

# Anti-Colonial Pedagogies: “[X] Justice” Movements in the United States

Angela P. Harris

*In the last few decades, the United States has seen the proliferation of social movements that incorporate the word “justice.” [X] justice movements share several commitments. First, they both make use of, and are critical of, legal rights. Second, [X] justice movements embrace the concept of interacting subordinations. Third, they begin with land, water, food, health, and reproduction, engaging with dynamics usually ruled outside the scope of democratic politics. I argue that these combined commitments disrupt two central projects of white settler societies: (1) the production of the (proper) national citizen as white and male and (2) the understanding that the “economic” sphere is not, and should not be, subject to democratic norms. In disrupting these foundations of white settler societies, I argue that [X] justice movements are striving to change what it means to be “human.”*

---

*Au cours des dernières décennies, on a vu proliférer aux États-Unis des mouvements sociaux qui intègrent le mot «justice» à leurs revendications et qui partagent plusieurs engagements. Premièrement, ils utilisent les droits légaux, tout en les critiquant. Deuxièmement, les mouvements de justice [X] embrassent le concept des subordinations croisées. Troisièmement, ils abordent le territoire, l’eau, la nourriture, la santé et la reproduction en y appliquant des dynamiques généralement considérées comme étrangères à la politique démocratique. Je soutiens que la combinaison de ces engagements perturbe deux projets centraux des sociétés colonialistes blanches: (1) la production de citoyens blancs et mâles (légitimes) et (2) la conception de la sphère «économique» comme n’étant pas et ne devant pas être assujettie aux normes démocratiques. En perturbant ces fondements des sociétés de colonialistes blanches, je soutiens que les mouvements de justice [X] s’efforcent de changer la définition même de l’«humain».*

The decolonial option does not simply protest the contents of imperial coloniality; it demands a delinking of oneself from the knowledge systems we take for granted (and can profit from) and practicing epistemic disobedience.

—Walter D Mignolo, “Sylvia Wynter: What Does It Mean to Be Human?”<sup>1</sup>

- 
1. Walter D Mignolo, “Sylvia Wynter: What Does It Mean to Be Human?” in Katherine McKittrick, ed, *Sylvia Wynter: On Being Human as Praxis* (Durham, NC: Duke University Press, 2015) 106 at 107 [Mignolo, “Sylvia Wynter”].

## Introduction

Sherene Razack's contributions to critical race feminism revolve around a central theme: how racialized gender constitutes "the structures and subjectivities that shape the nation and the global order."<sup>2</sup> In this article, I argue that [x] justice movements in the United States (and elsewhere, including Canada) mobilize Razack's insights about the subjects and spaces of white settler societies in ways that are certainly anti-colonial and raise the possibility of "epistemic disobedience." [X] justice movements—social movements in which advocates adopt a prefix to the word "justice," as in "environmental justice," "reproductive justice," "food justice," "land justice," and "water justice"—simultaneously protest the terms of imperial coloniality and point beyond them.

[X] justice movements accomplish this disruption in at least three ways. First, [x] justice movements embrace the concept of "interlocking oppressions," often centring around communities for which single-axis identity analysis works poorly or not at all.<sup>3</sup> Second, [x] justice movements root themselves in "life rights" that seek to protect complex socio-natural systems, rather than calling for individualized "civil rights."<sup>4</sup> Third, [x] justice movements invoke legal rights while simultaneously calling attention to law's limits: they seek to build power in the name of radical democracy and reject law's commitment to "order." The first part of this article, drawing on the insights of

- 
2. Sherene H Razack, Sunera Thobani & Malinda Smith, *States of Race: Critical Race Feminism for the 21 Century* (Toronto: Between the Lines, 2010) at x.
  3. Although the concept of interlocking oppressions can be traced in the United States at least as far back as Sojourner Truth's "Ain't I a Woman?" speech delivered at the Women's Convention in Akron, Ohio, in 1851, current American progressive movements tend to use Kimberlé Crenshaw's term for this concept: "intersectionality." See Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" (1989) 1989:1 *University of Chicago Legal Forum* 139; Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" (1991) 43:6 *Stanford Law Review* 1241. Razack prefers "interlocking" to "intersecting" as the key metaphor: "Intersecting remains a word that describes discrete systems whose paths cross. I suggest that the systems *are* each other and that they give content to each other." Sherene H Razack, "How Is White Supremacy Embodied? Sexualized Racial Violence at Abu Ghraib" (2005) 17:2 *Canadian Journal of Women and the Law* 341 at 343 [emphasis in original]; see Sherene H Razack, *Looking White People in the Eye: Gender, Race and Culture in Courtrooms and Classrooms* (Toronto: University of Toronto Press, 1998) at 11–12 [Razack, *Looking White People in the Eye*]. Although I believe Crenshaw and Razack are not in substantive disagreement, in this article honouring Razack I will use her terminology.
  4. See Walter D Mignolo, "From 'Human Rights' to 'Life Rights'" in Costas Douzinas & Conor Gearty, eds, *The Meanings of Rights* (Cambridge, UK: Cambridge University Press, 2014) 161 [Mignolo, "From 'Human Rights' to 'Life Rights'"].

Razack and other settler colonial theorists, provides an account of “white settler law” as a key institution in white settler societies. The second part provides a brief overview of [x] justice movements in the United States and then argues that, at their best, [x] justice movements challenge the colonial project of racializing and gendering subjects and space, making room for decolonial forms of governance and sociality.

### *White Settler Law*

Twenty years ago, American critical legal theorist Natsu Saito pointed out: “Those of us who are CRT [critical race theory] scholars have not developed clear analyses of the relationships between race and class, between political influence and economic power, between the repression of domestic minorities and the exploitation of the ‘Third World’ by U.S. interests.”<sup>5</sup> Like Saito in the United States, Razack uses the frame of colonialism and white settler societies to address these lacunae and to provide a richer historical context in which to understand how racism and gender operate. In this section of the article, based on their work and the work of other settler colonial theorists, I describe the operation of “white settler law,” emphasizing two of its projects. The first is the racing and gendering of the basic subjects of the law, such as “the state,” “the citizen,” and even “the human.” The second is space making, which is the maintenance of literal and conceptual borders to stabilize and protect relations of power and structures of governance.

Razack argues that in white settler societies such as Canada and the United States the idea of the nation is made coherent and sustainable through technologies of racism and sexism that produce identity and difference.<sup>6</sup> Within nation-states, these technologies of subject making determine which bodies will be treated with care and which will be considered “disposable.” Razack has shown, for instance, how Canada—a country that sees itself as tolerant, liberal, multicultural, and quite unlike the openly racist United States—was founded as, and remains, a “white nation.”<sup>7</sup> Through the technologies of racism, settler colonial logics persist beyond official decolonization as undead formations, rendering Aboriginal bodies as “waste.”<sup>8</sup> Razack also points to the role of space in organizing and maintaining the racial and

- 
5. Natsu Taylor Saito, “Critical Race Theory as International Human Rights Law” (1999) 93 *American Society of International Law Proceedings* 228 at 228.
  6. Sherene H Razack, “Gendered Racial Violence and Spatialized Justice: The Murder Pamela George” (2000) 15:2 *Canadian Journal of Law and Society* 91.
  7. See e.g. Sherene H Razack, *Dark Threats and White Knights: The Somalia Affair, Peacekeeping, and the New Imperialism* (Toronto: University of Toronto Press, 2004) at 33–34.
  8. Sherene H Razack, “‘It Happened More Than Once’: Freezing Deaths in Saskatchewan” (2014) 26:1 *Canadian Journal of Women and the Law* 51 at 59 [Razack, “It Happened More than Once”].

gender order of white settler societies. From a spatial perspective, Razack argues that the Canadian national story can be understood as “a series of efforts to segregate, contain, and thereby limit, the rights and opportunities of Aboriginal people and people of colour.”<sup>9</sup> This is done by regulating literal space, as in creating and policing reserves for First Nations people. It is also done by regulating conceptual space, rendering Aboriginal people as vanished and rights-less.

These two dynamics of white settler society—the production of subjects and anti-subjects and the spatial dimensions of oppression—are accomplished in part through law. White settler law does work that is both material and discursive. In material terms, law sets out the formal ground rules for the construction and maintenance of subjects; it determines the rules and procedures by which, for instance, “corporations,” “governments,” and “citizens” are recognized. Law also preserves and restrains competing dynamics of power, muting their tensions and contradictions by parceling them out into separate spheres. This spatialization is accomplished both literally and conceptually. The law draws and maintains literal borders, containing and regulating governance assemblages<sup>10</sup> through rules of jurisdiction and norms of sovereignty and comity. Conceptually, law stabilizes governance assemblages in an explicit way by establishing different “spheres” or “levels” for their operations—for example, allowing people in the same physical territory to be regulated by federal, state, tribal, and municipal governments. More implicitly, conceptual distinctions separate the “private” from the “public” spheres, reducing the potential contradictions of “state” versus “market” governance. The creation and maintenance of these conceptual boundaries and borders constitute what I have called structural liberalism.<sup>11</sup>

Law sustains its material power by trafficking in the dream life of the society it serves. As critical legal studies scholars have long recognized, law is a primary mechanism of “legitimation” in Western societies. Legal institutions and structures rhetorically associate themselves with social norms of “order” and “justice,” at once sustaining them and being sustained by them.<sup>12</sup> At this “ideological” or “discursive” level (depending on whether you follow Antonio Gramsci or Michel Foucault),

---

9. Sherene H Razack, “When Place Becomes Race” in Sherene H Razack, ed, *Race, Space, and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002) 1 at 17.

10. I borrow the helpful term “assemblages” to acknowledge that governance institutions and practices are never homogenous, internally logical, or conflict-free. See John Allen, “Powerful Assemblages?” (2011) 43:2 *Area* 154.

11. See Angela P Harris, “Theorising Law and Political Economy: A Seminar on Law, Markets and Culture” (2005) 14:2 *Griffith Law Review* 174; Angela P Harris, “From Stone-wall to the Suburbs: Toward a Political Economy of Sexuality” (2006) 14:4 *William and Mary Bill of Rights Journal* 1539.

12. See James Boyle, “The Politics of Reason: Critical Legal Theory and Local Social Thought” (1985) 133:4 *University of Pennsylvania Law Review* 685 at 706 (discussing legitimation).

liberal law protects itself and the political order it constitutes.<sup>13</sup> Liberal societies pride themselves on self-government under the “rule of law,” which is understood as being controlled by objective rationality and therefore antithetical to politics. The idea of the rule of law functions to turn state violence into “order,” state coercion into “authority.”<sup>14</sup> From the spectacular physical violence of criminal law to the slow violence of “the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death,”<sup>15</sup> law rewrites the violence associated with its own workings as natural, normal, and necessary.<sup>16</sup> The central, if often covert, message of every legal process is: the system works.<sup>17</sup> As Razack argues, these dynamics of law in white settler societies are steeped in the colonial and imperial project that produced them.<sup>18</sup> White settler law racializes and genders both the subjects it helps create and the spaces of territory and power in which these subjects function. The following sections explore this claim in more detail.

### *White Settler Law and Subjection: Nations, Whiteness, and the “Human”*

One important collective body created and sustained through liberal law is the nation. Throughout her career, Sherene Razack has sought to make visible the ways in which nation-states in white settler societies reconcile their asserted commitments to equality with practices of inequality. In her view, central to understanding this seeming contradiction is the fact that white settler nations sustain themselves as

- 
13. See Michel Foucault, *Archaeology of Knowledge* (London: Routledge, 2002); Antonio Gramsci & David Forgacs, *The Gramsci Reader: Selected Writings, 1916–1935* (New York: New York University Press, 2000).
  14. See Douglas Litowitz, “Gramsci, Hegemony, and the Law” (2000) 2000:2 *Brigham Young University Law Review* 515 at 517: “The current legal system is hegemonic in the Gramscian sense in that it induces people to comply with a dominant set of practices and institutions without the threat of physical force” (*ibid*).
  15. Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Oakland: University of California Press, 2007) at 28, defining racism as “the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death” (*ibid*). See Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Cambridge, MA: Harvard University Press, 2011).
  16. See Robert M Cover, “Violence and the Word” (1986) 95:8 *Yale Law Journal* 1601 at 1608, observing that “[t]he ‘interpretations’ or ‘conversations’ that are the preconditions for violent incarceration are themselves implements of violence” (*ibid*).
  17. See Gerald B Wetlaufer, “Rhetoric and Its Denial in Legal Discourse” (1990) 76:8 *Virginia Law Review* 1545 at 1596, observing that the rhetoric of law takes both “the rule of law” and the “existing distribution of power and wealth” as its clients.
  18. See Razack, *Looking White People in the Eye*, *supra* note 3.

imaginary communities constituted by, and limited to, “biocultural kin.”<sup>19</sup> This analysis easily extends to the United States, another white settler society that emerged from the European, Christian colonial project. Very early on, American elites conceived of their nation as founded in principles of universal liberty and equality, yet embraced Indigenous expulsion and genocide and created a subhuman caste for people of African descent. As in the law of nations and the law of Canada, the idea of “race,” inflected by gender, reconciled these contradictions.<sup>20</sup> The first naturalization statute in the United States, which was passed in 1791, required “whiteness” as a precondition for citizenship.<sup>21</sup> The first systematic attempt to restrict immigration at the federal level was directed towards the exclusion of Chinese migrants and was defended in explicitly racist terms.<sup>22</sup> During periods of nationalist sentiment, self-identified “white” citizens claimed to be “native Americans” and argued for immigration restrictions and eugenics policies using the rhetoric of racialized gender.<sup>23</sup>

- 
19. See Sherene H Razack,  *Casting Out: The Eviction of Muslims from Western Law and Politics* (Toronto: University of Toronto Press, 2008) at 16. This argument also draws upon the pathbreaking work of Nira Yuval-Davis and Floya Anthias, who have explored in detail how tropes of racialized gender are used to imagine, and sustain, national communities. See e.g. Nira Yuval-Davis & Floya Anthias, *Woman-Nation-State* (New York: St Martin’s Press, 1989) at 7.
  20. Rogers Smith argues that three theories of American political citizenship are central to the country’s history and traditions: liberalism, republicanism, and what he calls “ascriptive Americanism,” the notion that race, gender, and/or original nationality pose a barrier to full national citizenship. See Rogers M Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, CT: Yale University Press, 1997). Matthew Jacobson argues that white identity emerged as fundamental to American national identity through the concept of republican civic virtue; an American man was able and willing to take up arms against Indigenous people and runaway slaves. See Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge, MA: Harvard University Press, 1998).
  21. See Ian Haney López, *White by Law: The Legal Construction of Race* (New York: New York University Press, 1996) at 1.
  22. On the significance of the *Chinese Exclusion Acts* for structuring the American discourse of “gatekeeping” in immigration law, see Erika Lee, “The Chinese Exclusion Example: Race, Immigration, and American Gatekeeping, 1882–1924” (2002) 21:3 *Journal of American Ethnic History* 36.
  23. See John Higham, *Strangers in the Land: Patterns of American Nativism, 1860–1925* (New Brunswick, NJ: Rutgers University Press 2002). Erika Lee argues that the *Chinese Exclusion Acts* of the late nineteenth century, accepted by the courts on a theory of the federal government’s “plenary” (unrestrained) power to shape the demographic makeup of the United States, created a precedent for racial “gatekeeping” that would later be reflected in the *Immigration Restriction Act* of 1924, an explicitly racist federal statute meant to favour immigrants from “white” nations and limit the numbers of immigrants from “non-white” nations. Lee, *supra* note 22.

Americans, like Canadians, conceptualized the nation as a biocultural community through eugenic efforts, attempting to preserve national racial fitness and purity through the control of women's sexuality and reproduction.<sup>24</sup> Today, amidst a resurgence of open "white nationalism," American courts continue to defer to congressional and executive judgments that the immigration of certain groups represents a threat to the nation's sovereignty.<sup>25</sup>

Yet, in the United States, as in Canada, contemporary public political narratives also embrace a story of racial transcendence. This story is reflected in American anti-discrimination law. As critical race scholars have observed, the primary anti-discrimination provision in US federal law—the Equal Protection Clause of the Fourteenth Amendment—requires proof of conscious intent to discriminate on the basis of race, defining racism as a personal moral failing.<sup>26</sup> Moreover, justices of the US Supreme Court have collectively taken the view that racism is on the wane in the United States. Recent Supreme Court decisions have released states with a history of racial discrimination in voting from "pre-clearance" under the *Voting Rights Act*, which struck down diversity efforts in public schools and a violation of anti-discrimination laws, and have announced that affirmative action efforts in higher education will soon be unnecessary.<sup>27</sup> As Alan Freeman observed forty years ago, federal anti-discrimination law adopts the perspective of the perpetrator of racism, not the victim, preserving the innocence of the white nation at the level of law and policy.<sup>28</sup>

International law, like American domestic law, is today ostensibly race neutral, yet it has never disavowed its colonial-imperial birth. International law began as the

- 
24. See Nancy Ordover, *American Eugenics: Race, Queer Anatomy, and the Science of Nationalism* (Minneapolis: University of Minnesota Press, 2003).
  25. See Kevin R Johnson, *The "Huddled Masses" Myth: Immigration and Civil Rights* (Philadelphia: Temple University Press, 2004); Kaila C Randolph, "Executive Order 13769 and America's Longstanding Practice of Institutionalized Racial Discrimination towards Refugees and Asylum Seekers" (2017) 47:1 *Stetson Law Review* 1.
  26. For an early and influential criticism of the intent doctrine, see Charles R Lawrence, III, "The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism" (1987) 39:2 *Stanford Law Review* 317.
  27. See e.g. *Shelby County v Holder*, 570 US 529 (2013) (holding that Congress failed to demonstrate that preclearance restrictions imposed by the *Voting Rights Act* were still necessary); *Parents Involved in Community Schools v Seattle School Dist No 1*, 551 US 701 (2007) (striking down diversity efforts in Seattle public schools as a violation of anti-discrimination norms); *Grutter v Bollinger*, 539 US 306 (2003) (opining that race-conscious admission policies in American colleges and universities will be unnecessary in twenty-five years); *Voting Rights Act*, 79 Stat 437.
  28. See Alan David Freeman, "Legitimizing Racial Discrimination through Anti-Discrimination Law: A Critical Review of Supreme Court Doctrine" (1978) 62:6 *Minnesota Law Review* 1049 at 1052.

“law of nations,” a European, Christian imperial project that constructed the categories of “heathens” and “infidels” as inherently inferior subjects.<sup>29</sup> In the twentieth century, following the global catastrophe of the Holocaust, social justice advocates formulated “human rights” to protect persons who, in Hannah Arendt’s famous phrase, lacked “the right to have rights.”<sup>30</sup> Yet human rights efforts never fully disrupted the imperialist roots of the concept of the “human” itself.<sup>31</sup> Human rights campaigns thus routinely fail to protect those who, in the dominant social imaginary, are cast out of the category “human.” In white settler nations, these populations include “First Nations, migrants and refugees, Muslims and Arabs detained as terror suspects, ... Palestinians, Haitians, Iraqis, Afghanis, homeless groups, [and] youth of color.”<sup>32</sup>

### *Making White Spaces: Structural Liberalism and the State-Market Split*

Entwined with the racialized and gendered production of subjects is the racialized and gendered production of space. Razack’s work has focused on white settler law’s participation in policing territorial boundaries. For instance, she describes how police in Saskatoon maintained a long-standing practice of picking up Aboriginal people who were deemed disorderly and “dropping them off” outside the city limits, leaving them to walk home—a practice that in sub-zero temperatures is routinely lethal.<sup>33</sup> She also calls out the numerous unexplained deaths of Indigenous women while in carceral custody, and the Canadian government’s failure to properly investigate or stop these deaths.<sup>34</sup> Razack understands this violence as the product of a colonial logic in which bodies associated with the First Nations are irrelevant or

---

29. See Robert A Williams, *The American Indian in Western Legal Thought: the Discourses of Conquest* (New York: Oxford University Press, 1990); Steven T Newcomb, “The Evidence of Christian Nationalism in Federal Indian Law: The Doctrine of Discovery, *Johnson v McIntosh*, and Plenary Power” (1993) 20:2 *New York University Review of Law and Social Change* 303.

30. See Razack, Thobani & Smith, *supra* note 2 at xv.

31. See Sylvia Wynter, “Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, after Man, Its Overrepresentation—An Argument” (2003) 3:3 *New Centennial Review* 257; see also Mignolo, “From ‘Human Rights’ to ‘Life Rights’”, *supra* note 4; Makau Mutua, “Savages, Victims, and Saviors: The Metaphor of Human Rights” (2001) 42:1 *Harvard International Law Journal* 201.

32. Razack, Thobani & Smith, *supra* note 2 at xiv.

33. See Razack, “It Happened More than Once”, *supra* note 8.

34. See Sherene H Razack, *Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody* (Toronto: University of Toronto Press, 2015).



even dangerous to the body of the white nation.<sup>35</sup> In this section, I argue that white settler law also polices conceptual boundaries to protect the racialized and gendered order of power.

The United States, like other Western societies, has, in Arthur Okun's terms, a "split-level" institutional structure; it is simultaneously governed by principles and institutions related to democracy and to capitalism.<sup>36</sup> It is generally assumed that democracy and capitalism are compatible; indeed, influential scholars have argued that capitalism and democracy are mutually reinforcing and, together, bring national freedom, wealth, stability, and international peace.<sup>37</sup> Nonetheless, there are important tensions between democracy and capitalism that mark liberal societies with split-level structures of governance. Most notably, the primary democratic value is "equality," while the primary capitalist value is "efficiency." One way in which the contradictions between democratic and capitalist governance are stabilized is through the articulation in legal discourse of a conceptual split between "the market" and "the state." Under the terms of this border making, democratic governance and constitutional oversight are limited to matters labelled "public."

One place in which this structural liberalism is visible in American law is in the relative absence of economic and social rights in the United States. William Forbath notes that the language of "social citizenship . . . centered on decent work and livelihoods, social provision, and a measure of economic independence and democracy," is part of American constitutional history, but it is a tradition that now has been "forgotten."<sup>38</sup> Frank Deale points out that "only in times of acute national crisis such as the Civil War, Reconstruction, and the Great Depression, has the federal government assumed responsibility for anything resembling economic rights, or minimum welfare guarantees."<sup>39</sup> Notoriously, despite its participation in framing the

---

35. Recently, Razack has considered this phenomenon using the terminology of "waste." See Razack, "It Happened More than Once", *supra* note 8.

36. See Arthur M Okun, *Equality and Efficiency: The Big Tradeoff* (Washington, DC: Brookings Institution Press, 2015) (revised and expanded version of material originally delivered as an Edwin L Godkin Lecture, John F Kennedy School of Government, Harvard University, April 1974).

37. See Milton Friedman, *Capitalism and Freedom*, 40th anniversary ed (Chicago: University of Chicago Press, 2002).

38. William E Forbath, "Caste, Class, and Equal Citizenship" (1999) 98:1 Michigan Law Review 1 at 1. Forbath and Joseph Fishkin argue that present-day American constitutional discourse has wrongly ignored and neglected what they call the "Anti-Oligarchy Constitution," which they describe as "an underlying constitutional commitment to a political economy in which power and opportunity are dispersed among the people rather than concentrated in the hands of a few." Joseph Fishkin & William E Forbath, "The Anti-Oligarchy Constitution" (2014) 94:3 Boston University Law Review 669 at 672.

39. Frank EL Deale, "The Unhappy History of Economic Rights in the United States and Prospects for Their Creation and Renewal" (2000) 43:3 Howard Law Journal 281 at 288.

1948 *Universal Declaration of Human Rights (UDHR)*, which embraced political, civil, economic, and social rights as an indivisible whole, the United States also influenced the decision to split the *UDHR* into two separate protocols, and remains the only industrialized democracy that has refused to ratify the *International Covenant on Economic, Social and Cultural Rights*.<sup>40</sup> Far from recognizing economic rights or even considering the nation's political economy as relevant to its maintenance of a republican form of government, present-day American legal discourse tends to treat "the market" and "the economy" as a set of non-political, "natural" forces outside the proper purview of government.<sup>41</sup>

Structural liberalism in the United States, with its conceptual spatialization of democracy and capitalism—the state and the market—preserves white supremacy and the settler colonial order through race-neutral methods. For instance, constitutional law reflects the formulation of state and market governance as belonging to separate "spheres" by embracing the "public-private distinction," which imposes anti-discrimination norms only on "public" institutions and actors, not "private" ones.<sup>42</sup> This doctrine protects the racialized foundations of American wealth—Indigenous dispossession, slave labour, and racialized peonage—by treating that wealth as "private" and, thus, not subject to equality norms that might trigger reparations.<sup>43</sup>

Other doctrines protect the whiteness of property within anti-discrimination law. For example, the Supreme Court of the United States has adopted an "anti-classification" approach to constitutional equality law, which understands the use of racial categories by government actors to be the central harm to be remedied by anti-discrimination norms. This approach is antithetical to an "anti-subordination"

---

40. Linda M Keller, "The American Rejection of Economic Rights as Human Rights and the Declaration of Independence: Does the Pursuit of Happiness Require Basic Economic Rights?" (2003) 19:2 *New York Law School Journal of Human Rights* 557 at 562; *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, UN Doc A/RES/61/295 (2007); *International Covenant on Economic, Social, and Cultural Rights*, 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

41. As Martha McCluskey puts it, "[a]gainst [the] social citizenship ideal stands the powerful and pervasive neoliberal (free market) ideology asserting that state abstention from economic protection is the foundation of a good society." Martha T McCluskey, "Efficiency and Social Citizenship: Challenging the Neoliberal Attack on the Welfare State" (2003) 78:2 *Indiana Law Journal* 783 at 784 [emphasis and citations omitted].

42. For an early and influential investigation of the public-private distinction from a feminist perspective, see Frances Olsen, "The Family and the Market: A Study of Ideology and Legal Reform" (1983) 96:7 *Harvard Law Review* 1497.

43. See Cass R Sunstein, *The Partial Constitution* (Cambridge, MA: Harvard University Press, 1993) at 68 (explaining "status quo neutrality" in constitutional law as the preservation of existing distributions of wealth and power).

approach that would prohibit the government's use of race only when it creates and perpetuates white supremacy.<sup>44</sup> Hila Keren argues that the anti-classification approach has restricted "both lower courts' willingness to charge private actors with discrimination and their readiness to award, as arms of the state, race-conscious remedies based on group-based arguments."<sup>45</sup> The result has been that anti-discrimination law ignores racialized capital accumulation and the "sedimented inequality" caused by racialized mechanisms of financial discipline and dispossession.<sup>46</sup>

In residential segregation, which is one of the most powerful engines of structural racial inequality in the United States, we see literal and conceptual spatialization working together to protect the settler colonial order. Housing segregation is understood in American courts as the result of a myriad of innocent private "choices" that have nothing to do with race.<sup>47</sup> As a result, even courts charged with finding remedies for explicit racial segregation in housing routinely fail to recognize the need for a structural remedy.<sup>48</sup> Analogous to the use of the "private" sphere of the home as a space that protects and, hence, fosters gender exploitation and violence in

- 
44. See Jack M Balkin & Reva B Siegel, "The American Civil Rights Tradition: Anticlassification or Antisubordination?" (2003) 58:1 University of Miami Law Review 9.
45. Hila Keren, "Law and Economic Exploitation in an Anti-Classification Age" (2015) 42:2 Florida State University Law Review 313 at 317 [emphasis omitted].
46. The term "sedimented inequality" was coined by Melvin Oliver and Thomas Shapiro to describe the intergenerational compounding of racialized economic disadvantage. See Melvin L Oliver & Thomas M Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality*, 10th anniversary ed (New York: Routledge, 2006). Hila Keren, in "Law and Economic Exploitation," explains this racialization through the American housing market. During the run-up to the 2008 collapse of financial markets, lending institutions aggressively marketed subprime loans to working-class Latinos and African Americans, taking advantage of their financial vulnerability. That vulnerability was itself a product of the federal government's prior participation in "redlining," or the withholding of federally guaranteed mortgages from borrowers in nonwhite or racially mixed neighborhoods. After the collapse, borrowers of colour who sought to sue lenders for their predatory behavior based on a "reverse redlining" theory all too often saw their claims rejected by courts, based on their failure to prove intentional discrimination. Keren quotes one decision: "A jury might well conclude that [the borrowers] were targeted not on the basis of being African-Americans, but because they were vulnerable ... first-time home buyers who *happened* to be African-American." Keren, *supra* note 45 at 330, citing *M & T Mortg Corp v White*, 736 F Supp 2d 538 (EDNY 2010) at 576.
47. See Katie Nodjimbadem, "The Racial Segregation of American Cities Was Anything but Accidental", *Smithsonian.com* (30 May 2017) <<https://www.smithsonianmag.com/history/how-federal-government-intentionally-racially-segregated-american-cities-180963494/>>.
48. See Martha R Mahoney, "Whiteness and Remedy: Under-Ruling Civil Rights in *Walker v. City of Mesquite*" (2000) 85:5 Cornell Law Review 1309.

the family, American law uses the “private” sphere of the market to launder government and private racial discrimination, facilitating and sustaining racialized relations of wealth and poverty by treating them as “baseline” distributions that cannot be disturbed.

This contemporary failure to see racial discrimination in the “private” sphere of the market functions to protect the white settler order. During the founding period of the United States, Indigenous societies were locked out of real property ownership and physically dispossessed of the land; persons of African descent, legally defined as not being included within the nation, were commodified as factors of production throughout the slavery era. The combination of racialized dispossession and exploitation and resource extraction yielded extraordinary wealth for the new nation in a dynamic that historian Sven Beckert calls “war capitalism.”<sup>49</sup> As “war capitalism” matured into “industrial capitalism,” the wealth created by white settler colonialism was never redistributed. Instead, racial capitalism intensified with the emergence of “segmented” labour markets, the importation of racialized immigrant populations to create new systems of peonage, and the exclusion of non-whites from labour unions and redistributive social programs.<sup>50</sup> Meanwhile, gendered and seemingly “private” legal rules relating to families, estates, and trusts ensured that household wealth, along with sexualized power, flowed towards whites and away from non-whites.<sup>51</sup> As Cheryl Harris has noted, the rhetorical traffic between “whiteness” and “property” has material effects, as in the higher property values extant in “white” neighbourhoods.<sup>52</sup> White settler law in the United States, then, racializes and genders both literal and conceptual space, protecting the political economy of whiteness. This spatialization is intertwined with the racialized and gendered production of legal subjects. In the next part of this article,

---

49. See Sven Beckert, *Empire of Cotton: A Global History* (New York: Knopf, 2014).

50. See George Lipsitz, *The Possessive Investment in Whiteness: How White People Profit from Identity Politics* (Philadelphia: Temple University Press, 2006); Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York: Liveright Publishing, 2017).

51. See Palma Joy Strand, “Inheriting Inequality: Wealth, Race, and the Laws of Succession” (2010) 89:2 *Oregon Law Review* 453. For an exploration of the roots of American gendered political economy, see Adrienne D Davis, “Slavery and the Roots of Sexual Harassment” in Catharine A MacKinnon & Reva B Siegel, eds, *Directions in Sexual Harassment Law* (New Haven: Yale University Press, 2003) 457; Adrienne D Davis, “‘Don’t Let Nobody Bother Yo’ Principle’: The Sexual Economy of American Slavery” in Sharon Harley & Black Women and Work Collective, *Sister Circle: Black Women and Work* (New Brunswick, NJ: Rutgers University Press, 2002) 103.

52. See Cheryl I Harris, “Whiteness as Property” (1993) 106:8 *Harvard Law Review* 1707; see also Audrey G McFarlane, “Race, Space, and Place: The Geography of Economic Development” (1999) 36:2 *San Diego Law Review* 295.

however, I argue that a suite of progressive social movements aims to disrupt the dual projects of racialized subject and space making on which America's colonial commitments are sustained.

### *[X] Justice Movements*

In the last few decades, the United States has seen the proliferation of social movements that incorporate the word "justice": "environmental justice," "reproductive justice," "climate justice," "energy justice," "food justice," "land justice," "health justice," and "water justice," to name a few.<sup>53</sup> Some of these political-social formations, such as the climate justice movement, are direct spinoffs of the environmental justice movement.<sup>54</sup> Others, such as the reproductive justice movement, emerged independently.<sup>55</sup> Regardless of their origin, however, what I will call [x] justice movements challenge the race- and space-making mechanisms of white settler law. In the first section of this part, I provide an overview of some of these [x] justice movements as they have emerged in the United States. In the next section, I argue that they share certain commitments, and in the third section, I argue that the commitments of these [x] justice movements support anti-colonial, and, potentially, decolonial, struggle.

#### *[X] Justice Movements: A Brief Introduction*

In October 1991, academics and activists gathered in Washington, DC, for the first National People of Color Environmental Leadership Summit. The result of their three-day meeting was a list of seventeen principles that the group agreed were central to their nascent movement for "environmental justice."<sup>56</sup> Although its theoretical and organizing work would deepen over the succeeding decades, the sweeping breadth and depth of the movement's commitments can already be seen in the principles. Summit participants declared, for example, that environmental

---

53. Although these movements are of course not limited to the United States, exploring their characteristics and commitments from a comparative and transnational perspective is beyond the scope of this article.

54. See Ashley Dawson, "Climate Justice: The Emerging Movement Against Green Capitalism" (2010) 109:2 *South Atlantic Quarterly* 313.

55. See Kimala Price, "What Is Reproductive Justice? How Women of Color Activists Are Redefining the Pro-Choice Paradigm" (2010) 10:2 *Meridians: Feminism, Race, Transnationalism* 42.

56. See "Principles of Environmental Justice" (People of Color Environmental Leadership Summit, Washington, DC, October 1991) <<http://www.ejnet.org/ej/principles.html>>.

justice “affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples” (Principle 5); that it “demands the cessation of the production of all toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production” (Principle 6); and that it demands for its members “the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation” (Principle 7).<sup>57</sup> As Luke Cole and Sheila Foster observe, the summit served as a kind of “declaration of independence from the traditional environmental movement.”<sup>58</sup> Central to the breakaway was a concern with an American political economy that produced and distributed environmental benefits and burdens according to a racial logic. As environmental sociologist Laura Pulido would later explain, the seemingly colour-blind “market forces” that steered hazardous waste dumps to poor and minority communities were, in fact, the product of, and contributed to, racial subjection and racialized spaces.<sup>59</sup>

Notably, summit participants defined environmental law as part of the problem, not the solution. The second historical wave of American environmentalism, conventionally dated to the first Earth Day in 1970, produced a method of environmental regulation steered by federal and state administrative agencies and legitimated by scientific expertise.<sup>60</sup> Environmental justice leaders, however, objected to the presumption that environmental management was merely a matter of developing technological and regulatory management tools to control polluting industries. This “control” paradigm, they pointed out, assumed that industries had a prior right to internalize the profits produced by pollution and to externalize the burdens placed on poor communities and communities of colour situated on production and waste sites.<sup>61</sup>

---

57. *Ibid.*

58. Luke W Cole & Sheila R Foster, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement* (New York: New York University Press, 2001) at 31.

59. Laura Pulido, “Rethinking Environmental Racism: White Privilege and Urban Development in Southern California” (2004) 90:1 *Annals of the Association of American Geographers* 12.

60. See Michael Shellenberger & Ted Nordhaus, “The Death of Environmentalism: Global Warming Politics in a Post-Environmental World”, *Breakthrough Institute* (2004) <[https://www.thebreakthrough.org/images/Death\\_of\\_Environmentalism.pdf](https://www.thebreakthrough.org/images/Death_of_Environmentalism.pdf)>; Michael Shellenberger & Ted Nordhaus, “The Long Death of Environmentalism”, *Breakthrough Institute* (2011) <[http://thebreakthrough.org/archive/the\\_long\\_death\\_of\\_environmenta](http://thebreakthrough.org/archive/the_long_death_of_environmenta)>.

61. Mahoney, *supra* note 48.

Environmental justice leaders have argued that the sacrifice of poor and minority communities to “locally unwanted land uses” is endemic to the system of capitalist production itself.<sup>62</sup> For example, in a path-breaking article in the *Ecology Law Quarterly* introducing environmental justice to legal scholarship, Luke Cole argues that existing environmental law deliberately sacrificed the poor; he identifies environmental law as “the problem, not the solution.”<sup>63</sup> Toxic waste dumps, he observes, are deliberately placed in poor communities because it is cost-effective to do so. He concludes that because it is rational for industrial production in a capitalist society to offload disproportionate pollution loads onto populations without the wealth or political power to avoid them, to resist disparate burdens on poor communities is to challenge economic “rationality” itself. Pulido, taking a historical view, similarly argues that the communities that disproportionately face toxic burdens are already shaped by the rules of racialized space.<sup>64</sup>

Other emergent [x] justice movements in the United States share environmental justice’s insistence on challenging the racialized and gendered production of persons and spaces. The “climate justice” movement, for example, which is an outgrowth of the environmental justice movement, pushes back against the framing of climate change policy as a universal problem to be solved by the application of neutral technological and governance expertise. Instead, climate justice advocates argue that the looming threat of global environmental catastrophe is inextricably linked to European colonialism and imperialism. As Carmen Gonzalez observes, it was European imperialism and colonialism, and the new forms of racial capitalism that these projects produce, that brought about the “Great Acceleration”—the sudden and dramatic uptick in environmental destruction that we now associate with human-caused climate change.<sup>65</sup> Climate justice advocates demand that global relations of inequality be taken into account as the world’s nations address a warming world; they argue, for instance, that the global North, which produces a disproportionate amount of greenhouse gases, should cut back on production accordingly, while assisting the global South with financial and technological support to enable poor countries to improve the welfare of their citizens at the same time that they address climate change.<sup>66</sup> “Energy justice,” which is another spin-off of environmental justice, similarly calls attention to the centrality of unjust power differentials to the project of developing

---

62. Luke W Cole, “Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law” (1992) 19:4 *Ecology Law Quarterly* 619 at 646.

63. *Ibid* at 642.

64. Pulido, *supra* note 59.

65. See Carmen G Gonzalez, “Bridging the North-South Divide: International Environmental Law in the Anthropocene” (2015) 32:2 *Pace Environmental Law Review* 407 at 418.

66. Carmen G Gonzalez, “Environmental Justice and International Environmental Law” in Shawkat Alam et al, eds, *Routledge Handbook of International Environmental Law* (New York: Routledge, 2013) 77 at 91–92.

clean and sustainable energy for human beings and insists on examining the colonial and imperial roots of the problem. Lakshman Guruswamy, for instance, challenges the widespread failure of the “developed world” to pay attention to what he calls the “energy oppressed poor.”<sup>67</sup>

Like environmental justice, climate justice, and energy justice, the reproductive justice and food justice movements emerged as alternatives to subordination-blind policy frames. Advocates for reproductive justice argue that the movement for “reproductive rights,” with its individual choice framework, has failed to grapple with racially differentiated access to reproductive health. Reproductive justice seeks to challenge “reproductive oppression,” which is defined as “the control and exploitation of women, girls, and individuals through our bodies, sexuality, labor, and reproduction” through means that involve “systems of oppression that are based on race, ability, class, gender, sexuality, age and immigration status.”<sup>68</sup> Similarly, Eric Holt-Giménez and Yi Wang argue that those who identify with the term “food justice” recognize that “racial and class disparities are a structurally integrated part of the present food system,” which was “built over two centuries of violent, global-scale dispossession, and accumulation, a good part of which took place in North America.”<sup>69</sup> As [x] justice movements in the United States have emerged, they have placed settler colonialism and its racialized and gendered subjection and spatialization at the centre of their advocacy. In the next section, I explore three specific commitments of these movements in more detail.

### *The Shared Commitments of [X] Justice Movements*

In this section, I argue that [x] justice movements in the United States share three basic commitments: (1) a commitment to acknowledging interlocking systems of oppression, instead of embracing single-axis identity analysis; (2) a commitment to a politics of life, which transgresses conventional conceptual spatial boundaries; and (3) a commitment to “justice” that explicitly calls attention to the limits of white settler law.

---

67. Lakshman Guruswamy, “Energy Justice and Sustainable Development” (2010) 21:2 *Colorado Journal of International Environmental Law and Policy* 231 at 232.

68. Loretta Ross, “Understanding Reproductive Justice”, *What Is Reproductive Justice* (November 2006) <<https://www.trustblackwomen.org/our-work/what-is-reproductive-justice/9-what-is-reproductive-justice>>.

69. Eric Holt-Giménez & Yi Wang, “Reform or Transformation?: The Pivotal Role of Food Justice in the U.S. Food Movement” (2011) 5:1 *Race/Ethnicity: Multidisciplinary Global Contexts* 83 at 91–92.



## [X] Justice Movements and “Interlocking Oppressions”

[X] justice movements in the United States characteristically articulate their critical analyses and goals in terms of interlocking oppressions or “intersectionality.”<sup>70</sup> As we have seen, the environmental justice and climate justice movements have adopted their understanding of interlocking oppressions in deliberate opposition to a “colour-blind” understanding of environmental and climate degradation. Environmental and climate justice activists regularly weave together awareness of race, gender, Indigeneity, and class as mechanisms of oppression that are also interlocked with environmental extraction, exploitation, and degradation. Like environmental justice and climate justice, the reproductive justice movement in the United States is founded on an understanding of interlocking oppressions.<sup>71</sup>

[X] justice movements acknowledge interlocking oppressions not just in terms of their programmatic content but also as guides for organizing. For example, SisterSong, one of the leading reproductive justice organizations in the United States, is organized as a collective with “five principal caucuses representing ethnic and indigenous groups in the United States.”<sup>72</sup> The food justice movement has incorporated acknowledgement of interlocking oppressions into its organizing work as well. For example, in 2015, a new “grass-tips” organization, the HEAL Food Alliance, emerged to connect organizations concerned with health, the environment, labour, and agriculture.<sup>73</sup> The HEAL Alliance recognizes two dynamics of oppression as being intertwined: the corporate takeover of food production and distribution, which

---

70. See note 3 above.

71. One reproductive justice website states this explicitly: “RJ is an expansion of the theory of intersectionality developed by women of color and the practice of self-help from the Black women’s health movement to the reproductive rights movement, based on the application of the human rights framework to the United States. Reproductive justice is in essence an intersectional theory emerging from the experiences of women of color whose multiple communities experience a complex set of reproductive oppressions. It is based on the understanding that the impacts of race, class, gender and sexual identity oppressions are not additive but integrative, producing this paradigm of intersectionality. For each individual and each community, the effects will be different, but they share some of the basic characteristics of intersectionality—universality, simultaneity and interdependence.” Ross, *supra* note 68.

72. Price, *supra* note 55 at 48. These caucuses are (1) African American/Caribbean/African; (2) Arab American/Middle Eastern/North African; (3) Asian/Pacific Islander; (4) Latina; and (5) Native American/Indigenous. According to Price, “[o]ver the years, other caucuses have formed, including ones for the LGBTI/queer community, young women under the age of twenty-four, and women of color who work in majority-white, reproductive rights organizations” (*ibid*).

73. See HEAL Food Alliance, “Areas of Work” <<http://healfoodalliance.org/strategy/arenas/>>.

has resulted in economic oligopoly, and “the legacy and current reality of racism.”<sup>74</sup> For the alliance, “food system transformation is inseparable from the ongoing work to dismantle racism and the mythologies that hold profit as more valuable than people or the planet.”<sup>75</sup> The “land justice” movement makes a similar commitment to building movements of movements.<sup>76</sup>

Consciousness of interlocking oppressions was the impetus for the founding of [x] justice movements, and each attempts to centre the experiences of people of color, including women of colour. Moreover, attention to interlocking oppressions is also an organizing strategy for these groups; it makes possible broad coalitions and “movement of movements” alliances that increase organizing capacity and deepen structural analyses of power.

### [X] Justice Movements and Bodies That Matter

As we saw in the first part of this article, settler colonial theorists point out that the international discourse of “human rights” has not adequately grappled with the problem of protecting those who have been placed outside the human. “Decolonial” scholar Walter Dignolo accordingly calls for a shift from “human rights” to “life rights” as part of a project to abandon the politics of colonial subjection.<sup>77</sup> It is striking in this regard that [x] justice movements tend to be organized around the fundamentals of life on earth: land, water, health, food, and reproduction. Although committed to the recognition of interlocking oppressions in their programmatic demands and in their organizing, [x] justice movements are not limited to demanding human rights as they are conceptualized in international law. Rather, their focus is on the way that political and economic systems within settler colonialism produce differentiated access to the necessities of life.

One consequence of this commitment is a rupture of the conceptual boundaries maintained in American law between different types of rights: “negative rights”

---

74. HEAL Food Alliance, “Motivation” <<http://healfoodalliance.org/strategy/motivation/>>.

75. *Ibid.*

76. In his introduction to an edited collection of essays entitled *Land Justice*, Eric Holt-Giménez declares: “In the US, the future of the struggles for agrarian reform, food sovereignty, environmental justice, human rights, and racial and gender equity will be determined by the combination of these struggles, rather than by any single struggle. This position does not invalidate the importance of class, race, gender, climate, or land issues in and of themselves. It recognizes that alliances *between* these struggles are fundamental for social transformation.” Eric Holt-Giménez, “Introduction” in Justine M Williams & Eric Holt-Giménez, eds, *Land Justice: Re-Imagining Land, Food, and the Commons in the United States* (Oakland: Food First Books, 2017) at 12 [emphasis in original].

77. See Dignolo, “From ‘Human Rights’ to ‘Life Rights’”, *supra* note 4.

and “positive rights” or “economic rights” and “civil rights.” Reproductive justice, for instance, according to its leading advocates, “demands sexual autonomy and gender freedom for every human being.”<sup>78</sup> This goal requires far-reaching “positive” economic and social rights, none of which are currently recognized under American law.<sup>79</sup> Indeed, the breadth of [x] justice movements’ substantive demands and their openness to “movement of movements” opens the door to an understanding of rights that cannot be held by an individual or even a particular community. For instance, Giovanna Di Chiro argues that, working together, some environmental justice and reproductive justice organizations in the United States now understand environmental struggles not so much in terms of individual human rights as “about fighting for and ensuring *social reproduction*.”<sup>80</sup> Di Chiro defines social reproduction as “the intersecting complex of political-economic, socio-cultural, and material-environmental processes required to maintain everyday life and to sustain human cultures and communities on a daily basis and intergenerationally.”<sup>81</sup> At this level of abstraction, the demand for sustainable social reproduction demands the transformation of capitalist institutions and processes.<sup>82</sup> Reframing reproductive justice and environmental justice in this way disrupts the conceptual splits between democracy and capitalism, state and market, and public and private that have so long stabilized the settler colonial legal order.

Indeed, [x] justice movements have been forthright in demanding that markets and economic institutions be subjected to democratic principles rather than being treated as being outside the scope of democracy. Principle 6 of the 1991 Principles of Environmental Justice states: “Environmental Justice demands the cessation of the production of all toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production.”<sup>83</sup> Principle 6 subordinates “market” processes to “state” governance—the exact reverse of existing environmental politics, in which “private” production happens first and “public” questions

---

78. Loretta J Ross & Rickie Solinger, *Reproductive Justice: An Introduction* (Oakland: University of California Press, 2017) at 9.

79. Ross and Solinger thus call for “access to specific, community-based resources including high-quality health care, housing and education, a living wage, a healthy environment, and a safety net for times when these resources fail” (*ibid*).

80. Giovanna Di Chiro, “Living Environmentalisms: Coalition Politics, Social Reproduction, and Environmental Justice” (2008) 17:2 *Environmental Politics* 276 at 285 [emphasis in original].

81. *Ibid* at 281.

82. As Di Chiro puts it, “the conditions for social reproduction are always in dialectical relation with production and so are consistently restructured as capitalist systems shift to new political economies creating new regimes of production and accumulation” (*ibid*).

83. “Principles of Environmental Justice”, *supra* note 56.

of harm and responsibility are investigated later, if at all.<sup>84</sup> Food justice advocates have similarly been willing to challenge capitalism as we know it. Holt-Gimenez and Wang note that the radical wing of the food movement aspires not to achieve key policy reforms within the existing system but, rather, to build entirely new systems of food production and distribution that reflect local, democratic control within an anti-subordination politics.<sup>85</sup> They quote Henry Herrera, a northern California food justice activist: “Food justice work must result in ownership of the means of production and exchange of food by the people who consume the food. Food justice work is the incredibly difficult work of building new local healthy food systems, not opposing the global food industry.”<sup>86</sup> As the executive director of the organization Food First!, Holt-Giménez has brought this anti-capitalist stance to his conception of “land justice.”<sup>87</sup> With Justine Williams, Holt-Gimenez writes:

The challenge for land justice is not just how to confront the issues of concentrated private property and the financialization of agricultural land, or how to forge an agroecologically sound and economically equitable form of agriculture, but how to confront capitalism. Our skewed system of land tenure reflects a regressive political-economic system, itself embedded in a continuing legacy of dispossession, concentration and exploitation.<sup>88</sup>

Climate justice activists similarly demand nothing less than a new political economy. As Maxine Burkett notes,

the climate movement does not purport to be an environmental one. It aspires to be much more than an attempt to legislate to correct a discrete environmental harm. It seeks to correct a deeper harm that disparately dismantles livelihoods as a result of a changing climate, and to introduce a different kind of political economy that, at the very least, abandons the use of fossil fuels as a driver of our economy.<sup>89</sup>

The demand for life rights brings into view the possibility of protections for non-human beings and systems as well as human beings. The principal leaders in

---

84. William P Ophuls, with A Stephen Boyan, Jr, “The American Political Economy II: The Non-Politics of Laissez Faire” in John S Dryzek & David Schlosberg, eds, *Debating the Earth: The Environmental Politics Reader*, 2d ed (Oxford: Oxford University Press, 2005) 191; see also Daniel Faber, *Capitalizing on Environmental Injustice: The Polluter-Industrial Complex in the Age of Globalization* (New York: Rowan & Littlefield, 2008).

85. Holt-Giménez & Wang, *supra* note 69 at 88.

86. *Ibid*, citing Henry Herrera, correspondence on 24 April 2011 (unpublished).

87. Williams & Holt-Giménez, *supra* note 76.

88. *Ibid* at 259.

89. Maxine Burkett, “Climate Disobedience” (2016) 27:1 Duke Environmental Law and Policy Forum 1 at 17.

this regard have been Indigenous activists, and environmental justice and climate justice have seen the most developed campaigns.<sup>90</sup> The first of the seventeen principles of environmental justice adopted at the 1991 summit provides: “Environmental Justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.”<sup>91</sup> As Kyle Whyte notes, for Indigenous peoples, climate justice work is often intertwined with “the systems of responsibilities their community members self-consciously rely on for living lives closely connected to the earth and its many living, nonliving, and spiritual beings, like animal species and sacred places, and interconnected collectives, like forests and water systems.”<sup>92</sup> Accordingly, initiatives outside the United States to protect living systems such as rivers and forests are often designed and led by Indigenous peoples.<sup>93</sup> The same is true within the United States, although the incorporation of these initiatives within settler colonial law has been difficult. For instance, in 2012, native Hawaiian advocates established a committee within the Hawaii Department of Land and Natural Resources with the charge of, among other things, “identifying a comprehensive set of indigenous practices for natural resource management.”<sup>94</sup> Such practices are rooted in care for “Ka Lewalani,” “a resource realm which the ancient ‘aha councils considered when making decisions. It encompasses everything above the land, the air, the sky, the clouds, the birds, the rainbows, etc.”<sup>95</sup> However, despite words of praise in the Hawaii legislature for this committee’s work since 2012, the committee had still not received funding by 2018.<sup>96</sup> The struggle to preserve and sustain the means of and to life—land, water, food, “environment”—has produced movements that erase the conceptual spatialization of rights and methods of governance that shield activities deemed “private” or “economic” from democratic and anti-racist norms. [X] justice movements, in

---

90. “Animal rights” advocates, in contrast, have been slow and clumsy in their attempt to acknowledge interlocking oppressions. See Angela P Harris, “Should People of Color Support Animal Rights?” (2009) 5:1 *Journal of Animal Law* 15.

91. “Principles of Environmental Justice”, *supra* note 56.

92. Kyle Powys Whyte, “Indigenous Women, Climate Change Impacts, and Collective Action” (2014) 29:3 *Hypatia* 599 at 600.

93. As Whyte explains, these movements are often led by Indigenous women, in particular. Whyte argues that Indigenous women have distinctive forms of collective action that it is the responsibility of states to acknowledge and foster. *Ibid* at 611–12.

94. See HI Rev Stat §171-4.5 (d)(2) (2013 Hawai’i Revised Statutes, Aha moku advisory committee).

95. See *Final Rules of Practice and Procedure, Department of Land and Natural Resources, ‘Aha Moku Advisory Committee* (20 October 2016) ss 1–3 <<http://www.ahamoku.org/index.php/aha-kiolo-members/>> (defining Ka Lewalani).

96. See US, SB 351, *Relating to the Aha Moku Advisory Committee*, 2017-18, HI <<https://legiscan.com/HI/text/SB351/id/1768173>>.

addition to crossing territorial borders, have transgressed conceptual borders and challenge capitalist institutions in the search for radical democracy.

### Justice over Order: Exceeding the Terms of Liberal Law

Finally, a third commitment shared by [x] justice movements in the United States and elsewhere is the view that legal tools are necessary, yet ultimately inadequate, to achieve movement goals. Since white settler law's first commitment is to preserve itself, which means preserving existing colonial distributions of wealth and power in the name of social "order," [x] justice movements seek not "equal rights" or "inclusion" in the civil rights tradition but, rather, "empowerment," which exceeds existing law. Empowerment in the work of these movements includes both the right to participate in governance and the disruption of existing conventions of knowledge and "expertise." Again, the environmental justice movement is an example. A fundamental principle of environmental justice lawyering is recognition that conventional lawyering reproduces existing hierarchies of power. When looking for a way to recruit lawyers into doing environmental justice work, then, Luke Cole argues that environmental justice lawyers should embrace "three central tenets: client empowerment, group representation, and law as a means, not an end."<sup>97</sup> He asks environmental justice advocates to embrace three questions asked by social change activists: "(1) Will it educate people? (2) Will it build the movement? (3) Will it address the root of the problem, rather than merely a symptom?"<sup>98</sup>

Other [x] justice movements have similarly adopted theories of change that subordinate legal strategies to organizing strategies. For example, although they name their movement "trans liberation" rather than "trans justice," Gabriel Arkles, Pooja Gehi, and Elana Redfield embrace a power relations approach drawn from critical race theory and [x] justice movements to describe their work on behalf of trans communities at the Sylvia Rivera Project: "[W]e believe in a theory of change based in mass mobilization of communities, rather than elite (strictly legal) strategies. This belief comes from an understanding that significant change for those on the bottom has never been

---

97. See Cole, *supra* note 62 at 661.

98. *Ibid* at 668. Cole explains: "Environmental issues—like most legal services issues such as housing, health care access and (un)employment—are systemic. The disproportionate burden borne by poor people is a direct result of the system of economic organization in the United States and the corresponding inequities in the distribution of political power. Legal solutions to the environmental problems faced by poor people most often treat only the symptom, the environmental hazard itself. Embracing non-legal approaches, and legal approaches which treat the law as a means rather than an end, can help environmental poverty lawyers attack the root cause of the environmental problems faced by their clients, political and economic powerlessness" (*ibid*).

granted from those on top.”<sup>99</sup> The drive to transcend, rather than work within, existing relations of power also means rejecting conventional hierarchies of knowledge. Environmental justice organizers, for instance, embrace “street science” and “participatory action research” as ways to take back the power of scientific researchers and academic faculty who treat poor communities of colour as objects of study, promoting, and honouring “local knowledge” instead.<sup>100</sup> Reproductive justice advocates call attention to the “self-help” thread of their work, which honours the need for women of colour to link individual healing with collective social action.<sup>101</sup> These initiatives recognize that radical democracy includes not only participatory inclusion and the subordination of law to organizing but also the democratic control of knowledge. They also open the door to what Walter Mignolo calls “epistemic disobedience.”<sup>102</sup>

### *The Politics of [X] Justice in White Settler Society*

In this section, I argue that the shared commitments of [x] justice movements destabilize the racialized and gendered person- and place-making functions of white settler law. This destabilization is clearly anti-colonial, but whether American [x] justice movements will move further into openly “decolonial” struggle remains an open question. As we saw above, one of the central functions of law is subjection, the production and maintenance of actors authorized to exercise legitimate power. As we have also seen in white settler societies, the subjection function incorporates colonial logic, racializing and gendering “the human” itself.<sup>103</sup> Caribbean political theorist Sylvia Wynter argues that the time has come to “use the space of subjects placed beyond the grasp of this domain as a vital point from which to invent hitherto unavailable

- 
99. Gabriel Arkles, Pooja Gehi & Elana Redfield, “The Role of Lawyers in Trans Liberation: Building a Transformative Movement for Social Change” (2010) 8:2 *Seattle Journal for Social Justice* 579 at 581–82.
100. See e.g. Jason Corburn, *Street Science: Community Knowledge and Environmental Health Justice* (Cambridge, MA: MIT Press, 2005).
101. See Jael Silliman et al, *Undivided Rights: Women of Color Organize for Reproductive Justice* (Chicago: Haymarket Press, 2016) at 77–78 (describing the early emergence of self-help within the National Black Women’s Health Project).
102. Mignolo, “Sylvia Wynter”, *supra* note 1 at 107.
103. The Caribbean political theorist Sylvia Wynter calls the Western conception of the human “bio-economic man.” As Alexander Weheliye summarizes Wynter’s view, “[t]he idea of ‘bio-economic man’ marks the assumed naturalness that positions economic inequities, white supremacy, genocide, economic exploitation, gendered subjugation, colonialism, “natural selection,” and concepts such as the free market not in the realm of divine design, as in previous religious orders of things, but beyond the reach of human intervention all the same.” Alexander G Weheliye, *Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human* (Durham, NC: Duke University Press, 2014) at 25.

genres of the human.”<sup>104</sup> Centring themselves upon identities that are marginalized or defined as Other within the polity, and recognizing the interlocking nature of the oppressions that give rise to them, makes space for re-creating the human.

The other two shared commitments of [x] justice movements that I have taken note of—their focus on “life rights” and their insistence on going beyond law to build participatory and epistemic power for the marginalized—challenge the spatialization functions of white settler law. As we have seen, geographic and conceptual borders stabilize structural liberalism and, in so doing, preserve existing distributions of power. The call of [x] justice movements for deep transformations of American political economy—subordinating “private” production to the “public” interest, creating positive social and economic rights, and demanding the reshaping of capitalist production and exchange—pushes beyond the terms of white settler law. Through their focus on life rights, [x] justice movements have abandoned the quests for equality and liberty that have traditionally been the hallmark of “civil rights” organizing. Instead, they demand that the governance of health, water, land, food, social reproduction, and “environment” be entirely reconstructed on a blueprint of radical democracy.

Should these movements be understood as “anti-colonial” or “decolonial,” and what is at stake in this question? Criticizing theorists who use these words interchangeably, Eve Tuck and K. Wayne Yang argue that “decolonization is not a metaphor”; it means, simply, “the repatriation of Indigenous land and life.”<sup>105</sup> If they are correct, then, that the anti-colonial work of [x] justice movements, though it may converge with decolonial movement, is not synonymous with it.<sup>106</sup> The question becomes whether [x] justice movements are, and will be, led by Indigenous people and concerns or whether they will ultimately be revealed as multicultural “races to innocence.”<sup>107</sup> There is, as yet, no answer to this question. However, the recent resistance to the Dakota Access Pipeline (DAPL) provides an example of the possibilities.

---

104. *Ibid* at 24.

105. Eve Tuck & K Wayne Yang, “Decolonization Is Not a Metaphor” (2012) 1:1 *Decolonization: Indigeneity, Education & Society* 1 at 1.

106. As Tuck and Yang explain, “[b]ecause settler colonialism is built upon an entangled triad structure of settler-native-slave, the decolonial desires of white, non-white, immigrant, postcolonial, and oppressed people, can similarly be entangled in resettlement, reoccupation, and reinhabitation that actually further settler colonialism.” *Ibid* at 1.

107. In 1998, Sherene Razack and Mary Louise Fellows wrote of the “race to innocence” engaged in by white feminists when their racial privilege threatens to be exposed. Mary Louise Fellows & Sherene H Razack, “The Race to Innocence: Confronting Hierarchical Relations among Women” (1998) 1:2 *Journal of Gender, Race and Justice* 335; see also Janet Mawhinney, “*Giving Up the Ghost*”: *Disrupting the (Re)production of White Privilege in Anti-Racist Pedagogy and Organizational Change* (MA thesis, Ontario Institute for Studies in Education of the University of Toronto, 1998) <[http://www.collectionscanada.gc.ca/obj/s4/f2/dsk2/tape15/PQDD\\_0008/MQ33991.pdf](http://www.collectionscanada.gc.ca/obj/s4/f2/dsk2/tape15/PQDD_0008/MQ33991.pdf)>.



The DAPL, a 1,172-mile pipeline constructed to transport crude oil from North Dakota to refineries and terminals in Illinois, was promoted as a means of promoting American “energy independence,” a source of more than 80,000 jobs and “one of the safest, most technologically advanced pipelines in the world.”<sup>108</sup> The movement that emerged against it, however, sometimes known by its Twitter handle #NODAPL, saw the pipeline as a threat to both the water quality and the cultural integrity of the Dakota and Lakota peoples of the Standing Rock Sioux tribe. During the winter of 2016, Sioux “water protectors” and allies lived on camps on Sioux territory and “endured violence at the hands of law enforcement and the DAPL’s private security, including being pepper sprayed, shot with rubber bullets, attacked by dogs, denied nourishment and supplies, threatened by lawsuits, and drenched with cold water at the onset of winter temperatures.”<sup>109</sup> Whyte explains that the pipeline project must be understood in the context of settler colonialism in the area. For instance, as European colonization proceeded, the 1851 Treaty of Fort Laramie between the United States and Sioux leaders ceded about 134 million acres of land in what are now the states of North Dakota, South Dakota, Montana, Wyoming, and Nebraska to the Dakota and Lakota peoples. After repeated treaty violations, however, the 1868 Treaty of Fort Laramie reduced the Sioux land base to 25 million acres within what is now the state of South Dakota. Further white settlement, military invasions, and federal intervention ensued, further shrinking and degrading Indigenous land rights, disrupting educational and cultural traditions, and destroying the Indigenous political economy. As Whyte concludes, the United States “erased political self-determination through disrespecting treaties and pressuring the adoption of [Bureau of Indian Affairs] controlled constitutions, erased economic vitality through transforming ecosystems and dividing Indigenous lands, and erased cultural integrity through stripping Indigenous peoples of their language and ceremonies.”<sup>110</sup>

The water protectors were clear about the connection between #NODAPL and settler colonialism.<sup>111</sup> In Whyte’s words, [s]ettler colonial injustice is environmental

---

108. See “Dakota Access Pipeline Facts” <<https://daplpipelinefacts.com/about-the-dakota-access-pipeline/>>.

109. Kyle Powys Whyte, “The Dakota Access Pipeline, Environmental Injustice, and U.S. Colonialism” (2017) 19:1 *Red Ink* 154 at 156.

110. *Ibid* at 164.

111. E.g., Taté Walker (Mniconjou Lakota) expresses the connections this way: “Fossil fuel extraction, transportation, and use is destroying our planet, and Indigenous people are the most at-risk population, due to the ruralness of our communities and proximity to the pipelines, and our lack of political power and monetary influence . . . As primary caregivers and keepers of cultural traditions and practices, Indigenous women are especially vulnerable, and are disproportionately affected by toxic contaminants from things like oil spills and uranium mining, as well as the effects of climate change and hard-to-regulate oil field ‘man camps’ where violence against Native women and girls

injustice.”<sup>112</sup> Moreover, non-Indigenous supporters also embraced this analysis. For example, in August 2016, Black Lives Matter (BLM) activists from Minneapolis and Toronto travelled to the Standing Rock Indian Reservation to stand with the water protectors, and, later, the BLM’s national chapter released a statement expressing its solidarity with #NODAPL.<sup>113</sup> Indigenous and black activists articulated this alliance as being based on shared injustices and intertwined identities.<sup>114</sup> Showing Up for Racial Justice (SURJ), a white anti-racist organization, similarly posted on its website a “Standing Rock Solidarity Toolkit,” which identified the struggle as one against settler colonialism.<sup>115</sup> The Standing Rock water protectors also attracted solidarity statements from economic justice groups such as Jobs with Justice,<sup>116</sup> feminists from the Grassroots Global Justice Alliance,<sup>117</sup> queer and trans Asian Americans,<sup>118</sup> and American Muslims.<sup>119</sup>

Did #NODAPL herald a new chapter of decolonial activism by complex coalitions of white and non-white settlers led by Natives? So far, white settler law seems to have successfully outlasted the allies who came to stand with Standing Rock. On 11 October 2017, after the water protectors and their allies were finally evicted from the camp and the oil began to flow, US District Court Judge James Boasberg ruled

---

runs rampant.” Taté Walker, “3 Things You Need to Know about Indigenous Efforts against the Dakota Access Pipeline”, *Everyday Feminism* (6 September 2016) <<https://everydayfeminism.com/2016/09/dakota-access-pipeline/>>.

112. Whyte, *supra* note 109 at 168.

113. See Ashoka Jegroo, “Why Black Lives Matter Is Fighting alongside Dakota Access Pipeline Protesters”, *Splinter* (13 September 2016) <<https://splinternews.com/why-black-lives-matter-is-fighting-alongside-dakota-acc-1793861838>>.

114. Environmental justice scholar Maxine Burkett writes: “The CJ movement’s involvement in the Black Lives Matter struggle is telling. Not only are CJ activists joining the fray by, for example, staging a die-in outside the convention center at the 2014 U.N. Framework Convention on Climate Change meetings in Peru, they are also understanding the way in which other significant dimensions of race and class alter the framing of the climate crisis and underscore the need for rigorous and aggressive responses to it.” Burkett, *supra* note 89 at 41.

115. “Standing Rock Solidarity Toolkit”, *Showing Up for Racial Justice* <[http://nb.showingupforracialjustice.org/standing\\_rock\\_solidarity](http://nb.showingupforracialjustice.org/standing_rock_solidarity)>.

116. See “Solidarity with the Working People of Standing Rock”, *Jobs with Justice* (22 February 2017) <[http://www.jwj.org/press\\_release-post/solidarity-with-the-working-people-of-standing-rock](http://www.jwj.org/press_release-post/solidarity-with-the-working-people-of-standing-rock)>.

117. See “Berta Vive Feminist Delegation to Standing Rock - #NODAPL” <<http://ggjalliance.org/NODAPL-bertavive>>.

118. See Glenn Magpantay, “Dispatch from Standing Rock: Queer and Trans Asian Americans’ (QTAs) Reflections”, *Huffington Post* (2 February 2017) <[https://www.huffingtonpost.com/glenn-magpantay/dispatch-from-standingrock\\_b\\_14575938.html](https://www.huffingtonpost.com/glenn-magpantay/dispatch-from-standingrock_b_14575938.html)>.

119. See Carol Kuruvilla, “Muslims Stand in Solidarity with Indigenous People Fighting for Sacred Land”, *Huffington Post* (6 October 2016) <[https://www.huffingtonpost.com/entry/muslim-dakota-access-pipeline\\_us\\_57f3d75ee4b0d0e1a9a9ea8b](https://www.huffingtonpost.com/entry/muslim-dakota-access-pipeline_us_57f3d75ee4b0d0e1a9a9ea8b)>.

that the pipeline could continue operating while more court-ordered study was completed to assess its environmental impact on the Standing Rock Sioux.<sup>120</sup> It remains to be seen whether and to what extent the battle for Indigenous sovereignty will continue to attract non-Indigenous allies and whether [x] justice movements will embrace new solidarity work between decolonial and anti-colonial struggles. In taking a step beyond the colonial politics of equity and inclusion, however, [x] justice movements at least keep the possibilities open.

### *Conclusion*

When I began working on this article, I adopted the term “[x] justice movements” as shorthand for the list of movements that name themselves in this way. In that understanding, [x] connoted “fill in the blank.” As I continued to write, however the meaning of the [x] expanded. In algebraic language, [x] is the unknown, the thing one “solves for” or seeks to determine. Paola Bacchetta, however, uses the *x*, along with the *et cetera*, as a theoretical tool to recognize multiple relations of power. Beginning with the observation that those who embrace the concept of interlocking oppressions often mark that commitment with an embarrassed or glib reference to “race, gender, class, sexuality, disability, etc.,” Bacchetta seeks to replace the “etc.” with terms that consciously accept our limited understanding of how power and subjection interact:

While the etc., et cetera and the *x* all signal an outside to the analytic, the etc. only acknowledges a fraction of the relations of power that potentially comprise the et cetera and the *x*. The et cetera and the *x* can go where the etc. cannot venture. The etc. represents known relations of power, while the et cetera denotes both the known and unknown-knowable, and the *x* both the unknown-knowable and the unknown-unknowable. The et cetera, then, is about absent-presences while the *x* is about absent-absences.<sup>121</sup>

The term “[x] justice movements” from this perspective recognizes the distance of their visions from coloniality and also the uncertainty of whether anti-colonial means decolonial. [X] justice movements posit the existence of a freedom that, in Alexander Weheliye’s words, “most definitely cannot be reduced to mere recognition based on the alleviation of injury or redressed by the laws of the liberal state . . . [S]aid freedom might lead to other forms of emancipation, which can be imagined but not (yet) described.”<sup>122</sup> The commitments of [x] justice movements to disrupting

---

120. See Mary Kathryn Nagle, “Environmental Justice and Tribal Sovereignty: Lessons from Standing Rock” (2018) 127 Yale Law Journal Forum 667 at 682.

121. Paola Bacchetta, “Planetarity, Co-Formations, Co-Productions” (unpublished manuscript in possession of the author).

122. Weheliye, *supra* note 103 at 14–15.

the subjection and spatialization functions of white settler law are undermining the foundations of white settler society. To what extent these movements will help anti-subordination activists begin to “think otherwise” remains to be seen.

*About the Contributor / Quelques mots sur notre collaboratrice*

**Angela P. Harris** is a professor at UC Davis School of Law (King Hall). She writes widely in the field of critical legal theory, examining how law sometimes reinforces and sometimes challenges subordination on the basis of race, gender, sexuality, class, and other dimensions of power and identity. Harris is the author of a number of widely reprinted and influential articles and essays. At King Hall, she founded the Aoki Center for Critical Race and Nation Studies, a student-faculty initiative that promotes scholarship, teaching and learning, and public conversation on issues of race and ethnicity at the law school and beyond. She wishes to give special thanks to Gada Mahrouse for helping to bring this article to publication.