, history, language, and economics." GORDON, *supra* note 59, at 22.
139. GEORGE S. SCHUYLER, *Rise of the Black Internationale*, CRISIS, Aug. 1938, at 255, 255, *reprinted in* BLACK EMPIRE 328, 328 (Robert A. Hill & R. Kent Rasmussen eds., 1991) [hereinafter SCHUYLER, *Black Internationale*]. As Schuyler later explained, his essay aimed to chart the rise of "worldwide . . . white rule, which I referred to as the White Internationale." GEORGE S. SCHUYLER, BLACK AND CONSERVATIVE 248 (1966).
140. SCHUYLER, *Black Internationale*, *supra* note 139, at 328.
141. *Id.* at 328, 333.

dreams" concerning the possible radical internationalist alternatives out loud.[142] The remainder of this Article will aim to demonstrate how their novels (and other Black Internationalist fiction) might be read as "alternate . . . maps of global racial resistance,"[143] maps that chart the sociopolitical system of Global White Supremacy in all its dimensions. In so doing, these novels escape the disciplinary, epistemological, and historical boundaries set by establishment "white theory," including international law, which has "focused on a very limited section of it, either ignoring the rest of the world or squeezing it awkwardly into the categories developed for this restricted mapping."[144]

III.   MAPPING THE WHITE INTERNATIONAL THROUGH BLACK INTERNATIONALIST FICTION

Du Bois's *Dark Princess* tells the story of a romance between an educated Black American, Matthew Towns, and Princess Kautilya, ruler of the Indian Kingdom of Bwodpur, which takes place against the backdrop of the struggle of a secretive international organization representing the "Darker Races" against the "widespread, deep, powerful determination to make this a white world."[145] The novel takes place in a world divided by a global color line; the Dark Princess herself traces it as stretching from "[t]he black belt of the Congo, the Nile, and the Ganges reach[ing] by way of Guiana, Haiti, and Jamaica, like a red arrow, up into the heart of white America" in Virginia.[146] It begins in Berlin in August 1923, where Matthew Towns meets Princess Kautilya, who asks him to assist her in the struggle against the hegemony of the white world as a representative of Pan-Africa. The Princess's fellow conspirators, however, are initially reluctant to allow Towns to join their committee, which—like the actual 1911 Universal Races Congress which inspired the novel—initially did not include Africans and peoples of African descent among its members.[147] It is only toward the end of the novel that Towns overcomes this "color line within a color line" and joins the "Great Central Committee of Yellow, Brown, and Black."[148]

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142. *See generally* ROBIN D.G. KELLEY, FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION (2002).

143. Mills, *supra* note 18, at 209.

144. MILLS, *Revisionist Ontologies*, *supra* note 11, at 99, 118.

145. W.E. BURGHARDT DU BOIS, DARK PRINCESS 65–66 (1928).

146. *Id.* at 286.

147. *See id.* at 21 (having one of the conspirators question "the ability, qualifications, and real possibilities of the black race in Africa or elsewhere").

148. *Id.* at 22, 296.

For a novel set in the aftermath of World War I and during the supposed Age of Internationalism, *Dark Princess* is a text marked by its absences. There is no League of Nations, despite Du Bois's failed bid to address the Peace Conference and establish an International Africa at Versailles in 1919 and his presentation of a petition (on behalf of the Pan-African Congress) to the League of Nations in Geneva two years later.[149] International lawyers might be surprised (and dismayed) to learn that there were no international lawyers represented on Du Bois's Great Central Committee. Du Bois dreamed, it seems, of a world without international lawyers.[150] Rather than simply a fictional escape from the White International, *Dark Princess* can be more profitably read as an attempt to map out its contours, particularly when it is read along with Du Bois's other writings at the time.

Du Bois's *Dark Princess* begins with its protagonist defending Princess Kautilya from the predations of a White American man, who Matthew Towns identifies as a member of the "mighty organization of white folk" that he is at war with, the "same vast, remorseless machine [of whiteness] in Berlin as in New York" that he labels the "white leviathan."[151] As mentioned above, Charles Mills productively reworks the social contract of Hobbes's *Leviathan* (among others) as a racial contract,[152] and Du Bois's writings on this white leviathan anticipate Mills's *The Racial Contract* in a number of respects. In particular, a his 1917 essay, "Of the Culture of White Folk,"[153] used the concept of the White World to conceptualize White Supremacy as a sociopolitical system in terms very similar to Mills (as a racial contract with political, moral, cultural, epistemological, and economic dimensions).

In his 1917 essay, Du Bois weaved together two previous essays, "The Souls of White Folk" and "The African Roots of War," to argue that the unacknowledged roots of the First World War lay in imperialism abroad and racial

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149. *See* DAVID LEVERING LEWIS, W.E.B. DU BOIS: A BIOGRAPHY 415–16 (2009). Du Bois was unable to present the *Manifesto to the League of Nations* directly to the League's Assembly, but did manage to get its secretary to officially receive it. *Id.*

150. That *Dark Princess* is an internationalist fiction without internationalism as it is understood today should give pause to those who have belatedly but enthusiastically incorporated Du Bois into recent celebratory histories of the period (in international law, political science, and global history), usually at the beginning or end, and generally as an afterthought.

151. DU BOIS, *supra* note 145, at 7.

152. *See* MILLS, *supra* note 38, at 1–7.

153. Du Bois, *supra* note 8. While scholars in recent times have started paying attention to Du Bois's early critique of the "new religion of whiteness" in "The Souls of White Folk," Du Bois, *supra* note 16, at 26, and its international dimensions in "Worlds of Color," W.E.B. Du Bois, *Worlds of Color*, 3 FOREIGN AFFS. 423 (1925), Du Bois's 1917 essay has received less attention. Notably, it was published in the *Journal of Race Development* (the forerunner to *Foreign Affairs*).

capitalism at home, and the origins of both was the new global "religion of whiteness."[154] As Aimé Césaire would echo after the Second World War,[155] Du Bois noted of the First: "This is not Europe gone mad; this is not aberration nor insanity; this *is* Europe; this seeming terrible is the real soul of white culture—back of all culture, stripped and visible today."[156] As such, Du Bois was less concerned with the present "shameful war" than with the even more "wild and awful" one to come, if the "darker world['s] . . . oppression and humiliation and insult at the hands of the White World [did not] cease."[157]

In mapping out the White World produced by the "silent revolution that has gripped modern European culture in the later nineteenth and twentieth centuries,"[158] Du Bois anticipated Mills's conception of Global White Supremacy as a system (or a "set of systems")[159] that operates in the political, moral, economic, cultural, and epistemological spheres in several ways. For Du Bois, this would-be racial contract was, first and foremost, political (or "juridico-political"),[160] in that the unacknowledged underlying "theory of colonial expansion—of the relation of Europe, which is white, to the rest of the world, which is black and brown and yellow" was that "[i]t is the duty of white Europe to divide up the darker world and administer it for Europe's good"[161] (or, "[w]hen white people say 'Justice,' they mean 'Just us'").[162]

Second, Du Bois argues that the White World was predicated on a "color-coded morality" (in Mills's terms),[163] which was evidenced by its inability to recognize the horrors of the present war as no different from those committed during the colonial wars "through which we have lived in the last little decade" in "German Africa," "British Nigeria," "French and Spanish Morocco," and so on, noting: "there were for most of these wars no Red Cross funds!"[164] Third, and crucially for present purposes, Du Bois recognized the operations of White

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154. Du Bois, *supra* note 16, at 26; *see* Du Bois, *supra* note 8.
155. *See* Aimé Césaire, Discourse on Colonialism 31–32 (Joan Pinkham trans., Monthly Rev. Press 2000) (1955) (arguing that "Europe is indefensible," as "so-called European civilization— 'Western' civilization . . . is incapable of solving the two major problems to which its existence has given rise: the problem of the proletariat and the colonial problem" (emphasis omitted)).
156. Du Bois, *supra* note 8, at 437.
157. *Id.* at 444 (emphasis omitted).
158. *Id.* at 439.
159. Mills, *White Supremacy*, *supra* note 11, at 38.
160. *Id.* at 42–43 (incorporating both political and legal institutions, and formal and informal operations of power).
161. Du Bois, *supra* note 8, at 438–39.
162. A "black American folk aphorism" quoted in Mills, *supra* note 38, at xiv.
163. *Id.* at 16.
164. Du Bois, *supra* note 8, at 436.

Supremacy in the cultural sphere ("in picture and story, in newspaper heading and moving picture, in sermon and school book"),[165] noting (with a nod to Kipling):

> Slowly but surely white culture is evolving the theory that "darkies" are born beasts of burden for white folk. It were silly to think otherwise, cries the cultural world with stronger and shriller accord. The supporting arguments grow and twist themselves in the mouths of merchant, scientist, soldier, traveler, writer and missionary: Darker peoples are dark in mind as well as in body; of dark, uncertain and imperfect descent, of frailer, cheaper stuff; they are cowards in the face of mausers and maxims; they have no feelings, aspirations and loves; they are fools, unlogical idiots, "half devil and half child."[166]

Fourth, and related to this, Du Bois recognized the necessity for this White World of a "deliberately educated ignorance"[167] among white folk, which Mills would later term an "epistemology of ignorance."[168] Finally, Du Bois, like Mills, understood "the economic dimension of the Racial Contract is the most salient;"[169] as Du Bois put it: "All through the world this gospel is preaching; it has its literature, it has its priests, it has its secret propaganda and above all—it pays. There's the rub: It pays."[170] According to Du Bois, through a "silent revolution," this "theory of human culture and its aims has worked itself through warp and woof of our daily thought with a thoroughness that few realize."[171]

It is against his broader mapping of Global White Supremacy that Du Bois's *Dark Princess* can be most profitably read: not as a quasirealist story about the Age of Internationalism with touches of fantasy, but as an allegory about the underlying imaginary that made it thinkable: the White World, or the White International. On this reading, the struggle against White World imperialism in *Dark Princess* is not (or not only) about the economic imperialism of Europe, but also a struggle against the broader imperialism—political, moral, economic, cultural, and epistemological—of this White World. As the White International was being consecrated as a de jure global racial contract at Versailles, Du Bois was mapping both the broader systems of domination and conditions of possibility in ways that remain unsurpassed, as these systems and conditions would long outlast their formal demise with decolonization.

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165. *Id.* at 441.
166. *Id.* at 439; *see also* MILLS, *supra* note 38, at 44.
167. Du Bois, *supra* note 8, at 437.
168. MILLS, *supra* note 38, at 97.
169. *Id.* at 32 (emphasis omitted).
170. Du Bois, *supra* note 8, at 441.
171. *Id.* at 439–40.

This reading of *Dark Princess* works against a neater one, which credits Du Bois in 1928 with remarkable perspicacity. Toward the end of the novel, in a letter to Matthew, Princess Kautilya makes the following prediction:

> The Great Central Committee of Yellow, Brown, and Black is finally to meet. You are a member. The High Command is to be chosen. Ten years of preparation are set. Ten more years of final planning, and then five years of intensive struggle. In 1952, the Dark World goes free— whether in Peace and fostering Friendship with all men, or in Blood and Storm—it is for Them—the Pale Masters of today—to say.[172]

Most of the Dark World attained a particular form of freedom through statehood by the late 1950s and early 1960s. Some revisionist historians (international lawyers among them) might point to World War II as, in Du Bois's words, the "five years of intensive struggle" after which the Dark World was freed through the establishment of the United Nations and decolonization.[173] More radically-inclined revisionists might point instead to the 1955 Bandung Conference as the decisive moment[174]: the first public meeting of Du Bois's "Great Central Committee of Yellow, Brown, and Black" (Pan-Africa, once again, a late and partial entrant).[175]

But reading *Dark Princess* through Du Bois's "Of the Culture of White Folk" unsettles both of these accounts. In the ongoing struggle against White World supremacy, World War II, like its predecessor, is likely to have been considered a sideshow. As Du Bois noted at the end of his 1917 essay, as far as the Dark World was concerned, "wild and awful as this shameful war is *it is nothing to compare with that fight for freedom which black and brown and yellow men must and will make unless their oppression and humiliation and insult at the hands of the White World cease.*"[176] According to Du Bois, internal rivalries within the White World—between white people, classes, and states—would always be subordinated to the maintenance of White World imperialism and "the doctrine of the divine right of whites to steal."[177]

Moreover, on this reading, *Dark Princess* stands as a prescient critique of the apparent freedom that formal decolonization through the state (and international law) would bring: Kwame Nkrumah's "clientele-sovereignty, or fake

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172. DU BOIS, *supra* note 145, at 296–97.

173. *Id.* at 297.

174. *See* Luis Eslava, Michael Fakhri & Vasuki Nesiah, *The Spirit of Bandung, in* BANDUNG, GLOBAL HISTORY, AND INTERNATIONAL LAW 3 (Luis Eslava et al. eds., 2017).

175. DU BOIS, *supra* note 145, at 297.

176. Du Bois, *supra* note 8, at 444.

177. *Id.* According to Du Bois, "'International' Socialists had all but read yellow and black men out of the kingdom of industrial justice." *Id.* at 443.

independence" which, as Chinua Achebe put it, "was totally without content" and ensured that "[t]he old white master was still in power."[178] This understanding of the "myth of Bandung" supports the less celebratory strand of historiography that "writ[es] Bandung into history as a story of disappointment, with little long-term impact on international relations."[179] In particular, in its conceptualization of Global White Supremacy, *Dark Princess* stands in stark contrast to the depoliticized and domesticated account of race that delegates at Bandung officially adopted in their Final Communiqué (which condemned "racialism as a means of cultural suppression," and "policies and practices of racial segregation and discrimination" as "a gross violation of human rights").[180] In the end, the intensive struggle and freedom that the Dark Princess, Princess Kautilya, imagined at the end of Du Bois's novel relied on radically "alternate clocks and maps of global racial resistance."[181]

Inspired by Du Bois's *Dark Princess*, as well as his broader mapping of Global White Supremacy, George Schuyler wrote *The Black Internationale: Story of Black Genius Against the World* (serialized in the *Pittsburgh Courier* in 1936–37). The novel's protagonist is Carl Slater, a Black American journalist who gets caught up in the struggle of a secret global organization—the Black Internationale—led by the genius Dr. Henry Belsidus, against "White world supremacy."[182] As in *Dark Princess*, international law and institutions are barely present in *The Black Internationale*, but when they appear it is to preserve and defend the (White) international order: A French diplomat complains at one point about the Black Internationale flying planes over their colonial territory "in violation of international law,"[183] while the League of Nations is only mentioned for its failure to prevent "the Italian rape of Ethiopia."[184]

Schuyler's story picks up where *Dark Princess* ends, for the most part, except that Schuyler's secret organization (the Black Internationale), seizes the initiative from the White World and wages war against it (unlike in Du Bois's novel, it is no longer left to "the Pale Masters of today" to choose whether the "Dark World goes free . . . in Peace and fostering Friendship with all men, or in Blood and Storm").[185]

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178. GETACHEW, *supra* note 63, at 101 (quoting Kwame Nkrumah); CHINUA ACHEBE, *The African Writer and the Biafran Cause*, *in* MORNING YET ON CREATION DAY 137, 144 (1975).

179. Eslava et al., *supra* note 174, at 7, 16.

180. *Final Communiqué of the Asian-African Conference*, 11 INTERVENTIONS 94, 97–98 (2009).

181. Mills, *supra* note 18, at 209.

182. GEORGE S. SCHUYLER, THE BLACK INTERNATIONALE: STORY OF BLACK GENIUS AGAINST THE WORLD, *in* BLACK EMPIRE, *supra* note 139, at 1, 10.

183. *Id.* at 117.

184. *Id.* at 127.

185. DU BOIS, *supra* note 145, at 297.

The Black Internationale does so by first secretly fomenting civil war in the "White World"—between European powers and within White America—and then openly by overthrowing European colonial rule in Africa and replacing it with "a great Negro nation . . . all-powerful, dictating to the white world."[186] In doing so, the Black Internationale is "absolutely ruthless"[187] and employs "science of which the white man has not dreamed"[188] (including closed circuit television, solar power, fax machines, and hydroponics). It ends with the "Second World Conference" of the Black Internationale, which brings delegates from "every part of Africa, Australia, India, the West Indies, South America and the United States."[189]

As Robert Hill and Kent Rasmussen note, Schuyler's novel can be read as much for its "critical commentary on contemporary events" as for its radical alternative imaginations.[190] On this reading, the novel's indebtedness to *Dark Princess* and Du Bois's broader conceptualization of Global White Supremacy become evident, particularly when it is read alongside Schuyler's abovementioned 1938 essay, "The Rise of the Black Internationale," the novel's "ideological companion piece[]."[191] In that essay, Schuyler traced the emergence of what he called the "international color line" to European imperialism—as "the politico-economic changes that altered the world without and so altered the world within"[192]—and, like Du Bois before and Mills after, mapped out its moral, cultural, and epistemological underpinnings.

As such, like *Dark Princess*, the struggle of the Black Internationale must be read as one against Global White Supremacy in its broader sense; this fight was not simply a revenge fantasy against European empires, but was a struggle to overthrow "the peace of the [White] world: a peace based on the subjugation of [people of color]."[193] This understanding of the novel—as depicting one battle within the larger global race war, and one that is being waged by the White World (while, as Füredi has shown, being actively silenced)[194]—plays out in the story arc of its main character, Carl Slater, whose moment of personal actualization (and the consummation of his romantic relationship with Pat Givens) occurs when he actively joins in the Black Internationale's struggle against the White World. As

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186.   SCHUYLER, *supra* note 182, at 15.
187.   *Id.* at 11.
188.   *Id.* at 10–11.
189.   *Id.* at 139.
190.   Robert A. Hill & R. Kent Rasmussen, *Afterword* to BLACK EMPIRE, *supra* note 139, at 259, 270.
191.   *Id.* at 279.
192.   SCHUYLER, *Black Internationale*, *supra* note 139, at 329, 332.
193.   SCHUYLER, *supra* note 182, at 127.
194.   *See generally* FÜREDI, *supra* note 19.

the novel reaches its dramatic climax, the (presciently named) Second World War between European nations begins (after being secretly instigated by the Black Internationale). War is almost averted, however, when the Black Internationale's plans to free Africa became known and there is an attempt to broker peace within the White World, as European nations become "[m]asters of conciliation . . . [at] the possibility of losing . . . their empires"[195] (as Du Bois predicted in 1917 that they always would).[196] When Slater receives a coded message that the "Italians and British [were] about to patch up differences in view of African uprising," and action must be taken to prevent "the white imperialist powers . . . [from] avert[ing] war and send[ing] punitive expeditions to Africa," he decides for the first time to take "the authority upon [himself] . . . to act," taking control to ensure intra-European war breaks out.[197] Shortly thereafter, his romantic relationship with Pat Givens is realized, but only after she goes missing for a period on an air mission to prevent the rapprochement of the White World.

In this way, *The Black Internationale* also maps in finer detail the domestic and international dimensions of Global White Supremacy, the relationship between them, and the transnational nature of racial whiteness. In order to prevent the United States from "intervening to save the prestige of the white race"[198] that would necessarily suffer as a result of the end of white rule in Africa, the Black Internationale instigates internal civil unrest in America (a tactic Dr. Belsidus declares is modeled on the "British Imperialistic policy of 'Divide and Rule'").[199] The Black Internationale does so by preying on the "definite cleavages in the white population" of America by establishing a White Supremacist organization of "native white Protestants"—called the "White Americans"—that is "anti-Catholic, anti-Jew and anti-Communist," as well as a separate, "supposedly pro-Catholic organization" called the "Sons of Christ."[200] As a result, when a "powerful faction in America" proposes intervening to thwart the Black Internationale's violent decolonization of Africa, the "constant instigation of civic strife" by the White Americans means the United States is "unable to 'compose' its internal affairs, let alone compos[e] those of Africa."[201] Similarly, when the Black Internationale takes over Liberia, it prevents "any of the white people, even consular officials," from communicating with the White World outside.[202]

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195. SCHUYLER, *supra* note 182, at 128.
196. *See* Du Bois, *supra* note 8, at 26.
197. SCHUYLER, *supra* note 182, at 130–31.
198. *Id.* at 138.
199. *Id.* at 78.
200. *Id.* at 77–79.
201. *Id.* at 138–39.
202. *Id.* at 112.

Finally, the novel also anticipates the continued neocolonial influence of Western powers and corporations. Upon taking control of Liberia, Dr. Belsidus first informs "the fiscal agent of the Firestone Company that he would respect the agreement of 1926 drawn up between it and the Liberian government" and then, two weeks later, pays off "the $2,500,000 Firestone loan in full."[203] In 1925, Du Bois had written of the Firestone Company's role in Liberia: "White Imperialism today knows that conquest is only one method of domination. Economic onslaught with all its intricacies and propaganda is often much more profitable. . . ."[204] This revolutionary action—the valences of which reached back to the founding violence of the recognition of the first Black state (Haiti), and forward to the ongoing relations between debt and postcolonial sovereignty[205]— must be placed alongside the more direct and violent measures taken by the Black Internationale to prevent recolonization, including avenging the "rape of Ethiopia" through the massacre (with Ethiopian assistance) of Italian colonial forces, in order to ensure that "the Italians will never reconquer them."[206]

CONCLUSION

Du Bois and Schuyler were by no means unique in their revisionist accounts of the International as a White World (or the White International), accounts which recognized the "metaphysical infrastructure of global white supremacy" that underpinned it and sought to contribute to the global resistance to that system.[207] They were not even the first to do so in fiction. Both novels owe a debt to Pauline Hopkins's *Of One Blood: Or, the Hidden Self*, for their method and perhaps their main characters. Nor were they the last. Black Internationalist fiction has continued, in the words of Charles Mills, to produce "alternate clocks and maps of global racial resistance,"[208] with increasing contributions from African authors (before, and particularly after, decolonization). One such contribution was Peter Abrahams's *A Wreath for Udomo*, written in the twilight of colonial rule, which imagined a decolonized Africa united under one state called Pan-Africa.[209]

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203. *Id.* at 114.
204. W.E.B. Du Bois, *Liberia and Rubber*, 44 New Republic 326, 327 (1925).
205. Peter James Hudson, Bankers and Empire: How Wall Street Colonized the Caribbean (2017).
206. Schuyler, *supra* note 182, at 127, 132.
207. Mills, *Revisionist Ontologies*, *supra* note 11, at 113.
208. Mills, *supra* note 18, at 209.
209. *See generally* Gevers, *supra* note 24.

What these and many other Black Internationalist fictions have in common is that—to varying degrees—they place race at the center of their accounts of the international order (and often the domestic one as well). Moreover, they often bear little resemblance to the racial imaginary that has underpinned international law since at least the nineteenth century: a White World that we have come to know as the international (if not the world). In order to unwhiten and unwrite this White World, international lawyers (like their counterparts in political philosophy) need "to catch up with what the racially subordinated in the West have always perceived: that the local intra-European ontology was never the general one, and that [its] revision in both theory and practice . . . has always been as worth[y] . . . an enterprise as any of the preoccupations of orthodox textbook white theory."[210]

Together, these novels give us coordinates for what an alternative mapping of the international order might look like today. First, they share a conceptualization of race that refuses its depoliticization, its domestication, or its dehistoricization. These refusals are reflected in Mills's insistence on using the term "global white supremacy" to describe the "European domination of the planet that has left us with the racialized distributions of economic, political, and cultural power that we have today."[211] At their best, the articulation of race in these novels holds onto the economic aspects of this system of domination without becoming overdetermined by it; in particular, *Dark Princess*, produced on the threshold of Du Bois's introduction of the "dark proletariat" (a frontrunner to racial capitalism), makes an effort to bring together race and imperialism as "things require[d] to be linked because, though connected, they are not the same."[212]

Second, to return to Samera Esmeir, these novels understood the International that emerged during the course of the nineteenth century not only as a particular imaginary (or, in Mills's terms, a "local intra-European ontology"),[213] but also as one International among many. In doing so, these writers and scholars in the Black Radical Tradition "insist[ed] on not conflating world with international, and on pursuing political and legal practice that is neither local nor international, but generative of the world."[214]

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210. MILLS, *Revisionist Ontologies*, *supra* note 11, at 118.
211. *Id.* at 98.
212. Hall, *supra* note 26, at 325.
213. MILLS, *Revisionist Ontologies*, *supra* note 11, at 118.
214. Esmeir, *supra* note 5, at 99.