

Introduction

How do we rectify a system that so brilliantly serves its intended purpose?

—Dorothy E. Roberts

Racialization has always been essential to the establishment and maintenance of structures of power and privilege in the United States. Racial realism, as the late Derrick A. Bell Jr. termed it, forces us to acknowledge that communities of color in the United States remain economically, politically, and socially subordinated, long after the formal abolition of American apartheid.¹ An honest assessment of these realities makes it clear that neither the Constitution's guarantee of equal protection nor the "nation of immigrants" mantra can effectively dislodge structural racism. Yet we continue to return to the courts, the legislatures, and "our" political leaders in these terms, seeming, collectively, at a loss for meaningful alternatives.

The 2008 election of Barack Obama, the country's first Black president, generated a wide range of public reaction.* It gave those contesting racialized subordination renewed hope for meaningful structural change. Those generally content with the status quo hailed it as evidence that the United States was already a "postracial" society.² And for those clinging to the perceived benefits of White supremacy, it signaled the crumbling of their world. The visuals shifted during the Obama era, but ultimately very little changed with respect to racial disparities in the distribution of power and wealth.

Since the beginning of 2017, President Donald Trump's administration has illustrated how quickly and easily the perceived gains of subordinated groups can be reversed by executive action. Within just a few weeks of taking office

* Other than in direct quotations, I capitalize the term "Black" because, as Kimberlé Crenshaw observes, "Blacks, like Asians, Latinos, and other 'minorities,' constitute a specific cultural group and, as such require denotation as a proper noun." Crenshaw, "Race, Reform, and Retrenchment," 1332 (emphasis in original). Although "Indigenous" describes a relationship peoples have to their lands rather than a racial or ethnic group, I capitalize it when referencing a collective identity. I also capitalize "White" where referencing those of (purportedly) exclusively European descent, because they have claimed "group" status in American society. See Cheryl I. Harris, "Whiteness as Property"; and Lipsitz, *Possessive Investment*.

he expedited approval of oil pipelines contested by Indigenous peoples, intensified immigration enforcement and approved a travel ban targeting persons from predominantly Muslim countries, undercut enforcement of healthcare legislation, and appointed an attorney general who—despite the mass incarceration crisis—ordered federal prosecutors to seek the toughest charges and harshest sentences possible, even for persons accused of nonviolent drug offenses.³ Of equal significance, Trump’s call to “make America great again,” with its thinly veiled racial overtones, clearly resonates with a large sector of the population. Trump is not “being divisive” so much as exposing some of the deepest schisms that permeate this society.⁴ The vision of America as a White supremacist, patriarchal, settler society is alive and well today. Ignoring this reality is no longer an option.

We all have visions of better worlds, ones we’d like for ourselves, or to bequeath to our children and their children. To build these futures, we need to understand what’s wrong with where we are, and how it got to be wrong. Tracing the problem to its source allows us to conceive structural, rather than superficial, solutions. Michel Foucault articulated this in terms of “historical genealogy,”⁵ but it doesn’t take a French philosopher to make this point. Analogizing political struggle to a journey across the Northern Plains, Lakota elder Mathew King observed that it is necessary to look back over your shoulder periodically because “to know how to get to where you want to go, you have to first know where you are, and to know where you are, you always have to know where you’ve been.”⁶

This process requires conceptual frameworks unconstrained by the “consensus reality” reflected in the master narrative of American history, for we know it to be a narrative that does not accurately reflect the realities of life for most peoples of color or, indeed, most White people in this country.⁷ Tracing our histories back to locate the origins of racialized subordination leads us inevitably to the colonization of this continent by Euroamerican settlers, to their determined attempts to eliminate the Indigenous peoples of this land, and to the various strategies the settlers have employed—and continue to use—to profit from occupied lands.* That genealogy, and what it can tell us about deconstructing racial privilege and subjugation, is the focus of this book.

* The settlers at issue are predominantly White, but I generally use the term “settler” to emphasize that the issue is not a purportedly immutable racial identity but the structural implications of identification with the colonial project. I am grateful to Moana Jackson for pointing out that “settler” can be a deceptively benign substitute for “colonizer” or “invader.” Keeping this caution in mind, I employ the term because I believe that a cognitive shift from race to relationship can help us overcome widespread reluctance to acknowledge ongoing colonialism in the United States.

I have found that discussing race as a function of colonialism meets with considerable resistance from those who contest the status quo as well as those who support it, from non-Indigenous people of color and from those who identify as White. This may be because most struggles for racial justice focus almost exclusively on the enforcement of rights and the expansion of opportunities within extant state structures. For those of us engaged in such efforts, the suggestion that we might be trying to obtain “our fair share” of lands and opportunities built on the shifting sands of genocide and continuing colonial occupation is virtually unthinkable. As a result, discussions of Indigenous sovereignty are generally cabined in their own discursive sphere while broader discussions of racism tend to include American Indians as, at best, simply another “minority” in the requisite list of racial “food groups.”⁸

The relationship between Indigenous rights and the subordination of other people of color is only occasionally confronted. It is the elephant in the room (or, perhaps, still waiting in the hall), a subject few non-Indigenous people are willing to address except in the past tense.⁹ Yet if racialized power and privilege in the United States today are rooted in the historic and ongoing colonization of Native North America, dismantling the colonial relationships that still undergird the state is in the interest of not only Indigenous nations and peoples but all subordinated peoples of color and, quite possibly, a large majority of those who identify as White Americans.

In exploring the genealogy of race and racism in the United States from this perspective, the conceptual framework of settler colonial theory provides a good starting point. Briefly put, it assesses the impact of colonizers who did not just intend to exploit the land, labor, and resources of other peoples and then go home, but who came to *stay*. Over the past several centuries, a largely Angloamerican settler class has exercised a presumed prerogative to appropriate Indigenous lands and resources; to establish a state over which it wields total control; and to decide who could, could not, and had to live within its claimed territorial boundaries.¹⁰ To date, most settler colonial analysis has focused—quite appropriately—on settler-Indigenous relations; the structural implications for other peoples of color in the US context have been explored only minimally.¹¹ There is, however, much to be learned by viewing the relationship of voluntary and involuntary migrants of color to both Indigenous peoples and Euroamerican settlers in terms of the ongoing colonization of this continent.

Most contemporary writing on race in America presumes that implementing the Constitution’s guarantee of equal protection is the best—or perhaps only—way of remediating racialized domination and subordination. However, an equal protection framework presumes that we start from a level play-

ing field, and addresses the persistence of racial disparities in terms of explicit or implicit personal bias and/or the lingering effects of historic dispossession or exploitation. This means that potential remedies are, for the most part, limited to some variant of sensitivity training, laws and regulations prohibiting intentional discrimination, and compensation for a narrow range of past wrongs. Collectively, we have followed this path for well over a half century only to see that any gains we make can readily be stripped away by those determined to maintain the political, economic, and racial status quo. By framing our struggles in terms of the state's responsibility to implement its promises of procedural fairness and nondiscrimination, we have already foreclosed the possibility of fundamental structural change arising from grassroots movements for self-determination.

This book explores the possibility that *if* racial hierarchy is rooted in, and was essential to, the establishment of the United States as a settler colonial state *and* those foundational colonial relationships of power and privilege persist, *then* racism can be meaningfully eliminated only in conjunction with decolonization. Deconstructing the narratives we have come to accept and developing more accurate understandings are messy processes, particularly since there is considerably more overlap in the construction and experiences of various "races" than we have been led to believe. However, much light can be shed on contemporary racial dynamics if we are willing to come to grips with the foundational and continuing colonization of Indigenous lands and peoples, the functions of enslaved African labor in the settlers' early efforts to consolidate and profit from occupied lands, the ways in which the settler class maintained its hegemony in the wake of the abolition of chattel slavery, and the strategies subsequently utilized to recruit, exploit, and maintain a preferably disposable labor force consisting largely of migrants of color.

To some extent all peoples of color within the United States have been subjected to what philosopher Giorgio Agamben calls "inclusive exclusion,"¹² the transformation of those who have been coercively included in American society into excluded and subjugated Others. Those who struggle for racial justice often find it necessary to advocate for, or challenge, administrative actions, laws, and judicial decisions. However, relying solely on such measures cedes power to the state. Rather than assuming that inequities can be remediated only by governmental action, we can also support local initiatives that empower subordinated communities and help us to envision paths that lead not only toward equality but also self-determination. Incorporating colonization into our narratives complicates the picture by suggesting that constitutional remedies are inadequate, but it also opens up a host of alternatives rooted in a framework of decolonization.

I write as a lawyer, a student and professor of international law, and a descendant of Asian migrants and European settlers. As a Japanese American from a family deeply scarred by internment during World War II,¹³ I have struggled to understand the impulse to assimilate into a society so dependent upon the maintenance of racial hierarchy. As a relatively privileged person of color, I am trying to develop a structural analysis that takes into account the commonalities of those who are subordinated in this society on the basis of race or national origin, while acknowledging our very distinct histories and cultures and the particularities of our relationships to US power. Having spent most of my adult life in families and communities that are predominantly African American and American Indian, I cannot ignore the devastating effects that American colonialism continues to have on these communities.* That said, I do not presume to articulate their perspectives or to prescribe particular solutions.

Theory, of course, will not save us, and I have no interest in adding yet another layer to the already overburdened discourse about race. Instead, this book is an effort—admittedly tentative and certainly incomplete—to frame painful and seemingly intractable racial realities in a manner that encourages us to envision liberatory options and to conceptualize the decolonization of American society. To this end, I highlight those historical patterns and “strategies” of racialized colonization I find most helpful. Given the scope of the project, I am only able to provide cursory summaries and illustrative examples drawn from the histories of certain communities while omitting entire peoples.

Because colonialism is an economically driven enterprise, I expect that this framework could add much to an understanding of working-class White communities, lured by the prospect of inclusion into the settler class yet consistently excluded from the full benefits of settler privilege. I have not attempted, however, to incorporate that dimension into this work. Perhaps more controversially, I have not addressed the gendered dynamics of colonial relations in any meaningful way. European states and their derivative colonial ventures have been unremittingly patriarchal, and the colonial construction of the Other is permeated by the imposition of gendered constraints and expectations. This dimension deserves a level of thoughtful analysis beyond the scope of this book, and I cannot bring myself to pretend to address it by

* I use “American Indian” to refer to peoples indigenous to the contiguous territory in North America claimed by the United States, but prefer “Indigenous” as it also encompasses Native Hawaiians and Alaska Natives. I avoid “Native American” because it implies that Indigenous peoples are a subset of “Americans,” a construction many find problematic. See Robert B. Porter, “Demise of the Ongwehoweh,” 108.

superficially sprinkling references to gender, sexuality, or sexual orientation throughout my text.

There are three sections to this book. The first three chapters lay the groundwork for understanding structural racism as a function of ongoing colonization. Chapter 1 summarizes some contemporary racial realities that motivate our inquiry. Recognizing that all stories are rooted in particular epistemologies or worldviews, chapter 2 discusses both the triumphalist narrative of the American state and the alternative histories and perspectives that can inform our understanding of this society. Chapter 3 provides a brief overview of colonialism and settler colonial theory, the conceptual lens I find particularly useful in understanding the functions served by racialization.

The second section encompasses chapters 4 through 8, each presenting historical narratives highlighting the strategies used to accomplish the objectives of the settler class with respect to different sectors of the population. These chapters provide what I hope are convincing, although certainly not definitive, illustrations of the explanatory value of a paradigm that frames race, racial privilege, and structures of racial subjugation not as the product of personal bias and prejudice but in terms of the perceived needs of a settler colonial society that has always used race to justify its occupation and appropriation of Indigenous lands and natural resources, and its exploitation of the labor of those deemed Other.

Early Angloamerican colonizers were unable to envision systems of shared land tenure and governance, and unwilling to adapt themselves to extant Indigenous polities. They perceived Indigenous peoples to be incompatible with their claim to sovereign prerogative, and racialization provided the justification for the strategies they utilized—and, in many cases, continue to use—to eliminate, displace, contain, and conceptually “disappear” American Indians.* These strategies are the focus of chapter 4.

European settlers asserted an exclusive right to own the land based on their claims to be making it “productive” when, in fact, the bulk of the labor that made the occupied territories so profitable was done by Others—indentured, contracted, enslaved, or imprisoned. Chapter 5 examines strategies employed to create, expand, contain, and control a workforce of enslaved Indigenous, African, and Afrodescendant peoples.

In the wake of the Civil War, it appeared that the racial hierarchy so closely associated with enslaved labor might crumble, but racial domination re-

* In accordance with contemporary human rights law, I use the term “disappear” to reference the state-sponsored or sanctioned arbitrary detention or killing of persons perceived as socially or politically undesirable. See Kyriakou, “International Convention for the Protection of All Persons from Enforced Disappearance,” 425–44.

mained critical to the colonial project, for it undergirded the settlers' claims to the land, their continued expansion of that land base, their ability to control the benefits of that occupation, and their presumed prerogative to govern every aspect of American life. Chapter 6 considers means utilized to contain and control "emancipated" African Americans and to exclude them, structurally, from opportunities that might facilitate their economic and political independence.

Chapters 7 and 8 examine strategies utilized to subordinate and manipulate peoples of color who have been incorporated into the American polity, with greater or lesser degrees of volition, primarily as a result of the settlers' desire for a labor force that is both readily accessible and easily disposed of. In an attempt to provide a coherent framework for addressing hugely disparate populations and histories, chapter 7 provides a summary of how some peoples have been forcibly included as the result of US territorial expansion, how others come in response to the push-pull dynamic that pits the desire for cheap labor against exclusionary citizenship and immigration policies, and how some migrants arrive as refugees, many the collateral damage, as it were, of US political, economic, and military interventions around the world.

Noting both parallels and divergences in their histories, chapter 8 considers how the "dynamic of difference"¹⁴ that is critical to all colonial enterprises functions with respect to migrant Others. It describes the racialization of these groups as not only inferior but inherently "foreign," and discusses the illusory nature of assimilationism. It then provides a more detailed look at some of the highly racialized strategies used to maintain an exploitable yet readily disposable workforce and to reinforce racial hierarchies in the United States. While many of these strategies are familiar, having been developed to eliminate and subjugate Indigenous peoples and African Americans, they are unique in the symbiosis they develop between their purported promotion of inclusion and the ways in which they consistently invoke "foreignness" to exclude.

The final four chapters comprise the third section of the book, which focuses on remedial options. Our assessments of the origins and purposes of racism necessarily shape the measures we employ to counter racialized injustice. If racial privilege and subordination are simply vestiges of a bygone era, strengthening the constitutionally mandated guarantees of due process and equal protection may suffice. If our primary concerns are personal prejudice or socially perpetuated stereotypes, education and exposure may be called for. However, if racism is essential to the continued well-being of the settler state because it continues to enrich and empower those who benefit most from colonial relations, eliminating racism will require us to move beyond nondiscrimination to decolonization.

Chapter 9 discusses why our struggles to implement formal guarantees of equal rights and protection under domestic law have failed to ensure racial justice. Chapter 10 identifies ways in which international human rights law provides a more expansive understanding of racial discrimination as well as more effective remedies. While acknowledging the importance of this body of law, it concludes that the statist nature of the international legal system precludes structural remedies capable of redressing institutionalized racism in settler societies. International law does, however, clearly mandate decolonization and recognize (albeit in an arbitrarily constricted manner) that all peoples have the right to self-determination. The potential of these legal norms to transform the ways in which we understand our struggles for racial justice in the United States is addressed in chapter 11.

Chapter 12 concludes with some strategies we might employ as we move beyond the constraints of civil rights discourse, as well as some examples of grassroots efforts that spark the imagination. I have, of course, no magic road map. My hope is simply to jump-start a conversation about race and racialization that is not constrained to making exploitative structures a bit kinder or more equitable, but energized by the liberatory potential of self-determination in the complex, multilayered, and overlapping realities that comprise American society today.