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ABSTRACT

This keynote speech was delivered on January 31, 2020. It argues that dominant narratives of American legal liberalism and global exceptionalism increasingly find themselves under real political and intellectual strain, even among mainstream scholars and practitioners of constitutional law and public international law. The speech then draws from Critical Race Theory (CRT) and Third World Approaches to International Law (TWAIL) to articulate a competing account of the meaning of American power in the twentieth century, grounded in histories of race and empire. It concludes by reflecting on the current challenges to the established American global legal vision and the potential spaces that may now exist for an alternative politics of transnational solidarity.

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INTRODUCTION

First I'd like to say thank you to Dean Mnookin for that incredibly generous introduction; to Tendayi and Asli for bringing us all together and for all of their hard work conceiving of and organizing this conference. I'd like to thank Morris and Alveena as well as all of the staff and students that have been involved in making sure that today comes off; and last but not least thank you to Vasuki for providing comments on my talk. This is a particular challenge because she has no paper from which to draw, so I appreciate Vasuki's willingness to indulge me nonetheless.

My comments take their jumping off point from an article that Asli and I wrote in the University of Chicago Law Review titled *Constitutionalism and the American Imperial Imagination*. Asli is my primary coauthor and we have been thinking and writing together collaboratively for many years. I'm incredibly indebted to her and these ideas are in many ways a reflection of our conversations. In our writing, we've been trying to make sense of the present moment in the international order. In keeping with our arguments, I'm going to use my time to highlight how this moment is grounded in underlying structures of race and empire, which fundamentally shape the terms of today's transnational legal discourse. This means that any meaningful critique of the prevailing order—as well as assessment of what alternative possibilities are available for the future—requires drawing both explicitly and implicitly from Critical Race Theory (CRT) and from Third World Approaches to International Law (TWAIL).

There are really two parallel developments that we see taking place right now. The first has to do with shifts in domestic U.S. law. Since the mid-twentieth century, there's been a classic account of the meaning of the American legal project. This argument goes as follows: From the founding, the United States has always been committed to principles of freedom and equality. As a result, the United States is an exceptional nation, because unlike Europe it's a place where feudalism never took hold. To the extent that the United States has had problems of Native expropriation or African enslavement, these are really marginal to the basic identity of the country. We can think of the country as fundamentally, if incompletely, liberal, and on a steady path to fulfilling its essential project.

But the Trump era has made it increasingly difficult for politicians and scholars to repeat the classic narrative about the American domestic order. For law professors, the conversation has turned to assessments of the legal implications of virulent white nationalism and institutional paralysis, not to mention debates over whether the country is in a constitutional crisis or instead

facing constitutional rot. What's noteworthy is that these discussions are not only occurring on the radical edges, but also within mainstream politics and mainstream elements of the academy. One key development, therefore, concerns the extent to which the United States is facing, let's say, the limits of its own national mythology.

At the same time, the present moment is also shaped by a second parallel development occurring at the global level. Since 1945, a story similar to the classic one about American exceptionalism had been told with respect to international law and the international order. This story contends that the world system is a community of formally equal states, regardless of whether or not they've been previous colonizers or colonized. Given such equality, international law establishes a framework for shared peace and prosperity grounded in multilateral institutions that impose constraints on all and lift all boats. At the same time, one can think of international law as the progressive spread of human rights protections around the world. This is a spread that moves from the global center, especially the United States and Europe, to what is effectively the periphery. Problems of human rights abuses tend to be problems that exist at the periphery, within unstable regimes in Asia, Africa, and Latin America. But, according to this vision, as international law spreads from the Global North to the Global South everyone eventually will be governed under a broadly liberal democratic framework.

Today, this oft-repeated account of the post-1945 order is also confronting its own internal limits. Again, it's very hard to sustain these arguments in the context in which nativism and ethnonationalism are rampant across Europe, multilateral institutions are breaking down as a way of organizing international relations, and the world is increasingly defined by preventive war, unilateralism, and economic coercion in violation of the traditional notions of constraint. Critically, these threats are not coming from the periphery but being imposed on the world from the Global North itself, supposedly the repository of rights commitments and liberal-democratic values.

These two developments, in the United States and on the global stage, are bound together, as one recent example highlights. Just think about the meaning earlier this month of the United States's assassination of Qasem Soleimani. That assassination was a unilateral and preemptive act, which nearly plunged the United States and the world into a massive regional war. The Trump Administration's presentation of Iran as an implacable foe was also deeply racialized, in a manner consistent with the last panel's discussion of the domestic American counterterrorism vision of Muslim communities as inherently dangerous. The fact that this recent example is an American one is noteworthy,

because in many ways it speaks to shifts in American politics that have had reverberating effects within the country and within the global legal order. Above all, these shifts are tied to a breakdown today in how American legal and political elites have long conceived of and justified American power, both at home and abroad.

For the rest of my talk, I am going to work through how this breakdown occurred. In the process, I'm also going to contend that the traditional mechanisms for understanding U.S. constitutional law on the one hand, which CRT has long critiqued, and public international law on the other, which TWAIL has similarly long critiqued, do not have the internal resources to account for or to respond adequately to this breakdown. In a deep sense, the established modes of doing both constitutional law and public international law are facing analytical crisis, because they were both grounded in mid-twentieth century narratives that no longer seem plausible, even to more mainstream scholars.

The following discussion will be divided into three Parts. First—and I'll spend the most time here—I will describe the two basic modes of U.S. imperial power, what I call settler empire and American global primacy. I'm going to argue that only by foregrounding insights from CRT and TWAIL can we understand these two modes of power. I will also underscore that these imperial orientations are deeply and intricately interconnected. It's not that the United States was a settler empire first and then became a global hegemonic power afterwards; both fold into one another historically and today are joined conceptually together. Next, I'll turn to the specific role law has played in that second mode of imperial authority, the project of American global primacy. Third, I'll explore the conditions that generated the breakdown in the legitimacy of the post-1945 American legal order, at home and abroad. Finally, I'll end with some quick reflections on what the present moment suggests about the future of transnational solidarity and of efforts to create genuinely new institutions of domestic and global community.

I. SETTLER EMPIRE AND GLOBAL PRIMACY

So let me start with the classic imperial frames of American life, beginning with settler empire. Here, I'll be revisiting the central thesis of my first book, *The Two Faces of American Freedom*. From the seventeenth to the end of the nineteenth century, American legal and political life was arranged in ways not unlike other settler societies globally, especially the French in Algeria and the English in Australia, South Africa, Canada, and New Zealand. As with other

settler polities, in the United States there existed a basic legal and political distinction between the rights provided to colonists and their descendants and those that were provided to nonsettlers. In the United States, there were a variety of nonsettler populations subject to government coercion. But just for the sake of simplicity, I'll mention two key communities: Native peoples and enslaved workers of African descent. Each community was essential for the territorial and material growth of American settler society. The expropriation of Native land provided the basis for settlement and coerced African labor, before and after slavery, was key to extracting wealth and insuring internal prosperity.

American settlerism had four main components. The first was a primary focus on property and property owning. What settlers brought from England was a radicalized account of the republican tradition, one that emphasized economic independence and control over land as critical for freedom and self-rule. Under republican notions of freedom, property ownership and a broadly equal distribution of material resources, especially land, were key for social mobility and equal status among insiders.

Two, republican ideals meant that territorial expansion was also central. You needed expropriated Native land in order to be able to ensure such settler social mobility and economic independence. For this reason, U.S. settlerism was imperial—and I'll get into this in a bit. American borders were not fixed in advance by legal respect for Indigenous sovereignty. The borders were provisional, limited only by internal political judgments of necessity and security. Thus, the United States's familiar continental border was a contingent product of how those internal debates proceeded over the best direction for American empire. Indeed, other territorial constructions may well have occurred: There were revolutionary era invasions of Canada as well as slaveholding interests in the 1840s and 1850s in pursuing Caribbean expansion.

Three, American settler freedom was not universal; it was inherently exclusionary. The idea was that for someone to enjoy the benefits of economic independence and free citizenship, you needed others that engaged in hard and degraded forms of work, in particular enslaved African workers. And then, once consigned to those forms of work, that position was effectively racialized. In other words, the argument became that it was precisely because a person was of African descent that their dependent economic status was justified.

Four, American settlement required more than simply those individuals that initially came from England. The society needed a growing and dynamic population, and it is for this reason you see in the early republic striking practices of migrant inclusion for Europeans, those deemed to be ethnoracial insiders. You have policies that would be surprising today, like access to western land grants or

even voting rights, for noncitizens—but only those of European descent. Thus, depending on your racial identity the border in the United States was essentially a port of entry rather than a closed barrier.

What I've just presented draws in significant ways from CRT and TWAIL. Taking the lead from TWAIL, this preceding analysis is grounded in a fundamental rejection of the classic American idea that the United States is a break from the European imperial imagination. Rather, we can actually only understand the terms of legal and political life, how inclusion and exclusion have been stitched together, by recognizing the extent to which the United States is part of a colonial history. Now, for me personally, a key moment in thinking through these claims was when I was doing dissertation research and I was introduced to the work of Tony Anghie. A conference participant and friend, Darryl Li suggested that I read what then was a new book by Anghie, *Imperialism, Sovereignty and the Making of International Law*. And, indeed, reading that book was eye-opening. At the time I was focusing on the American Revolution and Anghie's account of the broader European imperial imagination made me question the traditional readings of independence from England. Rather than a rejection of the European imperial order, I began to see the revolt as really a settler revolt against both the British metropole and against Native peoples on the ground. It was an assertion by Anglo-American colonists of their rightful claim to political and territorial supremacy, including under the existing law of nations, as one of the world's legitimate European empires.

So, going back to the idea of U.S. borders as provisional, where did the United States's founders base their claim to sovereignty? U.S. sovereignty came from the "Doctrine of Discovery," which maintained a basic divide between the presumptive legitimacy of European Westphalian states and the illegitimacy of Indigenous invocations of ultimate authority over the land that Native peoples possessed. Since colonists were true inheritors of state sovereignty, this meant that if France, let's say, were to attack Indigenous peoples whose polities happen to be within the territorial zone claimed by Americans, this was not an attack on Indigenous sovereignty. This would be an attack on U.S. sovereignty, regardless of who actually occupies the land, since only American statecraft was recognized as fully legitimate. All of this underscores that the very basis of U.S. territorial possession and state legitimacy is premised on the United States being a continuation, under the law of nations, of the Europe imperial order.

At the same time, this analysis also derives directly from CRT. In particular, under the terms of American settler society, whiteness steadily became essential to social cohesion over the course of the nineteenth century. In developing my arguments, I was especially interested in how the project of American colonial

expansion became intertwined with whiteness, and thus racialized in a very specific way. In thinking through this question, a key text for me was Cheryl Harris's *Whiteness As Property*, which beautifully highlights how over time in the United States whiteness, rather than simply Anglo-Protestantism, gains a critical status. To be white carries with it genuine reputational and legal benefits that can be monetized. It offers the terms for how political, legal, and economic rights are distributed and who has the capacity to own and transfer wealth.

How does this happen? We can only understand the centrality of whiteness as social cohesion by frontloading the question of settler expansion, recognizing how the basic social distinction from the seventeenth to the nineteenth century is not citizen versus noncitizen. You could be African American and be a citizen if you weren't enslaved, but nonetheless denied all of the essential rights that go hand in hand with full membership. At the same time, as suggested earlier, if you were white, of European descent, you may not even be a formal citizen, but still have greater claim to political participation, through voting, or property, through western land grants, than nonwhite communities with long histories in the Americas. The reason why this occurs is that settler society has a demographic need for population expansion and so moves to include more settlers than just Protestants from England. As new European migrants, even Catholics from places like Ireland and Germany facilitate this demographic imperative, the terms of inclusion expand from Anglo-Protestantism to whiteness more broadly.

But this focus on whiteness necessarily emphasizes Blackness as its opposite—as a category defined by exclusion and subordinated labor. And by the mid-nineteenth century, this duality is also increasingly justified in the language of scientific and biological racism. All of this speaks to something central about the American imagination through the early republic, the importance of demographic thinking. In other words, the United States is a particular kind of imperial project that's claiming land and engaging in racially shaping the underlying population. The story of the nineteenth century is one of settling the right bodies and of transforming Indigenous spaces demographically into white spaces, with white control of subordinated communities—from African Americans and Native peoples to those of Mexican and Chinese descent. American settler empire is not about holding distant colonial dependencies, but about a reproductive politics of population management.

Alright, so how does this start to change into the United States more familiar to us from late twentieth century school books? There's a crisis in settler ideology in the late nineteenth and early twentieth centuries that is the product of the closing of the frontier as well as of how industrialization intensifies internal white class conflict. At the same time, changes in European migration also partially

destabilize definitions of whiteness. Can you actually include southern and eastern Europeans, especially Jewish people, as white? Among political elites, one of the responses to these overlapping pressures is to double down on the centrality of expansion and conquest for American identity. Teddy Roosevelt, Frederick Jackson Turner, Alfred Thayer Mahan, and Elihu Root are all part of a new generation of American imperialists, who imagine that claiming colonies abroad may enhance settler social cohesion and alleviate domestic crises. But what's interesting is that this moment occurs at just the period when European empires have already engaged in a colonial scramble for land and thus have already basically claimed all the world's territory. More importantly, you start to see the beginning of sustained nonwhite political assertiveness and anticolonial resistance, resistance that will define the twentieth century. And that's what the United States finds itself confronting in the Philippines, in Puerto Rico, and elsewhere when it tries to pursue formal overseas empire.

Even among white political elites, there was an emerging sense that the age of explicit European global dominance may have reached an endpoint and nonwhite polities in the future may be able to wrest authority internationally from white powers. In their wonderful book, *Drawing the Global Colour Line*, Marilyn Lake and Henry Reynolds focus on the writing of an Australian journalist Charles Henry Pearson. Pearson argues, in ways that are an interesting inverse of W.E.B. Du Bois's own discussion of the color line, that that the era of explicit white control over the international order may well be coming to an end. In this way, the United States, South Africa, and Australia, all understood as "white men's countries," were outliers. They were white outposts in a nonwhite world, and were increasingly artifacts of a disappearing age. Pearson's writing has a fascinating moment of popularity among white policymakers at the end of the nineteenth century. For instance, Oliver Wendell Holmes writes a letter to his various friends about what books people should be reading. He recommends Alfred Thayer Mahan, Karl Marx's *Capital*, Jane Austen's *Emma*, and Charles Henry Pearson's *National Life And Character, A Forecast*.

Over the next few decades, related ideas end up working their way through American official circles, beginning to shape U.S. practices in its overseas possessions and its hemispheric sphere of influence. With respect to the Philippines, officials realize that just to maintain control over the territory given an intense anticolonial uprising, they effectively have to hand back power to Indigenous elites. This development raises a basic question: If the condition of being able to control the territory is giving up power to the people you're supposed to be in charge of, how can you justify your imperial authority? American policymakers respond to this paradox by invoking Reconstruction era

ideals about national identity. They contend that American power is fundamentally distinct from European imperialism, the latter simply being an exercise of wealth extraction. Instead, American identity is defined by a principle of constitutionalism grounded in the Declaration of Independence and given institutional teeth through the Federal Constitution. The United States is the first truly universal nation; its interests are the world's interests. It is exceptional precisely because when it acts abroad, it does so in the service of a general principle of democratic self-government.

This ideological move generated a key additional question: If the United States is exceptional because it respects principles of self-government, why should it direct the terms of how such self-government emerges and is institutionalized across the globe? U.S. officials responded by arguing that the United States's cultural history was unique. From the earliest days of colonization through to the writing of the Federal Constitution, Anglo Americans had inculcated within society values of self-government. Therefore, they had a legitimate tutelary role to play in facilitating the political growth of less presumably mature nations. The figure that best embodied this argument about cultural exceptionalism was President Woodrow Wilson. And the fact that he played such a significant role in promoting American authority is significant because Wilson, a supporter of Jim Crow, consciously combined universalism and white supremacy through his arguments about tutelage. Indeed, this linking in the early twentieth century was one of the principal means by which the logic of settler empire and the logic of global primacy end up interwoven.

For Wilson, the world was organized with distinct ethnoracial peoples in a developmental hierarchy, with Anglo-Saxons at the very top. This hierarchy underscored the legitimacy of American power in the nonwhite world, and also what a future global order, after the collapse of formal European empires, should look like. For Wilson, the problem of European empires was that they imagined that a polity could be ethnoracially plural, with many different groups inhabiting the same shared community; take for instance, the Austro-Hungarian or the Ottoman Empires. Wilson blamed World War I and global instability in part on these pluralistic systems. This critique in a sense was a supercharged version of the settler obsession with demography that shaped so much of nineteenth century American thinking. According to Wilson, the only way you can have genuine self-government was if each state was bound to a very specific ethnoracial people. Thus, the purpose of American power was to create a world of self-governing states, which were in actuality nation states organized as distinct ethnic and racial communities. This Wilsonian vision fundamentally shaped how, especially by the time you get to World War II, American officials conceived of their project

internationally and of a postwar legal order. Such ideas also became joined to American critiques of both Nazi Germany and then later the Soviet Union. Reasserting the claims about exceptionalism, the United States was different from its totalitarian foes because it was open society grounded on principles of self-government. American security objectives were therefore equivalent to whatever were true aspirations of local communities around the world. If something was in the U.S. national interest, by definition it was in the world's global interest.

II. THE AMERICAN VISION OF LAW FOR THE POSTWAR ORDER

So what did all of this mean for the role of law under the post-World War II order fashioned by the United States? Much of the foundation of the American legal imagination was based on ideals of universalism and formal equality. At the international level, the notion was that every nation state should be formally equal. In other words, the U.S. role is to promote constitutionalism within the internal politics of foreign states, and also to promote constitutionalism as the bedrock principle for global governance. Therefore, the United States attempted to replicate, throughout the world, state structures that combined capitalism with representative government and constitutional constraints, such as checks and balances. Officials also pursued a system of multilateralism within international institutions aimed at constraining the capacity of any single actor to exercise excessive power.

Despite these ends, one should note that this period of American multilateralism and legal constraint, the hightide of the American century, was nonetheless marked as well by systematic and near continuous violence facilitated by the American state—from CIA complicity in Patrice Lumumba's assassination in the Congo to support for genocidal practices in Suharto's Indonesia. So why were both features—invocations of constitutionalism and practices of extreme violence—operative at the same time? Here, insights from CRT are essential. One can only make sense of this contradiction by appreciating the extent to which the United States projected internationally the very structures of domestic racism embedded in that Wilsonian account of universality. States may be formally equal, but the United States, given its cultural exceptionalism, nonetheless enjoyed a continuous right to assert an aggressive international police power, in ways that were deeply racialized. This duality at the heart of American global primacy was simply an international version of the domestic duality that came to mark the latter parts of the twentieth century. Under the domestic version, the United States also came to embrace colorblindness and a presumptively postracial national identity, a parallel to the formal equality at the international

level. Yet, at the same time, its domestic order remained structured around institutional racism, underscored by the eventual rise of hyper-incarceration and the interlocking realities of what Michelle Alexander and others have called today's "new Jim Crow."

Precisely due to its destructive effects across the Global South, the American-led international legal order thus faced significant pushback from local communities throughout the Cold War period. These communities, across Asia, Africa, and Latin America, often read American intervention as neocolonialism and as a threat to genuine self-determination. Pan-Arabist and Pan-African voices also challenged the focus on ethnicity as the defining way of organizing collective life. And through efforts like the New International Economic Order (NIEO), actors in the Global South attempted to break free from both the nation state model as well as its connections to an American structured system of market capitalism. From the perspective of U.S. policymakers, rather than an exercise in actual self-determination, such pushback was always framed as indicative of instability in the Global South, proof of the failure of local communities to live up to ideals of capitalist democracy and constitutional constraint. In this way, opposition justified yet further interventionism, especially given the specter of the Soviet Union. Not only was the Soviet Union seen as a rival whose influence had to be tamped down everywhere, U.S. officials often read local opposition as inauthentic and simply a communist ploy orchestrated from above. Moreover, pushback was also framed through ideas about development and the need for the United States to facilitate a proper shift by nonwhite societies away from traditionalism toward modernity. In keeping with old Wilsonian rhetoric, for officials, the tendency was to explain away opposition as problems generated by the incomplete transitions of traditional societies, and thus the remaining susceptibility of their political systems to communist manipulation and other forms of extremism.

Now throughout this Cold War period, it was, of course, the case that the American solution to instability was often what caused the problem in the first place. But recognizing this fact would require stepping outside the justificatory framework shaping American primacy. Instead, the dominant language American policymakers had for explaining their own bad behavior was to make arguments about hypocrisy and dirty hands. If the Soviet Union and guerrilla armies apply terror, you may have to use dirty hands yourself. Crucially, the internal tension American officials experienced with their own use of violence actually provided additional proof of just how moral the United States was. Its very concern with exercising coercion showed that, if anything, it may well have the most moral army in the world and was thus worthy of the very global power

it exerted abroad. All of this reinforced a very specific form of exceptionalism, in which the United States rightly—because it had to maintain the whole international legal order—behaved appropriately when it abandoned legal constraint and stepped outside of the international rules the country had been so central in establishing. The United States was therefore the one state that could act unilaterally; it might have to engage in assassinations as well as other unholy acts, because only through such practices could the whole system be safeguarded. Again, this vision of an exceptional American role, combining universalist rhetoric and claims about cultural superiority, underscore the way in which the logic of the American century bound together settler thinking with notions of global dominance.

III. THE BREAKDOWN OF DOMESTIC AND INTERNATIONAL LEGITIMACY

So, how does both the American domestic and international legal order start breaking down? First, I think it's really important to appreciate that for all of the problems with American primacy—its interventionism and violence—such primacy still enjoyed real legitimacy among many political elites at home and overseas, including in the Global South. This was because the confrontation with the Soviet Union imposed various real constraints on how the United States behaved. At home, the reality of bipolarity, and the genuine alternative offered by the Soviet Union, produced a need to embrace far greater racial inclusion—captured in Mary Dudziak's evocative phrase “cold war civil rights.” At the international level, it compelled the United States to keep up a defense at the UN and in other multilateral institutions of the principle that all states in the postcolonial world were formally equal. It also pressed American officials to promote shared material prosperity and welfarist economic policies, through everything from the Marshall Plan for Europe to the World Bank's infrastructure investments in the Global South. Thus, while American power faced real critique from the left, in the United States and internationally, it also enjoyed genuine legitimacy.

But with the end of the Cold War, the United States has effectively, over the last thirty years, experienced defeat in victory. And by this I mean that the winning of the Cold War validated the most jingoistic versions of national self-conception that had emerged during the first half of the twentieth century and that gained currency during the Cold War. The country was a “city on the hill.” Its version of market capitalism was the only real model for economic development. This self-congratulation led U.S. officials in both political parties to take on board an extreme and exaggerated account of how the American

economic and political system embodied a near ideal realization of liberal democracy. In the 1990s and 2000s, this extreme account emphasized neoliberal austerity abroad. It also justified the need for a persistent resort to unilateralism and preemptive war, because—so the story went—it was precisely the American exceptional role that won the Cold War. And by emphasizing such unilateralism, the United States step by step began to defect fairly systematically from the very rules that is established as the basis for its own hegemony.

Today, this defection has generated various effects, both domestically and globally. Domestically, it produces a world in which austerity politics steadily transformed from something projected abroad into something that has shaped how economic policy proceeds at home. That past welfarist agenda that gave legitimacy to the American project in the mid-twentieth century is long gone, hollowed out within the United States and abandoned on the international stage. At the same time, without the role of the Soviet Union in pushing Democrats and Republicans to reach an internal elite agreement on social policy, American politics has fallen prey to hyperpolarization, institutional paralysis, and economic dislocation. Against this backdrop, the country has experienced the return of explicit white nationalism, cultivated especially by politicians and media figures on the right. As for the global stage, the U.S. defection from its own international order makes it increasingly implausible to imagine organizing peace and prosperity through the multilateral institutions and legal rules forged after World War II. Underscoring this implausibility is a similar return of ethnonationalist politics across Europe, embodied in the revival of right wing populist politics and in defining events like Brexit. If liberal rights commitments were supposed to spread from the United States and Europe to the rest of the world, the center itself seems in desperate need of democracy promotion.

All of this speaks to the profound fragility of American global authority. In a sense, all of the main elements of the American model—market capitalism, constitutionalism, and representative government—seem to have failed in the face of two decades of rolling global crises, punctuated by economic meltdown and the rise of Trump. What's most noteworthy for the future, these breakdowns are occurring at the very center, within the United States and to a lesser extent Europe. They especially highlight how American political elites themselves no longer seem to have faith in their own imperial project nor clarity about its direction. The ultimate result is a contemporary moment in which the United States continues to assert profound forms of raw power. The United States maintains its hegemonic status when it comes to sheer military and economic influence, but without any of the legitimating discourses that marked the mid-twentieth century and without any vision about what ends that influence is

supposed to serve. Thus, we live during an era in which we can imagine truly dystopian outcomes, especially against the backdrop of climate change and ecological disaster. Raw and directionless American power vying for dominance with the managed authoritarianism of states like China in a world marked by pure realpolitik and violence. But we also live at a time of political openness, indeed to a degree the world has not seen in a half century, with alternative forms of solidarity, political organization, and movement politics emerging through the cracks.

CONCLUSION: TRANSNATIONAL SOLIDARITY IN AN AGE OF STRUGGLE

And here's where I'm going to end. This moment—marked by a legitimacy crisis facing the American imperial frame—is one in which we see a revival in the political power of the very movements that previously gave birth to both CRT and TWAIL. CRT and TWAIL were essentially academic formations that emerged after the collapse of Black radical politics in the United States and of the Third World internationalist agenda overseas. Along with other roles, CRT and TWAIL served during years of conservative reaction as intellectual links to past periods of organized struggle. They provided us, as students, scholars, and lawyers, the capacity to make sense of the present within which we lived and of the conditions that generated our own moment. And now, with the reemergence politically in the United States of the Black radical tradition and the strengthening of calls abroad for transnational solidarity and Third World internationalism, CRT and TWAIL provide an intellectual bridge to the future.

They share natural affinities, grounded above all in the need to appreciate how race and empire circulate across borders in ways that structure relations of power and oppression. The politics of the Movement for Black Lives highlight just these affinities as well as their implicit notions of community and solidarity. One can see this in the 2014 discussions of the link between Ferguson and Gaza, and in how the 2016 vision statement of the Movement for Black Lives very consciously rejected nationalism and embraced internationalist solidarity as central to Black liberation. That statement understood solidarity as emerging between those that share the same experience of subordination wherever they may live. It rejected the idea that just because you are co-nationals that means you have the same interests. And it conceived of capitalism as racial, precisely because it is a global system, fundamentally shaped by histories of colonialism and empire.

Outside of the United States, we see the revival of transnational solidarity in everything from Arab uprisings in 2011 to today's protest movements in Chile,

Hong Kong, Lebanon, Sudan, Algeria, and elsewhere. All of this suggests a moment of genuine hopefulness. We live during times in which the political traditions of liberation that gave birth to CRT and TWAIL may not be dominant, but are certainly relevant and perhaps even ascendant. The last time we had such an ideological moment, with Black radicalism and Third World internationalism as significant factors on the domestic and global stage, was a half century ago. The focus then was on contesting formal colonization and the mode of resistance was often state based. In other words, Black and student activists pursued alliances with national liberation organizations, whether the African National Congress (ANC) in South Africa or the Palestine Liberation Organization (PLO) in Palestine. During that period, various movement organizations, like the Black Panther Party, could lay claim to representational authority. They could say that they spoke for real constituencies. And precisely because those organizations were representative institutions in this way, transnational alliances could reach shared policy decisions and imagine a future in which they claimed actual state power.

In the end, the postcolonial politics these alliances produced had a myriad of problems, which we can discuss in question and answer. Many of the organizations were gripped by an authoritarian politics that undermined the emancipatory potential of postcolonial states. But one significant issue for the present, is that over the last half century, with those old organizations either collapsing into authoritarianism or disappearing altogether, there have been no equivalent institutions to take their place. Today, there are no intermediary associations that can represent the transnational and solidaristic commitments of mobilized mass publics across different states. Simply put, the Palestinian Authority (PA) or the South African government is not the PLO nor the ANC. One consequence is that at present you often have free floating activist intellectuals who speak in transnational and solidaristic terms, but without any representational authority.

These difficulties about representation and solidarity speak to the genuine political opening presented by our moment as well as its persistent dilemmas. You have the emergence of mass grassroots mobilization at home and abroad—organized around real visions of a radical alternative to the crisis-ridden domestic and international legal order—but to date without the institutional capacity to assert power over the state or to intervene meaningfully at the international level. To defeat that dystopian future—of raw American authority in conflict with managed authoritarianism—we will collectively have to find a way beyond this impasse. We will have to marry today's insurgent mass movements with new organizational forms that wield institutional power. That ultimate goal is the only

means for transforming this moment of American imperial unraveling into a new beginning worthy of the people, across the globe, in open rebellion.