Ntina Tzouvala, Australian National University*

Invested in Whiteness: Zimbabwe, the *von Pezold* Arbitration, and the Question of Race in International Law

Abstract: Using the 2015 arbitral award in *von Pezold v. Zimbabwe* as its starting point, this piece reflects on the relationship between racial capitalism and international law. Stressing the particularities both of this specific case and of the field of investment arbitration, I nevertheless argue that the tribunal's finding that Zimbabwe's land redistribution program had been racially discriminatory against white commercial farmers is symptomatic of broader argumentative structures in international law. In particular, I suggest that it was three argumentative moves that led to this perverse outcome: a temporal fencing of racism, a spatial containment of racism and, finally, a strict conceptualization of racism as prejudice pertaining to "skin color." The combination of these three moves allowed the arbitrators to artificially separate the question of race/ism from questions of property and wealth distribution, capitalist accumulation, and exploitation. Far from being aberrational, these three moves are commonplace in (neo)liberal domestic and international legal systems and contribute to the invisibilization of racial capitalism as a structure of dispossession, exploitation, and abandonment.

Keywords: international investment law, *von Pezold*, Zimbabwe, racial capitalism, temporality, spatiality, historical materialism

I. Introduction

This paper asks a deceptively simple question: How does international law deal with the question of race and racism in a nominally post-racial but deeply unequal world? Another way of putting this would be: Does international law have anything to say about race and racism besides the seemingly unequivocal prohibition of racial discrimination embodied in the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD)?[1] I will approach this question drawing from black and indigenous Marxisms (Du Bois [1935] 1998; Fanon [1961] 2004; Coulthard 2014; Estes 2019; Knox 2016), as well as from those strands of Critical Race Theory that have been attentive to political economy (Harris 1993;

* Associate Professor, College of Law. I would like to thank the symposium organizers, Prof. Carmen G. Gonzalez and Prof. Athena Mutua, for their hard work, insightful comments, and generous spirit. In addition, I would like to thank Prof. E. Tendayi Achiume, Prof. Erika George, Prof. Lua Kamál Yuille, Dr. Tanzil Chowdhury, and Dr. Esmé Shirlow for their comments and suggestions. All errors and omissions are mine alone. Please direct correspondence to ntina.tzouvala@anu.edu.au.

[1] UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 660 UNTS 195 (December 21, 1965) ("ICERD").

Saito 2000; Saito 2020). I will assume that racism is neither a form of irrational prejudice nor a trans-historical fear of the "Other." Rather, I conceptualize racism as a modality of stratifying populations that arose in tandem with capitalism and imperialism and enables the grabbing of land and other resources, as well as the (super)exploitation of the labor of racialized people. Such an approach does not reduce race to class, but rather, following Stuart Hall, it asserts that race is the modality through which class is lived (Hall 1978)—or, in a non-phenomenological register—race is a distinct mode of stratification that has its origins in the conditions of material production and reproduction under capitalism.

This historical materialist framework demands a dynamic understanding of racism and racialization. As capitalism evolves and changes, so do processes of racialization and racism. Relatedly, processes of racialization have, as I hope to show, transnational dimensions, but this does not mean that they unfold identically across different social formations. This intuition that political economy and race/ism are interconnected dictates the choice of my materials. Generally speaking, international lawyers, and also activists and social movements interested in confronting racism, focus on international human rights law, and in cases of extreme violence, on international criminal law (Wing 1996; Achiume 2018; Lingaas 2019; Edelbi 2020). International economic law has been subject to (relatively marginalized) feminist critiques, as well as criticism for its complicity with imperialism and (neo)colonialism (Pahuja 2000; Alessandrini 2010; Gathii 2011; Miles 2011), but it has resisted interrogation of its racialized underpinnings and consequences (Gathii 2000; Thomas 2000). For this reason, I chose the *von Pezold* award, handed down by an investment arbitration tribunal in 2015, as the focus of this article. In the span of over 600 pages, the tribunal addressed a broad range of issues, including jurisdiction and corporate nationality, indirect expropriation, fair and equitable treatment, compensation for moral damages, and—making the case highly relevant to my inquiry—racial discrimination. Against the background of the occupation and subsequent expropriation without compensation of the properties of white farmers in Zimbabwe at the turn of the 21st century, the tribunal found against the host state on almost all points and ordered both the restitution of the applicants' property, and the payment of hefty compensation to the applicants. [2]

The events that unfolded in Zimbabwe in the early 2000s were and remain controversial. Even though Western sources privileged Western and/or (neo)liberal criticisms of Mugabe's government, it is worth emphasizing the diversity of opinion both in support and against the land redistribution process (Moyo 2001; Streater 2018). Importantly, not all critics focused on abstract condemnations of violence and defenses of the sanctity of property. Rather, some Zimbabweans and other Africans of the political Left condemned the events, which they saw as the political maneuvering of a weakening government that benefited its allies and constituencies and not the majority of black, landless, and working-class Zimbabweans (Raftopoulos and Phimister 2004; Ndlovu-Gatsheni 2009).

Therefore, my critique of the *von Pezold* award does not depend on a positive evaluation of the government's actions. Instead, I posit that the award enacts certain liberal and neoliberal conceptualizations of race, racism, and anti-racism that do not stand up to conceptual, historical, political, or even jurisprudential scrutiny. Even worse, these conceptualizations have stifled anti-racist struggles in the past, and have contributed to the perpetuation of racial injustice domestically and internationally. I focus on three

[2] *Von Pezold v. Zimbabwe*, ICSID Case No ARB/10/15, Award (July 28, 2015), file: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/10/15. ("*von Pezold*"). The tribunal consisted of three arbitrators: a Canadian, a New Zealander and a Singaporean.

unarticulated premises of the award: (1) the firm temporal separation between a racially discriminatory past and a racially just, or at the very least colorblind, present (with the important exception of property rights that seem capable of traversing this line); (2) the conceptualization of racism as a fundamentally domestic affair and, correspondingly, of the initiatives to correct racialized injustice as belonging to the state, with international law playing only a peripheral role; and, finally, (3) the separation of racism from political economy and the elevation of market-based solutions as the only acceptable mechanisms for addressing racial injustice.

This article has a dual purpose. First, it expands the scope of scholarly engagement with the *von Pezold* award. To date, international investment and human right rights scholars have mostly focused on the tribunal's refusal to allow indigenous and human rights groups standing as *amici curiae* (Bastin 2014; Leary 2017; Mowatt and Mowatt 2013). Although important, this is a relatively minor aspect of the case. The disproportionate focus on it reveals a certain fixation with procedural reform and human rights as "silver bullets" for achieving fairer outcomes. As my piece will show, however, racialized reasoning and conclusions are deeply embedded in the structures of international investment law. Second, I aspire to show that, albeit unusual in its explicit engagement with race, the *von Pezold* award is not an aberration. The three argumentative moves summarized above (temporal fencing, national containment, erasure of political economy) are commonplace in domestic and international legal instruments and modes of reasoning. To summarize, not only are the problems with this award much more extensive and complicated than often assumed; they are also symptomatic of broader pathologies of how liberal and neoliberal legal systems engage with race and racism.

II. The *von Pezold* Award: Background and Key Findings

Before we try to understand the unacknowledged structure of international law's relationship with race, it is important to gain a fuller understanding of the case at hand. The events that formed the immediate factual background of the *von Pezold* arbitration concern the occupation and subsequent expropriation under the Fast Track Land Reform Program (FTLRP) of large tracts of land held almost exclusively by white farmers in Zimbabwe after 2000. In February 2000, the ZANU-PF government headed by Robert Mugabe was defeated in a constitutional referendum that involved—among other things—an amendment allowing for the compulsory acquisition of land without compensation (except for improvements). The government attributed its defeat to white farmers as well as to a growing body of black Zimbabweans whom it considered unpatriotic, especially because of their perceived alienation from the land due to their urban lives. In the words of Raftopoulos (2007, 185): "Aside from the white population, urban residents have been a major target of the ruling party's coercive and ideological attacks, because of their dominant support for the opposition. Historically the relations between the liberation movement and urban workers have been characterized by ambiguities and tension."

Soon after this defeat, landless black Zimbabweans, war veterans who had long been agitating for land reform and for getting their "fair share" of land due to their role in overthrowing white-minority rule, and people within the governing ZANU-PF party, occupied land commercial holdings held by white farmers. These events were (somewhat over-dramatically) referred to by the investment tribunal as "the Invasions."[3] Despite their

[3] "Professor Chan's evidence that once the Invasions began in 2000, the Government quickly mobilised to provide material support to the Settlers/War Veterans, thereby expanding the Invasions from being a local

unprecedented scale and levels of violence, they were not new in Zimbabwe's history. Occupations of both private and public lands had been a recurring feature of Zimbabwe's history after its independence in 1980, and were often catalysts for legal change in land redistribution.

The FTLRP, which included both ordinary legislation and constitutional amendments, was presented by the government as an immediate response to these occupations. The FTLRP included scheduling of land for two distinct types of re-settlement (smallholders under schedule A1 and small/medium commercial farmers under schedule A2); payment of compensation only for improvements on the land, placing the responsibility for any further compensation on the former colonial power, Britain; granting of broad discretion to the executive about scheduling land for expropriation; short administrative procedures for challenging scheduling; and erosion and, eventually, preclusion of the courts' jurisdiction over expropriation cases. None of these legal instruments mentioned race or ethnicity as grounds for scheduling, and, despite some confusion on the matter, it appears that a limited number of black-owned farms were scheduled for compulsory acquisition.[4] Following these events, foreign investors with large-scale agricultural businesses in Zimbabwe brought a wide range of claims under bilateral investment treaties (BITs) between Zimbabwe and Germany, as well as Zimbabwe and Switzerland.[5] In a detailed award, the tribunal sided with the applicants almost on all matters of significance.

First, the tribunal set out to determine whether Zimbabwe was internationally responsible for the acts of the squatters and—in the absence of attribution—whether Zimbabwe had nonetheless violated the BITs by not forcefully putting a violent end to these occupations. Despite the existence of some links between the squatters and the governing party, the arbitrators concluded that their actions were not controlled by the government closely enough to establish attribution (*von Pezold*, para. 448). The tribunal, however, proceeded to find Zimbabwe in violation of its obligation to offer "full protection and security" to foreign investors. In so doing, the arbitrators rejected Zimbabwe's arguments that the ongoing problem of land concentration in the country, its colonial origins, and the determination of the landless masses to bring forth a solution had created conditions of widespread instability that made the suppression of the occupations exceptionally difficult. In a passage that illustrates the type of statehood international investment law demands, the tribunal argued: "The purpose of any State, and particularly its police force, is to maintain order in spite of such instabilities rather than stepping back and allowing the citizenry to devolve into anarchy" (para. 642).

A second important aspect of the award was its finding that the expropriation process in Zimbabwe had been racially discriminatory against white people. This had direct legal

event in Masvingo Province to expanding throughout the country, and that the President's Office and the CIO were very much involved in the direction of the Invasions" (*Von Pezold*, para. 619).

[4] "The Tribunal notes, for example, Ms. Tsvakwi's evidence as to the policy toward black farmers (in contrast to that toward white farmers) which was not to expropriate their farms, although a small number of black-owned farms were expropriated in breach of this policy" (para. 501).

[5] Agreement between the Swiss Confederation and the Republic of Zimbabwe on the Promotion and Reciprocal Protection of Investments, Feb. 9, 2001 (signed Aug. 15, 1996), file: https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/4837/download; Agreement between the Republic of Zimbabwe and the Federal Republic of Germany concerning the Encouragement and Reciprocal Protection of Investments, April 14, 2000 (signed Sept. 29, 1995), file: https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/1453/download. These would typically be categorized as "first generation" bilateral investment treaties, which are acknowledged even by proponents of international investment law as having been disproportionately friendly toward the interests of Western investors.

consequences. First, this finding contributed to the tribunal's decision to order the restitution of the land to its original proprietors, despite the fact that restitution is not a common remedy in international investment law (para. 699). The arbitrators invoked Articles 40 and 41 of the ILC Draft Articles on State Responsibility, which mandate the non-recognition and termination by all lawful means of situations that result from serious breaches of international law. By reaffirming the *erga omnes* character of the prohibition of racial discrimination, the tribunal opined that restitution was the only appropriate means for rectifying the harm (paras. 737-38). Second, finding that the expropriation process was discriminatory on grounds of race enabled the tribunal to dismiss Zimbabwe's invocation of the defense of necessity. Zimbabwe's argument was that between 2000 and 2013, the combination of mass protests and worsening macroeconomic conditions threatened the "essential interests" of the state, and that the expropriations were the only available route for protecting the state:

> Insofar as its options to respond to the March of History are concerned, the Respondent argues that there was no other way than the FTLRP (and its associated policy measures) to save lives and safeguard the "ongoingness" of the State. The Respondent appears to reach this conclusion by relying on its previous attempts to reason with the "squatters" to no avail, as well as its analysis of the situation as extremely volatile, akin to a fire which was "symbolic of the invasions," which would have resulted in the loss of many other lives if the Respondent had pursued "Rhodesian style security." (Para. 638, citations omitted)

As a consequence—so Zimbabwe argued—*prima facie* illegalities did not incur the state's international responsibility. The tribunal was skeptical about this argument for a variety of reasons, but the alleged racially discriminatory nature of the measure was the final nail in the coffin. Relying on the law of state responsibility as crystallized by the ILC Draft Articles, the arbitrators concluded that the necessity defense was not available in this instance, since the obligation violated was *erga omnes* (para. 657).

A third point of note concerned the awarding of moral damages to one of the investors, Heinrich von Pezold, for the violence and intimidation that accompanied the occupation of his property. As both the claimants and the tribunal acknowledged, this is a highly unusual decision in the context of international investment law (paras. 908-09). Two aspects of this decision stand out. First, the arbitrators relied exclusively on the testimony of Heinrich von Pezold himself to establish the specifics of the occupation. In so doing, they rejected Zimbabwe's objections that these were uncorroborated statements by an interested party. And—in a stark reversal of their own statements about the allocation of the burden of proof[6]—the arbitrators showed unlimited faith in rich, white men's accounts of the harm they suffered. Paragraph 919 of the award reads as follows:

> The Respondent made a brief challenge to the evidence provided by Heinrich, suggesting that the Tribunal only had Heinrich's word to justify moral damages. However, Heinrich's evidence about events was never seriously challenged. Particularly in respect of Heinrich's own moral damages claim, *it seems difficult to think of evidence more appropriate than his own account of his experiences*. Accordingly, the Tribunal accepts Heinrich's detailed and comprehensive account of his treatment and the treatment of his staff. (Para. 919 (emphasis added))

[6] In theory, the burden of proof in this case was determined as follows: "[T]he party asserting the claim bears the burden of establishing it by proof. Where claims and counterclaims go to the same factual issue, each party bears the burden of proof as to its own contentions" (para. 174).

All in all, the main findings of the tribunal not only sided with the white investors, but they did so by equating whiteness with productivity, trustworthiness and vulnerability, while blackness was equated with violence, anarchy, and brutality.

III. Constructing Race: Time, Space, and Political Economy

The main purpose of this article is to use the *von Pezold* award as a window into the ways that international law understands race and racism. I have already suggested that this conceptualization revolves around three moves: Race and racism are treated as (1) essentially historical problems, (2) as fundamentally national issues, and (3) as only admitting market-based solutions. In the next three subsections, I will map each approach, show its concrete legal implications in this case, and interrogate its limitations. In turn, I will suggest three counter-arguments: First, race and racism persist today not only despite of, but also because of, and through (international) law; second, race and racism are transnational forms of identification and, more importantly, enable transnational relations of domination, dispossession and exploitation; and third, the roots of race as a historically specific relationship (as opposed to other forms of discrimination or bigotry) lie with the transatlantic slave trade and modern colonialism and imperialism.

A. Temporalities of Racism: from Rhodesia to Zimbabwe (In That Order)

The first assumption of the tribunal, which grounded the finding that the expropriation of white farmers' land was racially discriminatory, was temporal. The arbitrators assumed that anti-black racism in Zimbabwe was of jurisprudential importance until explicitly discriminatory legislation was abolished and the country became independent in 1980. In the tribunal's reasoning, when the occupations and expropriations took place in the early 2000s, racism was at most a legacy, or a background fact of limited legal relevance. In the opening paragraphs of the award, the tribunal was adamant about the limited temporal and thematic scope of its own jurisdiction:

> This case is, at its heart, a land dispute, but one with deep context and history . . . Oftentimes during these proceedings, members of the Tribunal had to remind themselves that their remit was not one of a commission of inquiry into what has been described as "the March of History," but rather strictly that of an Arbitral Tribunal mandated to adjudicate a dispute or disputes in accordance with the Convention of the International Centre for Settlement of Investment Disputes ("ICSID") and applicable law. (Para. 2)

This is not an uncommon rhetorical move in discussions of the intersection between race, political economy, and law in the context of twenty-first century Zimbabwe. When the South African Development Tribunal was asked to pronounce on the compatibility of the occupations and expropriations with public international, and especially international human rights, law, it performed a similar acknowledgment and cordoning-off of the historical context of the case: "We note that the acquisition of land in Zimbabwe has had a long history. However, for the purposes of the present case, we need to confine ourselves only to the acquisition under section 16B of the Constitution." *Campbell Ltd. v. Zimbabwe*, 2008 SADCT 2, 8 (November 28, 2008). Notably, the SADC Tribunal also concluded that the white farmers had been discriminated against on the basis of race, in a decision that radically undermined its legitimacy amongst African states (Achiume 2017).

The legal implications of this concealment of Zimbabwe's racially skewed land distribution becomes clearer where the *von Pezold* award discussed directly the question of potential

racial discrimination against white investors. In dismissing Zimbabwe's arguments about the identification of white investors with Rhodesia, as well as their alleged contribution to the prolongation of the state of necessity in the country, the arbitrators insisted: "[I]t should be noted that the Claimants invested in Zimbabwe in 1988, after its establishment as an independent State when it ceased being Rhodesia" (para. 654). They proceeded to rule:

> The Tribunal now also finds that the aggressive nature of the Settlers/War Veterans' demands was not justified and necessary so as to give rise to a corresponding justified and necessary response by the Government. Rather, the aggression displayed by the Settlers/War Veterans was a product of prejudice and racial discrimination. (Para. 655)

The line of argumentation that underpins this conclusion goes like this: after 1980, Rhodesia—a white-minority state and an international pariah—ceased to exist and was succeeded by Zimbabwe, which has since been ruled by the black majority. Having bought their land in 1988, the investors did so in the open market and under laws that were not racially discriminatory against black Zimbabweans. Therefore, it is not possible to argue that the targeting of their property either by private protesters or by the state was due to their complicity with white supremacy and thereby justifiable both politically and legally. Instead, the tribunal reasoned, the targeting must have been grounded on racial discrimination, here understood as irrational discrimination based on phenotype.[7]

There are a number of reasons to be skeptical about this argument. As Zimbabwe also argued, white control over the economy, and especially over land, continued long after 1980 as a matter of fact.[8] More importantly, the image of 1980 as a cut-off point that clearly separates colonialism and white supremacy from self-determination and post-racialism is also unsustainable as a matter of law. To substantiate this point, I need to briefly summarize the history of land ownership in Zimbabwe. This is, of course, a specific and complex history of colonization, dispossession, and contestation. However, it also bears significant similarities with other instances of imperialism and colonialism in Africa. As Gathii (2007) has argued in the context of Kenya, the law of contract and property (generally associated with informal, economic imperialism) and the international law of title acquisition over territory (often thought of as the juridical expression of (settler) colonialism) converged to ensure the dispossession of native populations from their lands and the introduction of capitalist relations of production and exchange.

British colonialism in Zimbabwe was structured by antagonism and cooperation between the corporation and the Crown (Galbraith 1975). In 1889, at the instigation of Cecil Rhodes, the British South Africa Company (BSAC) was incorporated in London and was granted both property and administrative rights over so-called Northern Rhodesia (contemporary Zambia) and Southern Rhodesia (contemporary Zimbabwe). Initial hopes for lucrative mining opportunities in Southern Rhodesia turned out to be overly optimistic. This resulted in a shift toward agriculture as the center of settler economy. In that context, land became the center of conflict among the BSAC, white settlers, indigenous peoples, and the British Crown. In 1918, the Judicial Committee of the Privy Council ruled on the

[7] "There is ample evidence that the Claimants were targeted in the present case on the basis of skin colour" (para. 467).

[8] "During Phase I of the LRP, the Government of Zimbabwe aimed to acquire on a 'willing buyer willing seller' basis 8.3 million ha of agricultural land from large-scale farms in order to resettle 162,000 families. Little progress was made toward this goal during the first 10 years of independence . . . By 1997 . . .the Government had only acquired 3.5 million ha and had only resettled 71,000 families" (paras 97, 102).

case of *In re Southern Rhodesia*.[9] Albeit technically concerning the relationship between the BSAC and the Crown, the case also clarified the common-law principle that preexisting property rights survive conquest. Putting in motion the then-omnipresent "standard of civilization" (Tzouvala 2020), Lord Summer proclaimed that the Ndebele and Shona people were too low on the civilizational scale for their relationship to land to be recognizable to the common law:

> Some tribes are so low in the scale of social organization that their usages and conceptions of rights and duties are not to be reconciled with the institutions and legal ideas of civilized society. Such a gulf cannot be bridged . . . Between the two there is a wide tract of much ethnological interest, but the position of the natives in Southern Rhodesia within it is very uncertain; clearly they approximate to the lower than to the higher limit. (*In re Southern Rhodesia*, 233-34)

Ndebele and Shona lawful relations to the land were—so Lord Summer's argument went—too obscure and convoluted to be considered property rights properly-so-called, and therefore, to discuss whether they survived conquest was absurd.[10] As a consequence, the argument that all unalienated land belonged to the indigenous peoples was summarily rejected.[11]

This original act of legalized dispossession was followed by successive waves of expropriation and openly racially discriminatory legislation and administrative practice that sought to confine indigenous people to arid lands, to force them into wage labor, and prevent the emergence of a black middle class. The land was divided in five zones of varying size and fertility. In 1930, the Land Apportionment Act made it officially illegal for black Zimbabweans to purchase land within the most fertile and extensive zones (I, II and III) (Moyana 1975). Rather, they were confined within native reservations that were both very small in comparison to the growing population and of relatively low soil quality. In 1969, Ian Smith's white-minority government extended the land available to black ownership and settlement to 45 million acres. This was supposed to be an equitable solution, since the same surface (45 million acres) was also reserved for the white population of Rhodesia—despite the fact that the black population was roughly 93% of the entire population, and the quality of the land reserved for them was manifestly inferior. Conflicts over land, including resistance against evictions from lands reserved for white use, were central in the rise of popularity of the Zimbabwe African National Union (ZANU) and the Zimbabwe African People's Union (ZAPU).

The Zimbabwean War of Liberation (also known as the Second Chimurenga) made the survival of the white-minority government untenable. However, Zimbabwean nationalist forces were not militarily strong enough to achieve a decisive victory. This precarious balance of power made an internationally negotiated settlement the only viable solution. The 1979 Lancaster House Agreement reinstated direct British rule for a defined period of time until the first free general election took place in the country. The Agreement also mandated that the constitution of Zimbabwe contain a clause that guaranteed no compulsory land acquisitions for the first decade of independence (Lancaster House Agreement 1979). In exchange, the British government offered an oral guarantee that it

[9] *In Re Southern Rhodesia* [1919] AC 211 (PC).

[10] "[T]he maintenance of their rights was fatally inconsistent with white settlement of the country, and yet white settlement was the object of the whole forward movement, pioneered by the Company and controlled by the Crown, and that object was successfully accomplished, with the result that the aboriginal system gave place to another" (*In re Southern Rhodesia*, 233-34).

[11] "Whoever owns the unalienated lands, the natives do not" (ibid., 213).

would offer funding to support willing seller-willing buyer schemes. Indeed, the UK under the Conservative government offered varying sums of money for this purpose. However, in 1997 the new Labour government asserted that it would only give funds to Zimbabwe in the form of developmental assistance for poverty eradication, and not for land redistribution as such. In a now infamous letter, Clare Short, then Secretary of State for International Development, asserted that the Labour Party had nothing to do with Britain's colonial past and therefore, it was neither legally nor morally obliged to honor the pledge of the Conservatives to financially assist with land redistribution.[12]

Clare Short treated not just the independence of Zimbabwe, but a mere change of government in the UK—which, as is well known, does not affect the legal identity of the state—as a drastic rupture with the past, one that created a blank slate to start anew the legal and political relations between Britain and its former colony. Time was once again understood as linear, and parcelized with specific events clearly demarcating the (racially unjust) past from the (racially just, or at least colorblind) present. In this instance, 1980 functions as the demarcation point. After that date, race and racism only exist as legacies of the past—if at all. After acknowledging the colonial history (as history) of land ownership in the country in paragraph 1, the arbitral tribunal proceeded to clarify that the situation had changed entirely after 1980:

> Following Zimbabwe's independence and the election of Robert Mugabe as President in 1980, the land policies of the Rhodesian era which favored the white minority population were reversed and replaced with land policies favouring the black indigenous population. Those policies, accompanied by the invasions of private land by settlers, feature prominently in this arbitration. (*Von Pezold*, para. 2)

This is a politically and jurisprudentially charged way of describing the relationship between past and present. Arguably, the very function of property rights as legal instruments in Zimbabwe and elsewhere has been to bridge the gap between past and present (Amupanda 2017; Modiri 2018; Tzouvala 2020). Private property rights acquired under colonialism and open white supremacy remained valid after 1980 in Zimbabwe. Indeed, the political discussion was whether compulsory acquisitions would be allowed or not, not if these property rights over land were valid in the first place. Legally speaking, the economic consequences of overt racial discrimination are not "legacies" of the past, nor does history offer some vague context for understanding the present. Through the legal form of property rights, the racially discriminatory past is not past at all, but rather part and parcel of the contemporary legal landscape. The function of both public and private law, domestic and international alike, is to continuously link past and present. In Orford's (2013, 175) words: "The past, far from being gone, is constantly being retrieved as a source or rationalization of present obligation."

Property rights—often protected by constitutions and by international law—mean that openly racist laws and practices continue to live, even after the demise of openly discriminatory governments or practices. By designating the economic interests of white settlers in the land as "rights," domestic and international law ensure that these interests will become the baseline against which all subsequent reparatory measures will be judged. Therefore, to say that 1980 constituted some complete rupture—let alone reversal—with racialized ownership of land is to obscure the very function of property rights as stabilizers of economic interests across time. For instance, Zimbabwe was found in violation of its

[12] A copy of the letter is available at https://www.theguardian.com/politics/foi/images/0,9069,1015120,00.html.

obligation of fair and equitable treatment toward the claimants because it converted water rights that had been originally created under the 1976 Water Act into water permits that were of limited duration and subject to payment.[13] Despite the idea of a clean break in 1980, then, rights that were created before the end of white-minority rule were considered valid and worthy of augmented legal protection under international investment law.

Apart from this broader jurisprudential point about the ability of property rights to merge past and present, there is another problem specific to the history of Zimbabwe. As mentioned above, between 1980 and 1990, Zimbabwe's sovereign right to expropriate land—even with compensation—was circumscribed. The right to expropriate is part of a state's sovereignty over its natural resources. Controversies over the international legal requirements for the exercise of this right have existed since the 19th century (Chimni 1998), but the right as such is not questioned, including in the context of international investment law in general, and the arbitration in particular (*von Pezold*, paras. 491-92). Nevertheless, when the claimants invested in Zimbabwe in 1988 the state was *as a matter of law* deprived of this crucial sovereign prerogative. The legal and political function of this deprivation is not hard to discern: The Lancaster House Agreement and the relevant article of Zimbabwe's constitution created another juridical bridge between past and present by outlawing the compulsory modification of patterns of land ownership in the country.

As a result, treating 1980 as a rupture ignores the legal implications of the Lancaster House Agreement as a transitional mechanism that inexorably blended the openly racist past with the supposedly post-racial present. To do so, the arbitral tribunal had to marginalize the Agreement in its narrative. Even though it did briefly mention the Agreement and its implications for land reform in paragraphs 94-95 of the award,[14] its subsequent engagement with the events implied that Zimbabwe embraced freely, and in a legally unqualified way, the operation of foreign investment in its territory. By the time it discussed the matter in detail in paragraph 654, the tribunal was adamant that any association of the claimants with Rhodesia was preposterous because their investment took place in 1988 (para. 654). However, as I have argued above, the role of law (domestic and international, private and public) has been one of building bridges between Rhodesia and Zimbabwe in ways that make a clear demarcation between the two impossible to sustain. At the very least, the tribunal should have treated 1990 (and not 1980) as the crucial date in Zimbabwe's history, as it was then that the state acquired full sovereign powers over land.

Claiming this to be an unsustainable demarcation is not the same as saying that it is an unusual one. Rather, this understanding of the past as clearly separated from the present is typical of (neo)liberal jurisprudence on race and racism well beyond international investment law. Zinaida Miller (2021) has offered a comprehensive overview of legal debates about law, temporality, and racial harm in the US, Canada, South Africa, and Palestine. Miller observes that in all four cases, opposing political positions on the need to redistribute material resources and power hinge on distinct approaches to law and time. Schematically, those who argue that the present is more or less racially just anchor their arguments to a clean separation between overt histories of racial oppression and the

[13] "This reversal of the von Pezold Claimants' legitimate expectations that the Forrester Water Rights would be protected, coupled with the significant change in the nature of the von Pezold Claimants' rights that accompanied the transition to the Water Permit regime (i.e., implementation of a finite duration for the Water Permits and the imposition of levies), constitutes in the Tribunal's view a clear breach of the Respondent's FET obligations from 1 January 2000." *Von Pezold*, para. 554.

[14] "This 'liberation struggle' led to the Lancaster House Conference in 1979, and the birth of a new independent State—the Republic of Zimbabwe. The Lancaster House Agreement established Zimbabwe's first Constitution, which provided for, among other things, robust private property rights" (ibid., paras. 94-95).

present. Typically, the adoption of liberal constitutionalism and equal legal rights serves as the demarcating event (Miller 2021, 648). However, those who insist that these four (and other) societies remain fundamentally racially unjust refuse such a stark demarcation and challenge the idea that equal legal rights operate as ruptures (ibid., 676).

Writing also on the question of law and time, Chowdhury (2020) argues that different conceptualizations of legal temporality ground varying forms of legal subjectivity. In his words, "certain adjudicative temporalities can produce fully willed and autonomous subjects through 'time framed' legal events—in effect, the paradigmatic liberal legal subject—or how alternative adjudicative temporalities may structure legal subjects that are situated and constituted by social structures" (Chowdhury 2020, 14). Importantly, Chowdhury stresses that the emergence of this concrete legal subject need not *necessarily* lead to more lenient legal treatment. There may be good reasons to find someone guilty even after we adopt an integrated temporal framework that reveals them to us as a concrete and complicated legal subject (ibid., 100).

This insight is also important in our case. Acknowledging the ongoing effects and legal lives of colonialism in Zimbabwe unseats the idea that racial discrimination can be directed against white investors as much as it can against black agricultural workers. Recognizing the continuity of colonial property relations and wealth distribution forces us to admit that any meaningful land distribution in Zimbabwe would inevitably involve taking property from white landowners, especially large-scale commercial investors such as the claimants. If we accept that the prohibition on racial discrimination is not the same as colorblindness, but is a demand to end patterns of racial subjugation, then the tribunal's ruling of the expropriations as racially discriminatory becomes unsustainable. Writing about the case of *Campbell v. Zimbabwe* discussed briefly above, Achiume and Carbado (2021) have articulated the aporias and reactionary politics of a temporally fragmented approach as follows:

> [C]olonialism "then" was not a momentary accomplishment fixed within a particular time frame. It created trajectories of inequality for Black people, and trajectories of opportunity for white people, into the future that shape extant racial hierarchies "now." Thus understood, contemporary juridical approaches rooted in treating all racial groups formally the same make little sense (unless one's racial project is to entrench in the present the race-based hierarchies colonialism produced in the past). (Achiume and Carbado 2021, 1484)

The conceptualization of time, race, and property in Zimbabwe underpinning the *von Pezold* award did exactly that.

B. The Nationalization of Racism

The conclusions of *von Pezold* hinged not only on the fracturing of time explicated above, but also on a fracturing of space. The tribunal relied on a conceptualization of racism that anchored it on the state as its exclusive *locus*, perpetrator, and bearer of legal and political responsibility for redress. Conversely, the international—be it formal or informal empire, international organizations, or laws—is understood as external to processes of racialization and racial exploitation. International law, in particular, only comes into the picture by outlawing racial discrimination and by setting outer limits to the acts that can be lawfully undertaken in order to correct "past" wrongs. This "nationalization" of racism in the *von Pezold* case manifested itself in the tribunal summarily rejecting Zimbabwe's arguments that Britain was at least partly responsible for the events and had a concrete legal obligation to pay compensation to the white farmers whose property had been expropriated.

The legal anchor of this discussion was Section 16A of the amended Zimbabwean constitution:

> [T]he former colonial power has an obligation to pay compensation for agricultural land compulsorily acquired for resettlement, through an adequate fund established for the purpose; and if the former colonial power fails to pay compensation through such a fund, the Government of Zimbabwe has no obligation to pay compensation for agricultural land compulsorily acquired for resettlement. (Quoted in *von Pezold*, para. 107)

In its submissions, Zimbabwe also argued that its purported state of emergency was at least partly attributable to international actors and circumstances. The respondent drew attention to two things. The first was the fact that the informal agreement by Britain and the international community to financially support land redistribution was not being upheld. In light of Britain's refusal to offer funds for anything other than "poverty reduction" after the election of the Labour government, Zimbabwe argued that it simply could not afford to pay compensation to white farmers. Second, Zimbabwe contended that its external debt, which it had partly inherited from its Rhodesian predecessors, had contributed to a national financial distress so grave as to ground a state of necessity (para. 663).

The tribunal dismissed these arguments out of hand. In a passage that directly nationalized blame and obligation in regard to land redistribution, the arbitrators argued, "The international community (in particular those States which had been providing financial assistance in the past) was under no obligation to assist Zimbabwe, to offer financial aid or provide preferential treatment to Zimbabwean exporters" (para. 664). The "international community" only appeared in the arbitral award as a source of benevolence and disinterested assistance, turned down by intransigent national actors. In rejecting the argument that the country was facing a state of necessity that justified the non-payment of compensation, the tribunal highlighted that in 2000, Britain had offered 36 million pounds for land reform, subject to Zimbabwe suppressing the ongoing land occupations (ibid.). The state's refusal of that offer and its demand for unconditional payments was read as yet another indication of its unreasonableness and bad faith, and as proof of the fact that there were, indeed, alternatives to its actions (ibid.).

For this line of argument to work, the tribunal had to accept fully and without much discussion—as it did—the idea that it is benevolence and generosity, rather than a (legal, political, and moral) obligation to repair the harms of colonialism, that should structure the transfer of resources from North to South (Getachew 2019). In the case of Zimbabwe, this idea also hinges on an exclusive association of racialized oppression, exploitation, and dispossession with Ian Smith's Rhodesia after 1965. The image of Rhodesia as a "rogue" state, an international pariah that remained unrecognized by the international community and was even subjected to sanctions, serves to nationalize the blame and responsibility for its openly discriminatory policies. This strict nationalization of (responsibility for) racism is unpersuasive. Racial segregation and dispossession in Zimbabwe started long before 1965 and the Unilateral Declaration of Independence by Ian Smith's government. As documented above, it was through the international structures of imperialism and settler colonialism that patterns of racialized land ownership were first established in the country. This was a process governed by a British corporation and the British Crown. As we saw above, international law played a crucial role in this process, through the language of "civilization" that enabled the Privy Council to consider the lawful relationships of the Ndebele and Shona people with their land to be legal nullities.

Even the idea that after Ian Smith's unilateral declaration of independence (UDI) in November 1965, white supremacy in then-Rhodesia was the exclusive doing of little more than 200,000 white settlers, is impossible to sustain. Far from the international community and international law confronting the racist minority in a united fashion, the legal treatment of Rhodesia was the object of controversy, dispute, and evasion. The precise legal form this dispute assumed was the disjunction between the UN General Assembly and the Security Council. The former, dominated by postcolonial and socialist states, adopted a firmer stance against Rhodesia, and it did so years before the UDI. The latter, dependent on the will of the UK and its veto power, was much slower to act and took years to escalate its measures to mandatory economic sanctions. At every step of the way, both the measures against the minority government and their implementation were fiercely disputed. Since the early post-UDI days, postcolonial states had urged Britain to exercise force against the rebellion—an option explicitly and repeatedly ruled out by the government of Harold Wilson. This was despite the fact that in 1966, the UN Special Committee on Decolonisation called for Britain to use force to suppress the racist rebellion.[15] Following the will of Britain, the Security Council only ever authorized the use of force by the UK in order to prevent large quantities of oil from reaching Rhodesia through the Portuguese-controlled port of Beira. UN Security Council Res. 221 (1966), para 5. Postcolonial states were suspicious of the restraint exhibited by their former colonial masters,[16] who were generally not known for their reluctance in putting down colonial uprisings. At the Kitwe UN Seminar on Apartheid and Racial Discrimination, the President of Zambia lamented what African states perceived as Britain's enabling passivity: "[A]partheid has found allies in the colonial policies of Portugal, in Angola and Mozambique, and Britain's failure to deal effectively with the Rhodesian rebellion has added more strength to the defiant regime in Pretoria." [17]

The idea that whiteness, as a "transnational form of racial identification" (see Lake and Reynolds 2008, 3), mandated this differential treatment was hard to ignore.[18] Whiteness as a transnational political force was also behind the actions of the two unapologetic sanctions-busters, South Africa and Portugal. Until Mozambique's independence in 1975, the two states openly used their colonial territories as a means of circumventing the sanctions and enabling Rhodesia to maintain its exports on surprisingly high levels (Kuyper 1978, 177). Similarly, right-wing intellectuals and politicians in the Anglosphere railed against the sanctions in more or less open defenses of white-minority rule. The list includes US representatives from Jim Crow states,[19] Enoch Powell (White 2015, 129), and—to

[15] UN Security Council, *Letter dated April 21, 1966 from the Chairman of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples Addressed to the President of the Security Council*, para. 4.

[16] UN Office of Public Information, *Address Given by the President of the Republic of Zambia in International Seminar on Apartheid, Racial Discrimination, and Colonialism in Southern Africa*, UN Folder S-0198-0004-02 (August 1967), p.5.

[17] UN Secretary General, *Note transmitting the report of the International Seminar on Apartheid, Racial Discrimination and Colonialism in Southern Africa*, UN Doc. A/6818 (September 29, 1967).

[18] This is a persistent pattern: The perpetrator of the Charleston church massacre in South Carolina, neo-Nazi Dylann Storm Roof, was running a blog named *The Last Rhodesian,* and had decorated his jacket with the flag of the abortive state, which had ceased to exist 15 years before he was born.

[19] For example, Representative Selden of Alabama wondered, rather rhetorically, "But what international crime has Rhodesia committed? Whose borders has Rhodesia invaded? What section of the charter of the United Nations has this small African nation violated? On what basis does Great Britain argue that Rhodesia has become a threat to the peace?" 112 Cong. Rec. H9179 (daily ed. April 12, 1967). On the same day, representatives from Florida and Indiana raised similar questions.

return to international law—Charles G. Fenwick. Fenwick, at the time an honorary editor of the *American Journal of International Law* and an honorary vice president of the American Society of International Law, penned an editorial that criticized the designation of the situation as a "threat to the peace" (Fenwick 1967). Apart from his doctrinal arguments and his general conciliatory stance toward the white-minority government, Fenwick objected to what he saw as a sudden and unjustifiable change of mind with regard to the legality and propriety of white, colonial rule. The opening paragraph of his editorial read:

> Admitting that some 220,000 whites are in control of some four million Africans, denying them what are accepted today as majority rule and other civic rights, what transformed so suddenly what was a common situation a generation ago into what is a threat to the peace today, and whose peace at that? (Ibid., 753)

Fenwick's treatment of white supremacy and colonial rule in Rhodesia as unexceptional was not simply a historical or political point, but an argumentative maneuver that aimed at their legitimization and continuation. Be that as it may, these remarks undermine the idea of racism in Rhodesia as exceptional, monstrous, and an exclusively national affair. As Mahmood Mamdani [1996] (2018) observed decades later about apartheid in South Africa, the hierarchical separation of black natives from white settlers was at the heart of the colonial enterprise in Africa, and transcended the differences between British, French, and Portuguese colonialism. Similarly, Marilyn Lake and Henry Reynolds (2008) have documented how legal and administrative techniques of white domination (including immigration controls, exclusion from citizenship and/or equal rights, legal definitions of "whiteness" and "blackness," etc.) circulated in the white Commonwealth (see Bhandar 2018). White Australians, Americans, South Africans, and, indeed Rhodesians, did not exclusively identify with their respective nations; they also understood themselves in terms of international white solidarity.

This element of internationality did not only apply to die-hard defenders of white-minority rule. Transnational capital was essential in the prolongation of the life of Smith's government, against British predictions that the regime's collapse was "a matter of weeks" (Maxey 1976, 155). A survey conducted more than ten years after the first imposition of mandatory sanctions found that Rhodesia remained an export-oriented economy, and that the impact of the sanctions on its economy had been real, but not at all catastrophic. Even though the extent of sanctions-busting remained controversial, it was not ever a question that British corporations were semi-openly defying the rules, especially through the usage of subsidiaries. A 1978 inquiry in the UK found that both BP and Shell had been evading the sanctions systematically, and that this had been known to British public servants since the late 1960s (Bingham and Gray 1978). Additionally, the reduction of trade with the UK was made up for Rhodesia by the fact that its trade with other states increased. Portugal and South Africa were amongst Rhodesia's willing trade partners, and they were not alone. Japan, Western Germany, and Switzerland were among the main culprits, the latter two arguing that in the absence of UN membership, they were not obliged in any way to implement any sanctions (Boczek 1969; Kuyper 1978). It is worth recalling that the two BITs under which the case at hand was brought were between Zimbabwe and Germany and Zimbabwe and Switzerland—two states that had actively contributed to the prolongation of white-minority rule in the country, both through direct assistance and investment, and by acting as conduits through which funds could be moved in and out of Rhodesia. To return to the UK, the Lancaster House Agreement, as discussed above, created a state that did not possess full sovereign powers over land as a matter of law for a decade after its independence. As TWAIL scholars have noted (Anghie 2005; Natarajan 2011), Third World sovereignty has been created and recreated by imperialism in ways that

render it more limited than, and inferior to, Western sovereignty. This form of limited sovereignty came along with (and as a precondition of) black majority rule in Zimbabwe, and it was a guarantee for the continuation of racially skewed patterns of ownership and health.

The effort of the arbitrators to present racism as a phenomenon limited to the boundaries of nation-states is as unpersuasive as it is unexceptional in international law. Darryl Li calls this tendency the "fragmentation" of race in and by international law, whereby "[r]ace exists as a doctrinal category in international law mostly as an object of regulation within states rather than a category that also inflects relations between them" (Li 2021, 1692). This is, for example, the approach dominant in the final text of the ICERD. The elimination of racial discrimination there is conceptualized as an obligation of each nation, and state and national laws are identified as the distinct locus of such discrimination. The idea of international laws, institutions, or authorities as sources of racial discrimination is, then, at best peripheral to the Convention. Li identifies two limited exceptions: the condemnation of colonialism in the Convention's preamble, and Article 15, which gives formally colonized peoples the right to petition the UN Committee on the Elimination of Racial Discrimination (Li 2021). These exceptions, however, do not challenge the overall state-centrism of the Convention. The state-centrism of ICERD was crystallized despite the fact that, in the debates leading to its adoption, postcolonial and socialist states placed colonialism, as an international form of domination and exploitation, at the center of discussion. Early on, for instance, the representative of Yugoslavia stated:

> The problem of racial discrimination continued to exist. The problem of that was that the roots underlying the practice of racial discrimination had not yet, by far, been destroyed. In large parts of the African continent, and elsewhere as well, the forces endeavouring to maintain inequality, exploitation and domination were still very active. Colonialism too was directly linked to the practice of racial discrimination. (18th Session UN General Assembly, *Draft Declaration on the Elimination of all Forms of Racial Discrimination*, 1214th Meeting (September 27, 1963).)

Similarly, the representative of Tanzania linked the elimination of racism and the protection of human rights to the structure of global political economy:

> It should be noted in that regard that the improvement of international trade as an indirect but important connection to the furtherance of human rights . . . indeed, it was the Western world that had given birth to colonialism and slavery, while the developing countries had suffered as a result. The most flagrant violations of human rights still occurred in the so-called open and free societies, and they were often allowed by the authorities on the very pretext that the societies were "free and open." (Ibid.)

Yugoslavia and Tanzania understood racism to be a transnational phenomenon because they also understood it to be a political-economic one. For them, racial discrimination was not simply a matter of national laws, let alone of individual attitudes and prejudices; rather, it constituted a form of stratification that emerged from and sought to rationalize material processes of exploitation. Nevertheless, the final text of the treaty only contained echoes of these positions. Instead, Article 1(2) explicitly carves out differential treatment of citizens and non-citizens from the definition of "prohibited racial discrimination,"[20]

[20] "This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens." ICERD.

further consolidating this nationalization of racism and invisibilization of racism as a transnational structure of domination and exploitation. Indeed, preferential access to and exclusion from citizenship and its benefits is one of the enduring ways in which racism is articulated in Western states (El-Enany 2020).

More broadly, conceptualizations of race/ism as a national or an international issue have often been a fault line between moderate/liberal and radical/socialist anti-racists. The example of the US civil rights movement is instructive. W.E.B. Du Bois and the Communist-led Civil Rights Congress (CRC) were eager to internationalize the fight against segregation by tabling petitions at the UN (Du Bois 1947; Civil Rights Congress [1951] 1970). More importantly, the CRC conceptualized anti-Black racism in the US not as a uniquely national phenomenon. Rather, in its petition "We Charge Genocide," the CRC linked US racism at home with imperialism abroad, and claimed that the position of African Americans was both homologous to and politically linked with the oppression of colonized peoples in Africa and Asia (Knox and Tzouvala 2020). In the petitioners' own words, "The lyncher and the atom bomber are related" (Civil Rights Congress [1951] 1970, 4). Martin Luther King's condemnation of the war in Vietnam was similarly articulated in terms that refused a narrow agenda exclusively focused on civil rights at home (King 1967). In contrast, moderate/liberal anti-racists in the US and beyond preferred national, constitutional avenues for dealing with racism, not least because of a desire not to "embarrass" their state on the world stage while the Cold War was at its peak (Dudziak 2011).

Often, this fault line has expressed itself as a demand for civil (or in other contexts, domestic human) rights as opposed to a struggle for human rights (understood in international legal terms) and, crucially, self-determination. Natsu Saito has recently documented in detail how radical movements of racial liberation in the US spoke the language of anti-colonialism and self-determination and aligned themselves with national-liberation movements across the global South, rather than with the institutions of the US state apparatus (Saito 2020). In other words, confining both racism and anti-racism within the borders of the nation-state, and doing so without any acknowledgement of alternative conceptualizations, involves a political choice to naturalize the more conservative understandings of the phenomenon, and to legitimize only the least ambitious solutions to the problem. The tribunal in *von Pezold* made precisely this choice.

C. Whither Political Economy? Legalism and the Naturalization of Race

The temporal and national confinement of race and racism in *von Pezold* are symptoms of the broader way race and racism were conceptualized by the arbitrators. In the award, race is understood as a natural and self-evident category, generally equated with skin color, and racism is conceptualized as differentiating between preexisting races in an unjustified and often openly prejudiced manner.[21] In this register, racism emerges as a set of beliefs and personal dispositions that are subsequently put into motion through laws and state acts and omissions that treat some race (any race) in a differential manner. This posture has a number of jurisprudential consequences. First, the abolition of openly discriminatory laws is generally considered to be the end of racism properly so-called. Second, the narrow

[21] "[T]he evidence supports a conclusion that the Claimants were targeted as a result of their skin colour and, hence, the taking was discriminatory in breach of the Swiss BIT. The Tribunal notes, for example, Ms. Tsvakwi's evidence as to the policy toward black farmers (in contrast to that toward white farmers) which was not to expropriate their farms, although a small number of black-owned farms were expropriated in breach of this policy" (*von Pezold,* para. 501).

legalistic understanding of racism positions colorblindness as the solution for, and the polar opposite of, racism. As a consequence, remedies to material racial inequalities that differentiate on the basis of race may be accepted as temporary solutions, but they are subjected to strict scrutiny. Finally, this equation of racism with discriminatory state laws and (in)actions means that the "market," or the "economy," are seen as spaces that are racially neutral or racially progressive. If racism is understood as an irrational prejudice enacted through the state, then the capitalist economy (imagined as separate from, or even antithetical to, the state) can be a space of equality, freedom, and rationalism.

In the *von Pezold* award, this conceptual separation between political economy and racism manifested itself in at least two ways. First, the tribunal summarily rejected Zimbabwe's argument that the von Pezold holdings did not qualify as an "investment" for the purpose of investment protection. The tribunal argued that, although it is questionable whether contributing to the host state's development meets the definition of "investment," the investors undoubtedly did so, "given the employment provided, contribution to the economy and know-how involved in the investment" (para. 286). Similarly, the tribunal rejected Zimbabwe's arguments that the white investors had contributed in any way to the (alleged) state of necessity by violently resisting the redistributive process (para. 654). The idea that the structure of Zimbabwe's economy—especially foreign investment—might be related to (let alone be the matrix of) the state's struggles with racism was unthinkable within this framework. Additionally, the arbitrators established an implicit but strong presumption that only market-based forms of land reform and redistribution were lawful under international investment law. The relevant passage reads:

> Yet, while the Tribunal can agree to these principles to a broad extent, it finds the Respondent's position too extreme. Some of the examples of policies that the Respondent has cited, which provide incentives and preferential treatment to indigenous persons, are good examples of policies that actually intend to, and lawfully do address such inequalities. However, the Tribunal rejects the Respondent's attempt to align the FTLRP with other legitimate policies that justifiably discriminate by race in order to address historical injustices. (Para. 652)

In other words, the tribunal found that only mechanisms that gave black Zimbabweans as market actors certain advantages to ameliorate their relative position within the capitalist economy were *prima facie* compatible with international law. Conversely, mechanisms that question the centrality and primacy of the market were deemed to be "extreme" and of questionable legality and legitimacy, regardless of their design and implementation. This was despite the fact that, as we saw above, market-based mechanisms had failed to substantially alter the racialized patterns of land ownership in the country in the twenty years after independence. Additionally, this formulation departs from the accepted standards of international investment law as recognized in this case, which accept the *prima facie* legality of expropriations subject to certain conditions. In the above-quoted passage, the tribunal revealed its overarching skepticism toward measures of racial justice that do not assume the primacy of the market and do not seek to better racialized people as competitive market subjects. Under this approach, forms of capitalist production and exchange in Zimbabwe are automatically exempted from legal and political scrutiny, and any measure questioning these forms is deemed to be "extreme" and of doubtful relationship to racial justice.

This elision of political economy also allowed the tribunal to reject Zimbabwe's argument that the targeting of the claimants' property was not due to irrational prejudice toward

people of a particular phenotype, but rather dictated by the entanglement between whiteness and property in the country:

> The Claimants also refer to the Respondent's opening submissions during the Hearing, in which counsel for the Respondent stated that, given that whites took the land prior to independence, it was the whites whose land had to be expropriated and that if it had been the Japanese who had taken the land then it would have been the Japanese whose land was expropriated. (Para. 651)

Albeit somewhat formulaic, this argument can be read as expressing an elementary truth about race and political economy: Whiteness and blackness are not preexisting categories upon which relationships of exploitation and domination were erected. Rather, these categories emerged out of material practices of dispossession and exploitation in the colonial encounter. The Marxist philosopher Frantz Fanon summarized this inter-relationship between race and class in the colonies: "In the colonies the economic substructure is also a superstructure. The cause is the consequence; you are rich because you are white, you are white because you are rich" (Fanon [1961] 2004, 9). In turn, Marxist lawyer Robert Knox has conceptualized the emergence of and social function of race: "Race initially enters the scene to justify the dispossession of native inhabitants and legitimise the transfer of value from the periphery. The deep social transformations required for expanded capitalist accumulation are articulated in terms of racial categorisations. Finally, these racialised categories play a crucial role in governing peripheral territories and containing resistance of processes of capitalist accumulation" (Knox 2016, 28; see Knox 2021). For Fanon and Knox, race as a social relation emerges to solve the tensions of colonial and imperial capitalism, and upon its emergence it reconfigures colonial capitalism.

However, the arbitrators held that highlighting the historically contingent coming together of whiteness and property was "attempting to minimize the racial aspect of Zimbabwe's history" (para. 651). This position relies on an essentialization and de-historicization of race that denies the material and, therefore, historically contingent origins and operations of race in the colonial context. To this static and essentialist understanding of race, Robert Knox juxtaposes the concept of "racialization" (Knox 2014). As a concept, racialization draws attention to the socially constructed, historically contingent, and evolving nature of race, as well as to the fact that law—domestic and international—does not simply respond to questions of race relations that purportedly exist outside its realm; rather, it is an active participant in the construction of racial categories and subordination (Knox 2014, 32; Haney López 2006) Writing specifically about the links between private property and race, Brenna Bhandar has argued that private property in land and modern conceptions of race have been co-constitutive in settler-colonial contexts (Bhandar 2018, 21-22). Private property in land was not simply "exported" to the colonies. It was forged in and through the colonial encounter, in which title by registration was introduced as a means of dispossessing indigenous people from their lands (ibid., 28). Conversely, those who did not possess a system of private property in land and did not engage in activities considered to be "productive"—or, even worse, actively refused and resisted such laws and practices—were marked collectively as being lazy, wasteful, and inferior (37).

The separation between race/ism and political economy is currently prevalent—albeit not unchallenged (Achiume 2019)—in international legal scholarship and practice. However, this demarcation is not self-evident. Rather, it constitutes the result of the (provisional) victory of liberal and neoliberal visions of racism and anti-racism. As mentioned above,

even though ICERD ended up adopting the narrow and legalistic idiom of "discrimination" in order to capture racialized harm, some of its drafters situated race and racism within the broader structure of global capitalism. In the case of Zimbabwe in particular, and southern Africa more generally, the United Nations was a battleground for competing understandings of racism and colonialism. The postcolonial and socialist camp, which was in control of the Special Committee on Decolonization, consistently put forward a political-economic (not necessarily strictly Marxist) conceptualization of segregation in Rhodesia. In a 1977 working paper, the Committee drew attention to the role of domestic and international capital in the perpetuation of white-minority rule. Relying heavily on economic statistics, the Committee showed that segregation and anti-black violence in Rhodesia were directly benefiting white commercial farmers and the foreign-controlled corporations that were operating in the country. UN General Assembly**,** *Report of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,* UN Doc. A/31/23/Rev.1 (1977). The penalties, restrictions, and indignities inflicted upon black Zimbabweans were construed not as irrational prejudices, but as essential to this highly exploitative economic system (ibid., 100). In concluding its working paper, the Committee articulated an essentially political-economic understanding of racism, in which the "psychology of white supremacy" was the byproduct, not the cause, of segregation.[22]

This approach to racism in Rhodesia was part of a broader Marxist, socialist, and Third World-ist reading of the persistence of overt racism in southern Africa. Far from thinking that South Africa (and its continuing occupation of South-West Africa), Rhodesia, or Portugal's clinging on its colonial possessions (in particular Mozambique) constituted irrational aberrations, Third World-ists of the Marxist and non-Marxist varieties alike argued that regimes of segregation and ongoing (open) colonial domination were the historically contingent form that class struggles assumed in the region, and were buttressed up by international capital that profited handsomely from overt racism. As the representative of Jamaica observed before the Decolonization Committee, the profit rate in apartheid South Africa for US and UK firms was double the world average, making it an attractive destination for foreign investment.[23] Similarly, Ethiopia's and Liberia's submissions for the contentious proceedings of the *South-West Africa* saga in front of the International Court of Justice offered a detailed description of the inner workings of capitalism in Namibia, and contended that this particular form of racial capitalism, put in place by South Africa and local white ruling classes, was in violation of international law (Tzouvala 2020, 149-58).

The clinical isolation of race/ism from political economy appears self-evident in the *von Pezold* award, but it did not look this way to those most fiercely opposing white-minority rule at the time. In fact, the term "racial capitalism" was first coined to capture the entanglement between race and capitalist political economy in South Africa. Often attributed to Cedric Robinson (2000), the concept has a longer pedigree, one born out of

[22] "The labour policies and practices of the illegal regime. the companies that operate in Southern Rhodesia and the European settlers have led to the introduction of economic practices intended to reinforce political controls thus frustrating the aspirations of the African masses in the Territory. At the same time, these practices have reinforced a psychology of white supremacy which the illegal regime encourages in order to perpetuate its monopoly of political power in the Territory." UN General Assembly, *Report of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples* (A/31/23/Rev.1), 105.

[23] UN General Assembly, 23rd Session, Fourth Committee (19 November 1968), file:///Users/konstantinatzouvala/Downloads/A_C-4_SR-1792-EN.pdf.

struggle. In 1976, two South Africans in exile, David Hemson and Martin Leggasick (1976), issued a short pamphlet entitled "Foreign Investment and the Reproduction of Racial Capitalism in South Africa." The purpose of this work is perhaps best summarized by its closing slogan: "sanctions against capital: solidarity with labour" (Hemson and Leggasick 1976, 16). To support this political conclusion, Hemson and Leggasick set out to refute the argument that sanctions against South Africa were counterproductive because foreign investment and capitalist development would undermine supposedly irrational racist laws (ibid., 1). To this progressivist argument, the two authors juxtaposed a detailed economic history of South Africa. In their telling, overt racial discrimination first emerged to solve the concrete profitability problems of the booming mining sector: It offered mining capital an avenue toward maintaining its high profit rates by suppressing the wages of the vast majority of the working class, while avoiding open confrontation with, indeed co-opting, white workers (ibid., 3-4). Central to this project was not the phenotype of the workers as such, but rather the embeddedness, at the time, of native workers into non-capitalist forms of production and re-production that allowed for the suppression of their wages below sustenance levels (ibid.) Therefore, racial segregation reflected the differences of the life-worlds and survival strategies among different sections of the working class, but in a way that subordinated these divergences to the needs of mining capital. Blackness and whiteness were, then, ideological and material constructions erected upon different strategies of capitalist exploitation.

For Hemson and Leggasick, then, apartheid reflected the power of mining capital in South Africa, in relation both to other classes and to other factions of capital: "Segregation was the means by which the interests of the mining industry were constituted as state policy" (ibid., 4). In addition, the pamphlet documented how foreign—especially British—capital greatly benefited from these uniquely disadvantageous circumstances for black workers. Pushing back against the narrative that capitalists opposed apartheid, the two authors set out to show two things. First, even rhetorical opposition was usually limited to the most egregiously racist aspects of the regime, while accepting the general proposition that law ought to protect the living standards of white South Africans (ibid., 9). Second, the authors illustrated the gap between rhetoric and facts on the ground, as nominal condemnation of apartheid was accompanied by a full utilization of the legal tools it offered (such as non-recognition of non-segregated unions) to lower the price of black labor power (ibid., 10-11). All in all, apartheid South Africa was invaluable to certain factions of British capital, and, in turn, the presence of foreign investment buttressed white-minority rule, both materially and ideologically.

This brings me back to my earlier comments about the constant transmutations of the relationship between law, capitalist accumulation, and racism. *Von Pezold*'s demand for colorblindness in the treatment of foreign investors does much more than merely protect white investors—even though it certainly does that. It brings international investment law in line with the major shifts of global capitalism, including the rise of non-Western, non-white-majority capitalist powers. Even when historical patterns of investment flows might change, ceasing to reflect the legacies of open imperialism and racism, investors still enjoy the special protections of international investment law—a regime put in place to serve the interests of white, Western capitalists (Slobodian 2018). This protection of capitalist interest beyond those of white capitalists, moreover, does not negate the ongoing complicity of international investment law with racial capitalism, but rather points to racial capitalism's elasticity and evolution. First, the communities that find themselves at the sharp end of foreign investment's social, environmental, and political consequences remain almost exclusively racialized, including indigenous peoples and racialized minorities within non-

white majority and white-majority states. Second, if we accept the link between race and political economy suggested above, then international investment law remains complicit with racial capitalism by offering protection to new forms of racialization that may not necessarily hinge on white supremacy.

Von Pezold's severing of the link between race and political economy, and its obsession with "skin color" as the marker of race, naturalizes racism as a form of prejudice attached to supposed natural, phenotypical differences. If we follow this logic, racist oppression is not only depoliticized so as to include "racial discrimination" against a powerful and hegemonic group; it is also stabilized so as to include only supposedly preexisting "races." This approach has a number of consequences. First, it buttresses white supremacy, by rendering legally dubious efforts to rectify the effects of colonialism and open racist discrimination. Second, by upholding a system of global capitalism that disproportionately relies on the over-exploitation of the lands and labor of racialized people, international investment law becomes complicit with racial capitalism. Thirdly, this stabilization and naturalization of racism renders new forms of racialization that hinge on new historical, political, and economic conjunctures unthinkable. In so doing, it paralyzes critical thinking and political action with respect, for example, to the rising influence of China across the global South and the often racialized and racializing ideologies that accompany it.

IV. Conclusion

The purpose of my intervention has been dual. First, I wanted to draw attention to the underexplored role of international economic law as a space where processes of race-making are articulated, reproduced and, less often, challenged. The *von Pezold* award is a rare instance of explicit treatment of race and racism in the field. Tellingly, the tribunal found that the only form of discrimination that was of legal relevance was that directed against white large-scale investors. One need not be supportive of the FTLRP program to acknowledge that any serious effort to redistribute land in Zimbabwe would necessarily implicate the property of what the tribunal itself characterized as the largest tobacco plantation in southern Africa. By finding the expropriations to be *prima facie* racially discriminatory, the tribunal rendered any effort to redistribute resources along racial lines all but impossible in international legal terms.

Second, I wanted to demonstrate that this conclusion was made possible through argumentative moves that are commonplace in liberal and neoliberal conceptualizations of race/ism, in both domestic and international law. Three patterns emerge here: the temporal fencing of racialized harm; the identification of racism with the state; and, finally, the separation between race and political economy. My argument is that this separation produces the temporal and spatial confinement of racism as a phenomenon of the past and as a problem of the nation-state. It is by equating racism with irrational prejudice that finds expression in legislation that these two distortions are produced. Against this view, I showed that materialist explanations of race/ism, including—but not limited to—the concept of racial capitalism, properly place racism within history. Instead of attributing racism to some unspecified will to power or to preexisting "races," materialist theorists of race and racism explain how racism emerged as a concrete response to the contradictions of colonial capitalism.

Where does this leave us in terms of law, and international investment law in particular? One conclusion concerns the potential of human rights to safeguard more equitable outcomes within international investment law, including on the front of race/ism. As this article demonstrates, human rights do not constitute a silver bullet. Rather, as Steininger

(2018) has also shown, human rights have been leveraged successfully by investors in the context of investment arbitration. Even though this does not negate the possibility of tactical invocations of human rights in the struggles against racial capitalism, it does cast doubt on the inevitable success of such an approach. A second conclusion concerns the depth of entanglement between international law and racial capitalism. In the *von Pezold* award, this entanglement was manifested both through the racialized rhetoric of the tribunal and through its legal conclusions.

This duality brings me to my final observation. To date, most critical engagements with race/ism and international law center on racialized tropes as indispensable to legal reasoning (Mutua 2001; Orford 1999; Pahuja 2019). This work is both necessary and evolving. However, the *von Pezold* award in particular, and the frame of racial capitalism more broadly, invite us to look beyond rhetoric and trace the racialized and racializing distributive effects (or at least distributive ambitions) of international law, even when not accompanied by transparent tropes. This work has only just begun.

REFERENCES

Achiume, E. Tendayi. 2017. "The SADC Tribunal: Socio-Political Dissonance and the Authority of International Courts." In *International Court Authority,* edited by Karen J. Alter, Laurence R. Helfer, and Mikael Rask Madsen, 124. Oxford University Press.

Achiume, E. Tendayi. 2018. "Transformative Vision in Liberal Rights Jurisprudence on Racial Equality: A Lesson from Justice Moseneke." In *A Warrior for Justice: Essays in Honor of Dikgang Moseneke*, edited by Penelope Andrews, Dennis Davis, and Tabeth Masengu, 179. Juta Press.

Achiume, E. Tendayi. 2019. "Global Extractivism and Racial Equality: Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance." A/HRC/41/54.

Achiume, E. Tendayi, and Devon W. Carbado. 2021. "Critical Race Theory Meets Third World Approaches to International Law." 67 *UCLA Law Review* 1462.

Alessandrini, Donatella. 2010. *Developing Countries and the Multilateral Trade Regime: The Failure and Promise of the WTO's Development Mission.* Hart Publishing.

Amupanda, Job Shipululo. 2017. "Constitutionalism and Principles of Economic Order: Examining Namibia's 'Mixed Economy' and the Economic Asylum of Neoliberalism." 21 *Namibian Studies* 7.

Anghie, Antony. 2005. *Imperialism, Sovereignty and the Making of International Law.* Cambridge University Press.

Bastin, Lucas. 2014. "Amici Curiae in Investor-State Arbitrations: Two Recent Decisions." 20 *Australian International Law Journal* 95.

Bhandar, Brenna. 2018. *Colonial Lives of Property: Law, Land and Racial Regimes of Ownership.* Duke University Press.

Bingham, Thomas H., and S.M. Gray. 1978. *Report on the Supply of Petroleum and Petroleum Products to Rhodesia.* H. M. Stationery Office.

Boczek, Bolesslaw A. 1969. "Permanent Neutrality and Collective Security: The Case of Switzerland and the United Nations Sanctions against Southern Rhodesia." 1 *Case Western Reserve Journal of International Law* 75.

Chimni, B.S. 1998. "Permanent Sovereignty over Natural Resources: Toward a Radical Interpretation." 38 *Indian Journal of International Law* 2008.

Civil Rights Congress. (1951) 1970. *We Charge Genocide: The Crime of Government Against the Negro People.* International Publishers.

Coulthard, Glen Sean. 2014. *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition.* University of Minnesota Press.

Du Bois, W.E.B. (1935) 1998. *Black Reconstruction in America: An Essay Toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860–*1880. Simon and Schuster.

Du Bois, W.E.B., ed. 1947. "An Appeal to the World: A Statement of Denial of Human Rights to Minorities in the Case of Citizens of Negro Descent in the United States of America and an Appeal to the United Nations for Redress, prepared for the National Association for the Advancement of Colored People." https://www.blackpast.org/global-african-history/primary-documents-global-african-history/1947-w-e-b-dubois-appeal-world-statement-denial-human-rights-minorities-case-citizens-n/.

Dudziak, Mary L. 2011. *Cold War Civil Rights: Race and the Image of American Democracy.* Princeton University Press.

Edelbi, Souheir. 2020. "Making Race Speakable in International Criminal Law: Review of Lingaas' *The Concept of Race in International Criminal Law*." *Third World Approaches to International Law Review*, April 14, 2020. https://twailr.com/making-race-speakable-in-international-criminal-law-review-of-lingaas-the-concept-of-race-in-international-criminal-law-%E2%80%A8/.

El-Enany, Nadine. 2020. *(B)ordering Britain: Law, Race and Empire.* Manchester University Press.

Estes, Nick. 2019. *Our History Is the Future: Standing Rock versus the Dakota Access Pipeline, and the Long Tradition of Indigenous Resistance.* Verso.

Fanon, Frantz. (1961) 2004. *The Wretched of the Earth.* Grove Press.

Fenwick, Charles G. 1967. "Editorial Comment: When Is There a Threat to the Peace–Rhodesia." 61 *American Journal of International Law* 753.

Galbraith, John S. 1975. *Crown and Charter: The Early Years of the British South Africa Company.* University of California Press.

Gathii, James T. 2000. "Retelling Good Governance Narratives on Africa's Economic and Political Predicaments: Continuities and Discontinuities in Legal Outcomes between Markets and States." 45 *Villanova Law Review* 971.

Gathii, James Thuo. 2007. "Imperialism, Colonialism and International Law." 54 *Buffalo Law Review* 1013.

Gathii, James. 2011. "'The Neo-Liberal Turn in Regional Trade Agreements." 86 *Washington University Law Review* 421.

Getachew, Adom. 2019. "Holding Ourselves Responsible." *Boston Review*, September 11, 2019. http://bostonreview.net/war-security/adom-getachew-holding-ourselves-responsible.

Hall, Stuart, et al. 1978. *Policing the Crisis: Mugging, the State and Law and Order*. MacMillan.

Harris, Cheryl I. 1993. "Whiteness as Property." 106 *Harvard Law Review* 1707.

Hemson, David, and Martin Leggasick. 1976. "Foreign Investment and the Reproduction of Racial Capitalism in South Africa." Foreign Investment in South Africa: A Discussion Series No 2. https://sahistory.org.za/sites/default/files/archive_files/Foreign%20Investment%20by%20%20Martin%20Legassick%20%26%20Dave%20Hemson.pdf.

King, Jr., Martin Luther. 1967. "Beyond Vietnam." https://kinginstitute.stanford.edu/king-papers/documents/beyond-vietnam.

Knox, Robert. 2014. "Race, Racialisation and Rivalry in the International Legal Order." In *Race and Racism in International Relations: Confronting the Global Colour Line,* edited by Anievas, Alexander Nivi Manchanda, and Robbie Shilliam, 175. Routledge.

Knox, Robert. 2016. "Valuing Race: Stretched Marxism and the Logic of Imperialism." 4 *London Review of International Law* 81.

Knox, Robert, and Ntina Tzouvala. 2021. "Looking Eastwards: The Bolshevik Theory of Imperialism and International Law." In *Revolutions in International Law: The Legacies of 1917,* edited by Greenman, Kathryn, Anne Orford, Anna Saunders, and Ntina Tzouvala, 27. Cambridge University Press.

Knox, Robert. 2021. "Haiti at the League of Nations: Racialisation, Accumulation and Representation." 21 *Melbourne Journal of International Law* 245.

Kuyper, P. J. 1978. "The Limits of Supervision: The Security Council Watchdog Committee on Rhodesian Sanctions." 25 *Netherlands International Law Review* 159.

Lake, Marilyn, and Henry Reynolds. 2008. *Drawing the Global Colour Line: White Men's Countries and the International Challenge of Racial Equality.* Cambridge University Press.

Leary, Thomas. 2017. "Non-Disputing Parties and Human Rights in Investor-State Arbitration." 18 *Journal of World Investment and Trade* 1062.

Li, Darryl. 2021. "Genres of Universalism: Reading Race into International Law, with Help from Sylvia Wynter." 67 *UCLA Law Review* 1686.

Lingaas, Carola. 2019. *The Concept of Race in International Criminal Law*. Routledge.

Mamdani, Mahmood. (1996) 2018. *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*. Princeton University Press.

Maxey, Kees. 1976. "Labour and the Rhodesian Situation." 75 *African Affairs* 152.

Miles, Kate. 2011. *The Origins of International Investment Law: Empire, Environment, and the Safeguarding of Capital.* Cambridge University Press.

Miller, Zinaida. 2021. "The Injustices of Time: Rights, Race, Redistribution and Responsibility." 2021 *Columbia Human Rights Law Review* 647.

Modiri, Joel M. 2018. "Conquest and Constitutionalism: First Thoughts on an Alternative Jurisprudence." 34 *South African Journal of Human Rights* 300.

Mowatt, J. Cameron, and Celeste Mowatt. 2013. "*Border Timbers and others v Zimbabwe* and *von Pezold and others v Zimbabwe*." 28 *ICSID Review–Foreign Investment Law Journal* 33.

Moyana, Henry Vusso. 1975. "Land and Race in Rhodesia." 5 *The African Review* 17.

Moyo, Sam. 2001. "The Land Occupation Movement and Democratisation in Zimbabwe: Contradictions of Neoliberalism." 30 *Millennium: Journal of International Studies* 311.

Mutua, Makau W. 2001. "Savages, Victims, and Saviors: The Metaphor of Human Rights." 42 *Harvard International Law Journal* 201.

Natarajan, Usha. 2011. "Creating and Recreating Iraq: Legacies of the Mandate System in Contemporary Understandings of Third World Sovereignty." 24 *Leiden Journal of International Law* 799.

Ndlovu-Gatsheni, Sabelo J. 2009. "Making Sense of Mugabeism in Local and Global Politics: 'So Blair, Keep Your England and Let Me Keep my Zimbabwe.'" 30 *Third World Quarterly* 1139.

Orford, Anne. 1999. "Muscular Humanitarianism: Reading the Narratives of the New Interventionism." 10 *European Journal of International Law* 679.

Orford, Anne. 2013. "On International Legal Method." 1 *London Review of International Law* 167.

Pahuja, Sundhya. 2000. "Trading Spaces: Locating Sites for Challenge within International Trade Law." 14 *Australian Feminist Law Journal* 38.

Pahuja, Sundhya. 2019. "Corporations, Universalism, and the Domestication of Race in International Law." In *Empire, Race and Global Justice,* edited by Duncan Bell, 74. Cambridge University Press.

Raftopoulos, Brian. 2007. "'Nation, Race and History in Zimbabwean Politics." In *Making Nations, Creating Strangers: States and Citizenship in Africa,* edited by Paul Nuget, Daniel Hammett, and Sara Dorman, 181. Brill.

Raftopoulos, Brian, and Ian Phimister. 2004. "'Zimbabwe Now: The Political Economy of Crisis and Coercion." 12 *Historical Materialism* 355.

Robinson, Cedric J. 2000. *Black Marxism: The Making of the Black Radical Tradition*. University of North Carolina Press.

Saito, Natsu Taylor. 2000. "From Slavery and Seminoles to AIDS in South Africa: An Essay on Race and Property in International Law." 45 *Villanova Law Review* 1135.

Saito, Natsu Taylor. 2020. *Settler Colonialism, Race, and the Law: Why Structural Racism Persists*. NYU Press.

Slobodian, Quinn. 2018. *Globalists: The End of Empire and the Birth of Neoliberalism*. Harvard University Press.

Steininger, Sylvia. 2018. "What's Human Rights Got to Do with It? An Empirical Analysis of Human Rights References in Investment Arbitration." 31 *Leiden Journal of International Law* 33.

Streater, Reginald L. 2018. "Zimbabwe's Struggle to Break the Chains of Colonialism: Self-Determination, Land Reform, and International Law." 31 *Temple International and Comparative Law Journal* 120.

Thomas, Chantal. 2000. "Critical Race Theory and Postcolonial Development Theory: Observations on Methodology." 45 *Villanova Law Review* 1195.

Tzouvala, Ntina. 2020. *Capitalism as Civilisation: A History of International Law*. Cambridge University Press.

Wing, Adrien K. 1996. "Critical Race Feminism and the International Human Rights of Women in Bosnia, Palestine, and South Africa: Issues for LatCrit Theory." 28 *University of Miami Inter-American Law Review* 337.