

The Intersection of Race and Economic, Social, and Cultural Rights

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1. Introduction

‘The plunder of Black life was not incidental to America’s rise; it was instrumental.’¹ Te-Nehisi Coates’ powerful words are a scathing reminder of what racialized peoples have always known: that racism constitutes and is constituted by economic and social exploitation. It took a long time for this lived knowledge to be spoken; understandably so because racialized peoples’ voices were suppressed.² In 1952, Frantz Fanon—one of the most influential anticolonial thinkers—remarked that ‘the economic infrastructure is also a superstructure. The cause is the consequence; you are rich because you are white, you are white because you are rich.’³ Fanon’s observation is a window into the relationship between racism and economic structures, where racism can be explained as a systemic and structural phenomenon rooted in white supremacy.⁴ It creates a hierarchy⁵ that justifies the commodification of people belonging to oppressed races, including through economic, social, and cultural exploitation.⁶

This chapter argues that this understanding of the reciprocal relationship between economic and social structures and racism has yet to translate into economic, social, and cultural *rights* (ESCRs) within human rights law. ESCRs are legal entitlements necessary for survival, such as ‘housing, food, clothing, water, health care,

¹ Ta-Nehisi Coates, ‘The Case for Reparations’ (*The Atlantic*, 22 May 2014) <<https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>> accessed 23 April 2024. In its linguistic style, this chapter draws inspiration from the language protocol subversions attempted in the brilliant Italian translation of Grada Kilomba’s book *Plantation Memories* by Marie Moïse and Mackda Ghebremariam Tesfau’ (Capovolte 2021). Moïse and Tesfau’ play with the protocols of the Italian language, particularly its rigidly gendered spellings and its rules of capitalization. Illustratively, their Italian translation capitalizes the N of Nero (Blackness) in order to signify that is a self-assertive label, and uses a small case b for bianca (whiteness) to signify that whiteness is merely a social construction. This chapter similarly capitalizes the B of Black or the I of Indigenous and uses small case for the w of whiteness (and similar terms such as eurocentrism embodying imperial or racial domination) to refuse the social superiority of whiteness.

² Anna J Cooper, *A Voice from the South: By a Black Woman of the South* (University of North Carolina Press 2017).

³ Frantz Fanon, *Black Skin, White Masks* (Pluto Classics edn, Pluto Press 2002).

⁴ Charles W Mills, *The Racial Contract* (Cornell University Press 1997).

⁵ *ibid.*

⁶ CLR James, *The Black Jacobins: Toussaint l’Ouverture and the San Domingo Revolution* (2nd edn, Vintage Books 1989).

social security, and an adequate standard of living.⁷ The genesis of ESCRs in contemporary international human rights law can be credited to the sustained efforts of the 'Third World' movement, born in proud contrast to the 'U.S.-aligned West (the First World) and the Soviet-aligned Eastern Bloc (the Second World).⁸ Following the end of the Second World War and the formal demise of colonialism in some parts of the world, newly independent states convened in Bandung in 1955 to forge a new vision of the 'Third World'. The 'Bandung ethic' rested on South–South cooperation, anti-imperialism, and the restoration of the agency of colonized peoples.⁹ The centrepiece of the Bandung vision was human rights praxis, particularly recognition of the ESCRs of colonized peoples.¹⁰

An important victory for the Third World was the adoption of the International Covenant for Economic, Social, and Cultural Rights (ICESCR) in 1966, the first ever binding treaty to give teeth to ESCRs. For Third World states, the ICESCR represented an opportunity to remedy the economic inequities wrought by colonialism by introducing collective rights, imposing positive duties on states, and codifying a redistributive vision of justice.¹¹ Because Third World states were so actively involved in designing ESCRs, the ICESCR was also uncritically accepted as an 'anticolonial' instrument.¹² As more and more states ratified the Covenant,¹³ its anticolonial status was elevated to an *antiracist* one more broadly.¹⁴ This label is often validated by citing evidence of the Covenant's commendable recognition of the intersectionality of racial discrimination and violations of ESCRs. However, this chapter argues that despite their anticolonial origins, ESCRs are not antiracist. A study of the drafting history of the ICESCR and the contemporary interpretations of the Covenant reveals that it *entrenches* rather than *combats* racism.

The chapter proceeds in three parts. Section 2 contextualizes the racial state of the world in which the ICESCR was adopted and maps the Covenant's present engagement with racial discrimination when delineating state obligations towards ESCRs. Section 3 explains how the Covenant's engagement with race is informed by eurocentrism. It

⁷ Claire-Michelle Smyth, 'Social and Economic Rights: The Struggle for Equivalent Protection' in Sean Egan (ed), *The Routledge History of Human Rights* (Routledge 2019).

⁸ Michael Galant and Aude Darnal, 'Who's Afraid of the Global South?' *Foreign Policy* (15 August 2024) <<https://foreignpolicy.com/2024/04/14/global-south-united-nations-new-international-economic-order/>> accessed 23 April 2024.

⁹ Obiora C Okafor, 'The Bandung Ethic and International Human Rights Praxis: Yesterday, Today, and Tomorrow' in Luis Eslava, Michael Fakhri, and Vasuki Nesiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (Cambridge University Press 2017).

¹⁰ *ibid*; David Kimche, *The Afro-Asian Movement: Ideology and Foreign Policy of the Third World* (Praeger 1966).

¹¹ Matthew CR. Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on Its Development* (Oxford University Press 1998).

¹² Maya H Randall, 'The History of the Covenants: Looking Back Half a Century and Beyond' in Daniel Moeckli, Helen Keller, and Corina Heri (eds), *The Human Rights Covenants at 50: Their Past, Present, and Future* (Oxford University Press 2018).

¹³ Ben Saul, David Kinley, and Jacqueline Mowbray, 'Introduction' in Ben Saul, David Kinley, and Jacqueline Mowbray (eds), *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (Oxford University Press 2014).

¹⁴ Daniel J Whelan, *Indivisible Human Rights: A History* (University of Pennsylvania Press 2011); Steven LB Jensen, 'Twentieth-Century Economic and Social Rights: Decolonization and the Global South' in Malcolm Langford and Katharine G Young (eds), *The Oxford Handbook of Economic and Social Rights* (Oxford University Press 2022).

theoretically teases out the relationship between eurocentrism and racism in international law, analysing how the genocide unfolding in Gaza lays bare the analytical and epistemic links between the two. Section 4 uncovers evidence of eurocentrism within the ICESCR both in the discourse on civilizing and economic development as well as in the epistemic makeup of those engaged in drafting the Covenant. These strains—rooted in the originary and the contemporary life of the Covenant—the section argues, sustain the ‘racial international legal imaginary’ within the Covenant.¹⁵ Section 5 concludes by proposing ways through which the ICESCR can meaningfully engage with racism, invoking existing tools in its institutional toolbox, taking inspiration from the better practices of contemporaneous institutions.

The chapter’s diagnosis emerges from its study of the contemporary interpretive and adjudicative practices of the chief interpretive bodies of the ICESCR to understand the extent of official engagement with the racial dimensions of ESCRs. Of special interest is the interpretive practice of the Covenant bodies within the United Nation’s (UN) framework. Chief among these is the Committee on Economic Social and Cultural Rights (CESCR), the body tasked with interpreting the ICESCR and overseeing its implementation. The Committee has been central in developing the normative definitions of key ESCRs, interpreting the obligations of states parties to the ICESCR, and monitoring protections and violations of the ICESCR. Also relevant is the interpretive practice of the Human Rights Council and the Special Procedures, both of which are universal procedures aimed at addressing gross violations of human rights by any of the 193 UN member states.¹⁶

2. Locating race in the substantive content of ESCRs

Following the adoption of the Universal Declaration on Human Rights (UHR) in 1948—a non-binding resolution that many describe as having acquired the status of a supreme law within the lexicon of human rights law¹⁷—the Commission of Human Rights was tasked with drawing up a ‘binding international human rights treaty’.¹⁸ At that time, the socialist bloc teamed up with the Third World states to propose a separate binding treaty for ESCRs,¹⁹ firmly resisting the pushback from the United States and the United Kingdom, both of whom were concerned about ESCRs curbing market freedoms.²⁰ Ultimately, concerns about market freedoms were put to rest, and

¹⁵ Frederick Douglass, ‘The Color Line’ (1881) 132 *North American Review* 567; Douglass describes the colour line as the gate to personhood in society. He compares the situation of Black people in the United States with those living outside the states, noting that abroad is ‘where this malignant prejudice, as we know it in America, does not prevail; where character, not color, is the passport to consideration; where the right of the Black man to be a man, and a man among men, is not questioned; where he may, without offense, even presume to be a gentleman.’

¹⁶ OHCHR, ‘Human Rights Council Complaint Procedure’ (OHCHR) <<https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/hrc-complaint-procedure-index>> accessed 23 April 2024.

¹⁷ Mary A Glendon, ‘Knowing the Universal Declaration of Human Rights’ (1998) 73 *Notre Dame Law Review* 1153.

¹⁸ ECOSOC Resolution 1/5 (16 February 1946) E/RES/5(I).

¹⁹ UNGA Resolution 543 (VI) UN Doc A/RES/543(VI) (1952).

²⁰ Eric D Weitz, ‘The Human Rights Surges of the 1940s and 1990s: A Commentary on Margaret E McGuinness and William A Schabas’ (2011) 35 *Diplomatic History* 794.

the ICESCR was adopted in 1966, together with the International Covenant on Civil and Political Rights.²¹

Because newly independent states heavily lobbied for ESCRs,²² the Covenant was seen as an accomplishment of the anticolonial coalition.²³ In part, this attribution was a product of the anticolonial politics of the time. The negotiations for the Covenant followed closely on the heels of the Asian–African conference in Bandung in 1955, hailed as the birthplace of an ‘impregnable Asian-African alliance’.²⁴ Although it would be presumptuous to credit Bandung for facilitating ideological agreement amongst the participating Third World states, what Bandung definitively did was offer a platform for newly independent states to express their ‘determination to share more fully with the west in decisions affecting the interests of their countries’.²⁵

The drafting history of the Covenant reveals that postcolonial states did steer the formulation of many ESCRs. States such as the Philippines, Mexico, and Egypt²⁶ took important strides to prevent western imperial powers from blocking the drafting of the Covenant.²⁷ For Third World states, ESCRs presented an opportunity to lay stakes to power and knowledge in the same way as their western counterparts did. As James Gathii writes, it was an opportunity for Third World states to challenge the eurocentrism of international law and rescript the Third World as a site of epistemic production.²⁸ Third World states ‘saw socioeconomic rights as a way of moving beyond the age of colonialism in which human livelihood was sacrificed for the economic gain of the metropole’.²⁹

Racial discrimination was a notable fixture in this postcolonial lawmaking strategy,³⁰ or as Bertrand Ramachandran notes, racial discrimination was the ‘dominant single theme’ of the ICESCR.³¹ This is no surprise given that the postcolonial

²¹ Helen Keller and Daniel Moeckli, ‘Introduction’ in Corina Heri (ed), *The Human Rights Covenants at 50: Their Past, Present, and Future* (Oxford University Press 2018).

²² As Carozza notes, the human rights traditions of Latin American states married the individualistic and socioeconomic dimensions of human dignity. See Paolo G Carozza, ‘From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights’ (2003) 25 *Human Rights Quarterly* 281.

²³ Roland Burke, *Decolonization and the Evolution of International Human Rights* (University of Pennsylvania Press 2018); Aiah Hasan, ‘Report by Aiah Hasan (Algeria) in Afro-Asian Peoples’ Solidarity Conference Cairo, December 26, 1957–January 1, 1958’ (Foreign Languages Publishing House 1958); Katharine McGregor and Vannessa Hearman, ‘Challenging the Lifeline of Imperialism: Reassessing Afro-Asian Solidarity and Related Activism in the Decade 1955–1965’ in Luis Eslava, Michael Fakhri, and Vasuki Nesiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (Cambridge University Press 2017).

²⁴ Departemen Penerangan Republik Indonesia, *Pidato-Pidato Peringatan Ulang Tahun ke-V Konperensi Asia-Afrika: tahun 1960 [Speeches for the Commemoration of the Fifth Year since the Asia Africa Conference: 1960]* (Departemen Penerangan RI 1960).

²⁵ George M Kahin, *The Asian-African Conference: Bandung, Indonesia, April 1955* (Cornell University Press 1956).

²⁶ Jensen (n 14).

²⁷ *ibid.*

²⁸ James T Gathii, ‘The Promise of International Law: A Third World View’ (Grotius Lecture, American Society of International Law Virtual Annual Meeting, 25 June 2020).

²⁹ Christopher NJ Roberts, *The Contentious History of the International Bill of Human Rights* (Cambridge University Press 2015).

³⁰ Jensen (n 14); Steven LB Jensen, *The Making of International Human Rights Law: The 1960s, Decolonization, and the Reconstruction of Global Values* (Cambridge University Press 2017).

³¹ Bertrand G Ramcharan, ‘Equality and Non-discrimination’ in Louis Henkin (ed), *The International Bill of Rights: The Covenant on Civil and Political Rights* (Columbia University Press 1981).

bloc first catapulted to international visibility because of its concerted condemnation of the apartheid regime of South Africa.³² Indeed, in the very first meeting of the Commission of Human Rights in 1947, the postcolonial delegation succeeded in persuading the Commission to recognize that the apartheid regime perpetrated 'racial persecution and discrimination'.³³ On this basis, securing the 'unity of the human race' became the Commission's ambition.³⁴ Many postcolonial states advanced this agenda in the drafting of the ICESCR as well, particularly advocating that the prohibition of racial discrimination be incorporated into the recognition of ESCRs.

One example is the right to work, as recognized in Article 6 of the ICESCR. Much of the groundwork for the recognition of the right to work was done by Asian states such as Pakistan and Afghanistan,³⁵ clarifying how unjust work conditions result from existing social prejudices against racialized communities.³⁶ This is reflected in the practice of relegating racialized peoples to low-skilled employment³⁷ and requiring fluency in colonial languages to prevent racialized employees³⁸ from obtaining identity documents.³⁹ In more contemporary readings of the right to work, monitoring bodies such as the CESCR and the Human Rights Council have found that racial discrimination continues to be the highest contributor to national unemployment.⁴⁰ Racial discrimination has been placed at the centre of other rights too. In the case of the right to health, for instance, early negotiations led by the Philippines and Afghanistan⁴¹ invited attention to how racialized communities were disproportionately disadvantaged in terms of access to health care.⁴² First introduced in the Covenant by the state of Jamaica, since the adoption of the Covenant, many interpretive bodies such as the Special Rapporteurs on Health and on Racism have condemned states for enabling health inequities between dominant and oppressed racial groups.⁴³ Racialized peoples are reported to have been denied access to emergency care, subjected to forced

³² UNGA Third Committee (112th Meeting) 'Summary Record' (25 October 1948) UN Doc A/C.3/SR.1127.

³³ UN Commission on Human Rights (1st Meeting) 'Summary Record' (27 January 1947) UN Doc E/CN.4/SR.1.

³⁴ UN Commission on Human Rights (13th Meeting) 'Summary Record' (4 February 1947) UN Doc E/CN.4/SR.13.

³⁵ UNGA Third Committee (710th Meeting) 'Summary Record' (13 December 1956) UN Doc A/C.3/SR.710.

³⁶ Constitution of the International Labour Organization (adopted 1 April 1919, entered into force 28 June 1919) 15 UNTS 40.

³⁷ CESCR, 'Concluding Observations: Ukraine' (4 January 2008) UN Doc E/C.12/UKR/CO/5.

³⁸ *Jean-Louis Ramiaranjatovo v Fitsaboana Maso* (2004) Antsirabe Labour Court No 58 (Madagascar).

³⁹ CESCR, 'Concluding Observations: Russian Federation' (12 December 2003) UN Doc E/C.12/1/Add.94.

⁴⁰ CESCR, 'Concluding Observations: Bosnia and Herzegovina' (24 January 2006) UN Doc E/C.12/BIH/CO/1; 'Concluding Observations: Estonia' (19 December 2002) UN Doc E/C.12/1/Add.85; 'Concluding Observations: Macedonia' (15 January 2008) UN Doc E/C.12/MKD/CO/1; 'Concluding Observations: Hungary' (16 January 2008) UN Doc E/C.12/HUN/CO/3.

⁴¹ UNGA Third Committee 'Draft International Covenants on Human Rights: Amendments to Article 13 of the Draft Covenant on Economic, Social and Cultural Rights' (1956) UN Doc A/C.3/L.589.

⁴² *ibid*; UN Commission on Human Rights, 'Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health' (11 February 2005) UN Doc E/CN.4/2005/51.

⁴³ UNGA 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health - racism and the right to health' (20 July 2022) UN Doc A/77/197.

sterilization, offered poor medicines, and even non-consensually treated as subjects of clinical trials.⁴⁴ No doubt, facially, the ICESCR's engagement with race appears to be quite progressive. However, behind the veneer of an easy acceptance of the normative immorality of *racial discrimination*, the Covenant's engagement with *racism* proves to be normatively dubious and theoretically suspect.

Firstly, in spite of including race within the enumerated grounds of discrimination, the Covenant chooses not to define race at all, unlike other identity categories such as gender, religion, and national origin, which are considerably theorized. When the list of enumerated protected grounds was being drawn up, Covenant drafters shared that the grounds—taken together—were *intended* to address the rampant racial discrimination in the United States, particularly against Indigenous peoples.⁴⁵ Yet, race itself was left unspoken. The historical records of the Covenant are equally helpful. At the Universal Declaration of Human Rights (UDHR) negotiations, delegates from India proposed the addition of the word 'colour' as an enumerated ground for non-discrimination. In deliberating the conceptual boundaries of colour, delegates shed light on its relationship with race, with delegates from Lebanon, the Philippines, and China clarifying that race *included* colour and ethnicity—all of which are immutable features of one's birth.⁴⁶ Their comments implied that race was considered to have a more social rather than scientific basis.⁴⁷

By failing to define race as such, the Covenant confers race with *naturality*, treating it as a *pre-existing difference* between rightsholders.⁴⁸ The naturality of race, as Christopher Gevers argues, is not coincidental. It is a deliberate construction of fiction that nurtures the racial imaginary of international law as a system of values and rules made by and for white subjects.⁴⁹ Naturalizing race in this way makes it impossible to historicize or explain racism,⁵⁰ a disadvantage imposed purely on those *subjugated by racism*. This is only exacerbated by the incorporation of colour into the category of race.⁵¹ Colour, as Shahab Saqib's chapter in this collection explains, was another work of fiction that was imported into social hierarchies both in the west and in postcolonial societies simply to vindicate the racial thinking of international law by colouring those that international law was looking to exclude.⁵²

⁴⁴ *ibid* [35]; OHCHR 'Communication to Special Procedures' (OHCHR, 3 May 2024) <<https://spcomm.reports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28751>> accessed 23 April 2024; CESCR 'General Comment No 17' (12 January 2006) UN Doc E/C.12/GC/17.

⁴⁵ Johannes Morsink, *'Nondiscrimination' in the Universal Declaration of Human Rights for a New Generation* (University of Pennsylvania Press 2022).

⁴⁶ UN Commission on Human Rights (35th Meeting) 'Summary Record' (12 December 1947) UN Doc E/CN.4/SR.35; see remarks of the Belgian delegation raising the minority view of race being a scientifically justifiable.

⁴⁷ UN Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities (426th Meeting) 'Summary Record' UN Doc E/CN.4/Sub.2/SR.4/2.

⁴⁸ Robert Knox, 'International Law, Race, and Capitalism: A Marxist Perspective' (2023) 117 AJIL Unbound 55.

⁴⁹ Christopher Gevers, 'Unwhitening the World: Rethinking Race and International Law' (2021) UCLA Law Review 1652.

⁵⁰ Knox (n 48).

⁵¹ UNGA Third Committee (659th Meeting) 'Summary Record' (9 November 1955) UN Doc A/C.3/SR.659. Israel, too, described apartheid as a colour-based identity discrimination, noting that 'men are deprived of rights and opportunities because of the colour of their skin.'

⁵² See Saqib, ch 6 in this volume.

Secondly, the Covenant is marked by a conspicuous silence on *racism*, where racism can be understood—invoking Derrick Bell’s conceptualization—as a tool of socio-economic stratification in which white people enjoy supremacy via the oppression of Black people.⁵³ Throughout the ten-year drafting discussions of the Covenant, there is only one fleeting reference to racism: that of the Lebanese delegate describing ‘nazism’ and ‘zionism’ as forms of racism.⁵⁴ This is not to say that the spectre of racism did not loom large over the minds of the Covenant drafters. Famously, Soviet delegate Alexi Pavlov strongly opposed South Africa’s bid to prevent the proscription of racial discrimination from being included in the Covenant, inviting attention to the systemic ways in which Asians and Black South Africans were systematically eviscerated from economic and social life in South Africa by application of the apartheid regime. Pavlov remarked how ‘Indians were forced to live in restricted areas, where there was a shocking mortality rate. The colour line was strictly drawn in theatres, parks, restaurants, cafés, and railway trains. Millions of people paid in blood and tears for the policy of discrimination pursued by the Government of the Union of South Africa.’⁵⁵ The Soviet delegate was actually describing racism, but he hesitated to call it by that name. Compared to racism, the Covenant is liberal in its proscription of racial discrimination. The drafting history is replete with examples of how racial discrimination was credited as the inspiration for the Covenant. As the previous paragraphs note, it was also inserted into the formulation of multiple ESCRs.

Although racial discrimination seems to be an adjectival form of racism, the differences between the two are far from slight. Racial discrimination can be understood as ‘any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.’⁵⁶ Racial discrimination, however, does not address the culpability of structures and institutions of the state in the way that racism does. If racial discrimination penalizes the visible conduct of individuals, racism proscribes the *ideology* of segregating people on the basis of race. Racial discrimination places guilt on select individuals, whereas racism implicates larger systems of power, knowledge, and thought. Scholars like Anna Spain Bradley argue that the Covenant’s silence on racism and visibly inconsistent commitment to racial discrimination are by design.⁵⁷ The few and far mentions of racism in the drafting of the Covenant ensure that racism is confined to the realm of an *extreme ideology* that rears its head only in an exceptional, totalitarian state. By locating racism in the exceptional and the extreme such as the nazi or apartheid state, a broader understanding of ‘the interaction between racism as a modern political project and the European nation-state’ is lost.⁵⁸ This works to the advantage of western

⁵³ Derrick Bell, *Faces at the Bottom of the Well: The Permanence of Racism* (Basic Books 1992).

⁵⁴ UNGA Third Committee (649th Meeting) ‘Summary Record’ (1 November 1955) UN Doc A/C.3/SR.649.

⁵⁵ UNGA Third Committee (112th Meeting) ‘Summary Record’ (25 October 1948) UN Doc A/C.3/SR.1127.

⁵⁶ ICERD (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (ICERD), Article 1.

⁵⁷ Anna Spain Bradley, ‘Human Rights Racism’ (2019) 32 *Harvard Human Rights Journal* 1.

⁵⁸ Alana Lentini, *Racism and Anti-racism in Europe* (Pluto Press 2004).

liberal states that have historically benefited from structures of racism. These benefits are fastened more securely by the Covenant's visibly insistent commitment to the prohibition of racial discrimination, which succeeds in diverting attention away from the Covenant's complicity in naturalizing race and diminishing the everyday impact of racism.

The Covenant's damning relationship with racism points to a more systemic feature of international human rights law, one that leaves little capacity within international law to interrogate the discipline's complicity in sustaining the apparatus that enables racism. This feature is better known as eurocentrism.

3. Eurocentrism as the enabler of racism

Originating from European imperialism, eurocentrism describes the centring of European or white ways of knowing and defining the world.⁵⁹ In Egyptian thinker Samir Amin's words, 'eurocentrism's manifestations, like those of other prevailing social phenomena, are expressed in the most varied of areas: day-to-day relationships between individuals, political information and opinion, general views concerning society and culture, social science.'⁶⁰

Eurocentrism shares a peculiar relationship with racism, serving as a foundation for enabling and legitimizing racism by positioning European thought as normal and superior. In the early eighteenth century, racial difference was predicated on abjection. Racial abjection, as Charles Mills and Juliet Hooker explain, creates white identity from the disgust and desire felt towards Blackness and the pain of Black people.⁶¹ The repulsiveness of the Black body was the reasoning offered to justify that higher forms of life were meant to dominate the lower.⁶² 'Racial abjection simultaneously constructs racial difference and renders it incoherent by exposing its arbitrary and ambiguous nature.'⁶³ However, these assertions proved to be quite precarious. As imperialism came to be challenged in many parts of the world, it was no longer sufficient to evoke the abjection of race alone. The biological horrors of co-existing with coloured peoples could not explain why the labour of coloured peoples could be exploited. To do so, race had to transition from being a marker of biological difference to a grammar of political economy.

Eurocentrism was the method used to achieve this shift: placing European thought at the centre allowed racial *worldmaking*. Because European thought dictated the political economy, free labour was considered a birthright of white employees or what David Roediger calls the 'wages of whiteness.'⁶⁴ Moreover, because sovereignty was

⁵⁹ Samir Amin, *Eurocentrism* (2nd edn. Monthly Review Press 2009).

⁶⁰ *ibid* 179.

⁶¹ Charles Mills, *Blackness Visible: Essays on Philosophy and Race* (Cornell University Press 1998); Juliet Hooker, 'Black Protest/White Grievance: On the Problem of White Political Imaginations Not Shaped by Loss' (2017) 116(3) *South Atlantic Quarterly* 483.

⁶² Mills (n 61).

⁶³ Brandon R Davis, 'The Politics of Racial Abjection' (2023) 20(1) *Du Bois Review* 143.

⁶⁴ David R Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (Rev edn, Verso 2007).

seen as the provenance of European states alone, the colonization of coloured peoples was understood to be legally permissible. In this way, race rapidly ‘became the ideological medium through which people posed and apprehended basic questions of power and dominance, sovereignty and citizenship, justice and right’⁶⁵

International law was one of the first and the most successful laboratories of this analytical experiment using eurocentrism and racism, a critique that was first vocalized by Third World Approaches to International Law (TWAIL) scholars. By re-configuring international law through the lens of colonialism,⁶⁶ TWAIL scholars showed how imperialism and later colonialism erased the contributions of those outside Europe, both to the originary encounters of international law and to its contemporary praxis.⁶⁷ A number of critical scholars have pointed to the eurocentrism ingrained in the list of sources of international law,⁶⁸ the jurisdiction of international courts,⁶⁹ the publishing preferences of international legal journals,⁷⁰ the rules permitting use of force,⁷¹ and even the teaching of international law.⁷² The impact of eurocentrism in international law is not confined to the epistemic realm alone.⁷³ Eurocentrism incorporates ‘prejudice against the Other’ into the political, cultural, and social world of international law as well.⁷⁴ It is no surprise that racialized peoples are the most frequent victims of human rights abuses by states and state institutions.

The ongoing Israeli genocide in Gaza makes the links between eurocentrism and racism in international law more apparent than ever. Since the Hamas-led offensive of 7 October 2023 and the genocidal destruction that Israel has wreaked ever since in Gaza, the West Bank, and East Jerusalem, mainstream media, international legal institutions, academics, and states have rushed to invoke the language of international law.⁷⁵ Media channels have reported on the ongoing ‘humanitarian conflict’ or ‘crisis’, ‘calling on ‘both sides’ to use ‘restraint’ and, partly, ‘blaming the Palestinian Resistance

⁶⁵ *ibid.*

⁶⁶ Andrew F Sunter, ‘TWAIL as Naturalized Epistemological Inquiry’ (2007) 20 *Canadian Journal of Law & Jurisprudence* 475.

⁶⁷ Georges Abi-Saab, ‘The Third World and the Future of the International Legal Order’ (1973) 29 *Revue Egyptienne de Droit International* 27; JIG Syatauw, *Some Newly Established Asian States and the Development of International Law* (Martinus Nijhoff 1961).

⁶⁸ Ntina Tzouvala, ‘The Specter of Eurocentrism in International Legal History’ (2021) 31 *Yale Journal of Law & Humanities* 413.

⁶⁹ BS Chimni, ‘The International Law of Jurisdiction: A TWAIL Perspective’ (2022) 35 *Leiden Journal of International Law* 29.

⁷⁰ Mohsen al Attar and Claire Smith, ‘Racial Capitalism and the Dialectics of Development: Exposing the Limits and Lies of International Economic Law’ (2024) 35 *Law Critique* 149.

⁷¹ Ntina Tzouvala, ‘TWAIL and the “Unwilling or Unable” Doctrine: Continuities and Ruptures’ (2015) 109 *AJIL Unbound* 266.

⁷² Makane M Mbengue and Olabisi D Akinkugbe, ‘The Criticism of Eurocentrism and International Law: Countering and Pluralizing the Research, Teaching, and Practice of Eurocentric International Law’ in Anne van Aaken and others (eds), *The Oxford Handbook of International Law in Europe* (Oxford University Press 2023) and Mohsen al Attar, ‘Must International Legal Pedagogy Remain Eurocentric’ (2021) 11 *Asian Journal of International Law* 176.

⁷³ Arturo Escobar, *Territories of Difference: Place, Movements, Life, Redes* (Duke University Press 2008) 310–11.

⁷⁴ Gloria Anzaldúa, *Borderlands: The New Mestiza = La Frontera* (Aunt Lute Books 2007).

⁷⁵ Tor Krever and others, ‘On International Law and Gaza: Critical Reflections’ (2024) 12(2) *London Review of International Law* 217.

for the ongoing Israeli massacres.⁷⁶ Legal scholars have engaged in pages of debates about the principles of distinction and necessity within international humanitarian law, the permissible limits of the use of force *in jus in bello*, and the reasonable restrictions that can be placed on the enjoyment of human rights.⁷⁷ This coverage is a marked departure from the resolute silence of the western liberal fraternity towards Israel's historical occupation of Palestine and the longstanding decolonial struggles for resistance by Indigenous Palestinians.⁷⁸ The events of 7 October 2023 and the shuddering carnage that Israel launched presented a moment of moral reckoning for the western liberal powers, all of whom rushed to express solidarity with Israel. International law and its eurocentric design proved crucial in articulating this 'malleable morality' of western liberalism.⁷⁹

Despite confirmation from the highest international court (the International Court of Justice) that Israel has occupied Gaza and the West Bank,⁸⁰ ministers, lawyers, and news channels have unabashedly cited international law to deny that Israel's conduct meets the standard of genocidal intent.⁸¹ News channels continue not to mention who carried out the bombing of schools, homes, museums, and hospitals in Gaza; the sexual crimes against men and women in Gaza; or the plunder of Gazan homes.⁸² Citing the international laws of war, the western world has conveniently concluded that Israel is at best 'only culpable for the ongoing "war" in Palestine, just as much as Palestinians themselves are.'⁸³ The genocide of Palestinians is 'en brera' or 'the only choice available to Israelis to defend themselves against the violence used by Hamas.'⁸⁴

As Robert Knox writes, the sanitization of Israeli guilt is not an example of hypocrisy or inconsistent application of international law, but the very objective of international law.⁸⁵ The genocide in Gaza unmasks the *structural racism* within international law. Gaza makes clear that the rules of necessity in international humanitarian law were

⁷⁶ Ramzy Baroud, "Watering Down" Genocide: No More Moral Compromises on Palestine, Please' (*CounterPunch*, 30 July 2024) <<https://www.counterpunch.org/2024/07/30/watering-down-genocide-no-more-moral-compromises-on-palestine-please/>> accessed 23 April 2024.

⁷⁷ Shahd Hammouri, 'The Commission of Inquiry on Palestine and Israel: To Speak of Genocide from a European Liberal Lens' (2024) *Peace Human Rights Governance* 1; Justina Uriburu, 'On Gaza, International Law, and Future Conversations' (2024) 12(2) *London Review of International Law* 298.

⁷⁸ 'Watershed Moment: Hundreds of Academics Equate Israel Occupation with Apartheid' (*Middle East Eye*, 24 January 2024) <<https://www.middleeasteye.net/news/watershed-moment-hundreds-academics-equate-israel-occupation-apartheid>> accessed 23 April 2024.

⁷⁹ 'War on Gaza: From Decades of Colonialism to a Genocidal Moment' (*Middle East Eye*, 15 October 2023) <<https://www.middleeasteye.net/opinion/war-gaza-israel-decades-colonialism-genocidal-moment>> accessed 23 April 2024.

⁸⁰ Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem (Advisory Opinion) [2024] ICJ Rep.

⁸¹ Jeremy Scahill and Ryan Grim, 'Leaked NYT Gaza Memo Tells Journalists to Avoid Words "Genocide," "Ethnic Cleansing," and "Occupied Territory"' (*The Intercept*, 15 April 2024) <<https://theintercept.com/2024/04/15/nyt-israel-gaza-genocide-palestine-coverage/>> accessed 23 April 2024.

⁸² Natalie Khazaal, 'Bias Hiding in Plain Sight: Decades of Analyses Suggest US Media Skews Anti-Palestinian' (*The Conversation*, 29 February 2024) <<http://theconversation.com/bias-hiding-in-plain-sight-decades-of-analyses-suggest-us-media-skews-anti-palestinian-216967>> accessed 23 April 2024.

⁸³ Baroud (n 76).

⁸⁴ 'Israel's Preventative War' (*Politico*, 10 October 2023) <<https://www.politico.eu/article/israel-gaza-preventative-war/>> accessed 23 April 2024.

⁸⁵ Robert Knox, 'Hypocrisy, Race, and International law' (2024) 12(2) *London Review of International Law* 224.

always intended to disadvantage technologically challenged, racialized parties to an armed conflict. International criminal law—in requiring endorsements from known depredators such as the United States (through the device of the Security Council authorization)—was always intended to immunize white perpetrators from prosecution.⁸⁶ Similarly, international human rights law was always intended to free western states from the traps of fixed obligations towards securing the rights of minorities. That is why economic, social, and cultural rights were made contingent on state capabilities and executive discretion.

As Nahed Samour and Ntina Tzouvala note, the genocide unfolding in Gaza can only be explained if we acknowledge the ‘racialised and, more broadly, hierarchical elements of the international (legal) order that authorise excessive, often eliminationist violence as a response to the violence (justified or not, legitimate or not) of subaltern actors.’⁸⁷ This hierarchy and the drunken power that those beholden to international law enjoy emerges from a deep-seated eurocentrism within international law. In the white world in which international law resides, there can be no genocide when a white state eliminates ethnic minorities, in the same way that Israel has full license to eliminate ‘human animals’ such as Palestinians.⁸⁸ Even if one produces evidence of schools, refugee camps, and hospitals being burnt with thousands of Palestinians inside, it would not meet the standard of proof unless ‘internationally accredited investigators’ are able to attest to the veracity of such proof.⁸⁹ In this hierarchical world, even time, space, and feeling are dictated by European thought.⁹⁰ The humanitarian crisis in Gaza and the West Bank is temporally affixed to 7 October 2023, rendering consideration of the historical continuities between the Nakba of 1948, the interim occupation of the West Bank, and the events of the present day impossible.⁹¹ The spatial narrative is similarly controlled.⁹² Gaza is spatially classified as an isolated conflict zone, caught in the crossfire between two warring powers: Hamas and Israel.⁹³ Such a spatial framing disconnects Gaza from the histories of Palestinian struggle and invisibilizes the everyday lived experiences of Palestinians under occupation outside of the active hostilities. Each of these assaults on time and space and ontology occurs through law. In this way, the eurocentrism of international law nurtures racism in its

⁸⁶ Rugenge wa Nciko, ‘Symposium on Unbroken Bond: Solidarity Between the Palestinian Al-Haq and Congolese Action Youth Platform’s Campaigns against Genocide’ (*Opinio Juris*, 31 July 2024) <<https://opiniojuris.org/2024/07/31/symposium-on-unbroken-bond-tracing-the-ties-between-african-and-palestinian-anti-colonial-struggles/>> accessed 23 April 2024; see also John Reynolds, ‘Genocide and/as Civilisation’ (2024) 12(2) *London Review of International Law* 279.

⁸⁷ Nahed Samour and Ntina Tzouvala, ‘Self-Defence in Israel and Palestine: Unsuspending Disbelief’ (*Research Society of International Law*, 27 November 2023) <<https://rsilpak.org/2023/self-defence-in-israel-and-palestine-unsuspending-disbelief/>> accessed 23 April 2024.

⁸⁸ Brett Wilkins, ‘Israeli Defense Minister Calls Palestinians “Human Animals” in Vow to Cut Off All Food, Fuel to Gaza’ (*HuffPost*, 9 October 2023) <https://www.huffpost.com/entry/israel-defense-minister-human-animals-gaza-palestine_n_6524220ae4b09f4b8d412e0a> accessed 23 April 2024.

⁸⁹ William A Schabas, *The International Legal Order’s Colour Line: Racism, Racial Discrimination, and the Making of International Law* (Oxford University Press 2023).

⁹⁰ Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oneworld Publications 2006).

⁹¹ Noura Erakat, ‘The Limits and Potential of International Law in Gaza’ (Lecture, Georgetown University Center for Contemporary Arab Studies, Washington DC, 8 March 2024) <<https://ccas.georgetown.edu/2024/03/08/the-limits-and-potential-of-international-law-in-gaza/>> accessed 23 April 2024.

⁹² Chandler (n 76).

⁹³ *ibid.*

most terrifying proportions. The net effect is that eurocentrism enables international law to exist as a racist regime.⁹⁴ The racist structures of international law, in turn, allow for white domination to thrive. It is the thirst for domination that motivates white people and institutions to be betrothed to the international legal project.⁹⁵

4. Finding evidence of eurocentrism in the ICESCR

The ICESCR is no stranger to eurocentrism. Within the Covenant, two pools of evidence of eurocentrism are covertly available: one, the recurring use of rhetorical devices such as civilization and economic development, and second, the epistemic make-up of the voices who participated in the treaty's making.

4.1 The grammars of civilization and economic development

Described by many as the 'founding ideal' of international law,⁹⁶ civilization appears in many international treaties in the form of 'civilized nations', 'civilized worlds', and 'civilized peoples'.⁹⁷ Having originated as a justification for settler colonialism, the valence of civilization remains undiminished, as it helps western liberal states rely on eurocentrism to validate the economic and epistemic suppression of the non-western world.⁹⁸ Analytically and normatively, civilization draws on regressive racial classifications.⁹⁹ Civilization is seen as the anathema for the savagery of racialized peoples. Throughout history, racist regimes have justified Zionist and apartheid projects as attempts to 'save western civilization from uncivilized savages'.¹⁰⁰ What makes civilization even more insidious is how it is dressed in a morally defensible, *improvement-oriented* narrative. As Sarah Krakoff writes, civilization is framed as an opportunity offered to racialized peoples 'to become white',¹⁰¹ and this is how it is made resistant to challenge. The construction of this narrative reveals that it is eurocentrism through the centring of the white standard of life that facilitates the racist civilizing mission to fester.

⁹⁴ See Saqib, ch 6 in this volume.

⁹⁵ More generally, see Kyoko Kishimoto, 'Anti-Racist Pedagogy: From Faculty's Self-Reflection to Organizing within and beyond the Classroom' (2018) 21(4) *Race Ethnicity and Education* 540.

⁹⁶ William E Hall, *A Treatise on International Law* (3rd edn, Clarendon Press 1890).

⁹⁷ Schabas (n 89).

⁹⁸ Antony Anghie and BS Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflicts' (2003) 2 *Chinese JIL* 77; Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination* (Oxford University Press 2016).

⁹⁹ Jean Allain, 'Slavery and the League of Nations: Ethiopia as a Civilised Nation' (2006) 8 *Journal of the History of International Law* 213. Hathaway and Shapiro find the interconnections between racism and civilization in the early writings of Grotius justifying private wars against the Portuguese. Oona Hathaway and Scott Shapiro, *The Internationalists* (Simon & Schuster 2018).

¹⁰⁰ 'Gallant: "This is a War Between Light and Darkness"' (*Jerusalem Post*, 15 October 2023) <<https://www.jpost.com/israel-news/article-768470>> accessed 23 April 2024.

¹⁰¹ Sarah Krakoff, 'They Were Here First: American Indian Tribes, Race, and the Constitutional Minimum' (2017) 69 *Stanford Law Review* 491.

Like other fields of international law, ESCRs have also routinely employed the discourse of civilization. Particularly in the ICESCR, civilization has been a fixture since some of the earliest iterations of the Covenant. Even though postcolonial states succeeded in inserting race into the Covenants, ESCRs were accepted solely because their protection was considered the prerogative of 'civilized nations'.¹⁰² Hernán Santa Cruz, the Cuban delegate to the Commission of Human Rights observed: 'Europeans colonized portions of Africa or Asia in order to preserve the indigenous peoples from barbarism, to convert them to Christianity, or to bring to them the "benefits" of civilization.'¹⁰³ The only critical voice raising the alarm about using the grammar of civilization was the Soviet delegation, but as a lone dissenter it was unable to mobilize much support.¹⁰⁴ The systematic invocation of civilization forced a universal acceptance that it was the burden of the 'civilized' white man to ensure this improvement occurred.¹⁰⁵

The drafting records of the ICESCR reveal that it was in fact often postcolonial states that invoked the discourse of civilization. The Pakistani and Guatemalan delegations linked the protection of the right to work to the protection of human civilization. The Pakistani delegate noted that recognition of the right to work was important because it enabled each citizen to 'contribute to the enrichment of the civilization to which he belonged and to the production of the goods and services which were essential to the life of his country'.¹⁰⁶ Similarly, Uruguay proposed the introduction of annual paid leave because 'this was the minimum guarantee in all civilized countries'.¹⁰⁷ Even the debate about cultural rights and the right to science was attached to civilization, with the Czechoslovakian delegate claiming that cultural rights were in service of the 'creation of a world civilization'.¹⁰⁸

By the mid-twentieth century, the explicit invocation of the grammar of civilization had become 'untenable in a world witnessing antiracist, anti-imperialist and anti-capitalist struggles'.¹⁰⁹ In the bid to rescue civilization from antiracist struggles, the international legal community started to search for less suspect alternatives. The framework of economic development emerged as the most suitable disguise for the civilizing mission. First invoked in technical standard-setting organizations such as the Permanent Mandates Commission and the International Labor Organization,¹¹⁰

¹⁰² Glenda Sluga, 'René Cassin: Les droits de l'homme and the Universality of Human Rights, 1945-1966' in Stefan Ludwig Hoffman (ed), *Human Rights in the Twentieth Century* (Cambridge University Press 2011); Burke (n 23).

¹⁰³ Hernán Santa Cruz, *Racial Discrimination* (United Nations 1977) [40].

¹⁰⁴ UN Commission on Human Rights Drafting Committee (2nd Meeting) 'Summary Record' (11 June 1947) UN Doc E/CN.4/AC.1/SR.2.

¹⁰⁵ See the Belgian and American delegates' comments at EECOSOC (151st Meeting) 'Report of the Commission on Human Rights' (10 August 1950) UN Doc E/AC.7/SR.151.

¹⁰⁶ UNGA Third Committee (709th Meeting) 'Summary Record' (13 December 1956) UN Doc A/C.3/SR.709 (Pakistan's comments); UNGA Third Committee (742nd Meeting) 'Summary Record' (25 January 1957) UN Doc A/C.3/SR.742.

¹⁰⁷ UNGA Third Committee (713th Meeting) 'Summary Record' (17 December 1956) UN Doc A/C.3/SR.713.

¹⁰⁸ UNGA Third Committee (797th Meeting) 'Draft International Covenants on Human Rights' (31 October 1957) UN Doc A/C.3/SR.797.

¹⁰⁹ Tzouvala (n 68).

¹¹⁰ Guy Fiti Sinclair, 'A "Civilizing Task": The International Labour Organization, Social Reform, and the Genealogy of Development' (2018) 20 *Journal of the History of International Law* 145.

economic development was quickly absorbed into the broader ideal of improvement.¹¹¹ Given its technically dense and neutral-seeming language, economic development enjoyed more immunity from critique than the doctrine of civilization as such, even though the former was merely a reincarnation of the latter. At its core, the grammar of economic development—much like its predecessor—was entangled in eurocentrism. Effectively, the objective of securing economic development through human rights justified the ‘global expansion and reproduction of capitalism in ways that denied non-Europeans any form of historical agency and commanded them into Europeanising themselves at the pains of irreversible social and cultural decline.’¹¹²

When the ICESCR was being negotiated, participating states were hesitant to assent to a universal and absolute obligation to secure ESCRs, noting that the degrees of performance were contingent on each state’s resource capabilities.¹¹³ This reservation was not completely ill-founded, as not all states have equally and evenly benefited from economic development.¹¹⁴ In the ICESCR, differentiated economic capacities were addressed by introducing the ‘progressive realisation’ standard, according to which states’ performance of their obligations would be assessed in proportion to their means. With these caveats formalized within the text of the Covenant, the added *discourse* of economic development was no longer about moderating responsibility based on economic capacity. Instead, development was simply utilized to affirm the colour line, separating the world into the ‘disproportionately poor and relatively powerless’¹¹⁵ and the developed, without acknowledging the former’s complicity in creating and sustaining the latter, and the Covenant offers ample evidence of this.¹¹⁶ The standard of ‘productive and full employment’ is interpreted differently in developing vis-à-vis developed countries.¹¹⁷ Forced labour is recognized as a social menace that only developing states grapple with.¹¹⁸ Developed states are obliged to offer assistance to ‘poorer developing states’ to discharge their obligations towards the right to health.¹¹⁹ State obligations towards education—especially towards eliminating illiteracy and offering vocational education—are also segregated based on the degree of development.¹²⁰ As the Soviet delegate at the Commission of Human Rights

¹¹¹ Ntina Tzouvala, *Capitalism As Civilisation: A History of International Law* (Cambridge University Press 2020).

¹¹² Amin (n 59).

¹¹³ See Argentina’s comments in UNGA Third Committee (299th Meeting) ‘Draft First International Covenant on Human Rights and Measures of Implementation’ (31 October 1950) UN Doc A/C.3/SR.299; UN Commission on Human Rights (184th Meeting) ‘Proposals for Additional Articles to be Inserted in Part II of the Draft Covenant’ (19 May 1950) UN Doc E/CN.4/SR.184.

¹¹⁴ Cristina Lafont, ‘Global Justice and Economic and Social Rights’ in Malcolm Langford and Katharine G Young (eds), *The Oxford Handbook of Economic and Social Rights* (Oxford University Press 2022).

¹¹⁵ Ruth Gordon, ‘Critical Race Theory and International Law: Convergence and Divergence’ (2000) 45 Villanova Law Review 827.

¹¹⁶ Anibal Quijano, ‘Colonialidad del poder y clasificación social’ (2000) 1(2) Journal of World-Systems Research 342; Jessica Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism* (Verso 2019).

¹¹⁷ Krzysztof Drzewicki, ‘The Right to Work and Rights in Work’ in Asbjorn Eide, Catarina Krause, and Allan Rosas (eds), *Economic, Social and Cultural Rights: A Textbook* (2nd edn, Kluwer 2001).

¹¹⁸ *ibid.*

¹¹⁹ CESCR ‘General Comment No 14: The Right to the Highest Attainable Standard of Health’ (11 August 2000) UN Doc E/C.12/2000/4.

¹²⁰ CESCR ‘General Comment No 13: The Right to Education’ (8 December 1999) UN Doc E/C.12/1999/10.

remarked, economic development was actually intended to emphasize that ‘races and nations did not have equal rights.’¹²¹

Clearly, not all references to development relate exclusively to economic *capabilities*; they also draw on the correlations between poverty and race.¹²² It shows how European states and Third World states naturalized white modes of capitalist accumulation, embracing it as the universal standard of progress.¹²³ By centring white modes of production and ordering of labour and land, the rhetoric of economic development allowed race to become the primary means of ordering human bodies and their relationship with the economy, enabling dehumanizing practices such as slavery.¹²⁴ In so doing, developmentalism ensured the continuation of racism.

As this section shows, contrary to mainstream claims, the Covenant has struggled to rid itself of the eurocentric grammars of international law, particularly concerning race. Instead, from the time of its conception, the Covenant has provided fertile ground for states—European and Third World—to naturalize race as a means of policing human bodies and their social and economic interactions. On some occasions, race is naturalized through protective measures such as the prohibition of racial discrimination. On other occasions, race is naturalized through the repeated invocation of civilization and economic development as objectives that the protection of ESCRs ought to achieve. What connects all these grammars is the emphasis on white ways of reading race. The following section finds an explanation for the ubiquity of eurocentric grammars in the Covenant in the racial and epistemic dynamics of those representing the participating states in the Covenant.

4.2 Finding evidence in the privileges of racialized representation

As a successor to the UDHR—an instrument widely maligned for its birth defects¹²⁵ and its loyalty to European-origin natural rights theories¹²⁶—the ICESCR is not unfamiliar with the critique of eurocentrism. As Georges Abi-Saab, a prominent Third World jurist, remarked: ‘countries inhabited by people of colour were, by and large, “objects” of international law rather than its “subjects.”’¹²⁷ Today, a diverse group of scholars continues this critique, arguing that international law has benefited from European states positioning themselves as standard-setters.¹²⁸

¹²¹ UNGA (183rd Plenary Meeting) ‘Verbatim Record’ (10 December 1948) UN Doc A/PV.183169.

¹²² OHCHR ‘Report by Maurice Glélé-Ahanhanzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, on His Mission to Brazil’ (23 January 1995) UN Doc E/CN.4/1996/72/Add.1.

¹²³ Robert Knox, ‘Haiti at the League of Nations: Racialisation, Accumulation and Representation’ (2020) 21 Melbourne Journal of International Law 299.

¹²⁴ Eric Williams, *Capitalism and Slavery* (University of North Carolina Press 1994).

¹²⁵ Christian Tomuschat, *Human Rights Between Idealism and Realism* (Oxford University Press 2003).

¹²⁶ Howard Langer, ‘Human Rights: A Documentary on the United Nations Declaration of Human Rights Featuring an Interview with Mrs Eleanor Roosevelt’ (Folkways Records 1958).

¹²⁷ Georges Abi-Saab, ‘The Newly Independent States and the Rules of International Law: An Outline’ (1962) 8 Howard Law Journal 95.

¹²⁸ Tzouvala (n 111); Makau Mutua, *Human Rights Standards: Hegemony, Law and Politics* (State University of New York 2016); Susan Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (Oxford University Press 2000).

Typically, however, attempts to redress the eurocentrism of international law focus on improving the representation of racialized people in international legal spaces. Representation has been a moot point in conversations about the UDHR for many years. The Declaration came to life in an imperial world; there is no denying this. It was drafted at a time when half of the world was still colonized. Including apartheid South Africa, only four of the fifty-four states that exist in Africa today participated in the negotiations and voted on the Declaration.¹²⁹ Famously, in 1947, the civil rights organization National Association for the Advancement of Coloured Peoples (NAACP) led by WEB Du Bois called out the hypocrisy of the UDHR: that Black Americans were both central to the democratic promise of the Declaration and yet remained firmly outside of the rooms where the Declaration was drafted.¹³⁰ Carol Andersen credits Du Bois's appeal and the highly publicized condemnation of NAACP's demands for representation of racialized peoples in the UDHR drafting process for ushering what she calls their 're-enfranchisement'.¹³¹ In the face of the lack of non-European voices in the making of the UDHR, many scholarly efforts started to rescript the Declaration by amplifying the instrumental role played by Asian delegates like Charles Malik from Lebanon, Vijayalakshmi Pandit from India, PC Chang from China, and Carlos Romulo from the Philippines.¹³²

Compared to the UDHR, the twin Covenants saw a significantly higher number of Third World states participating.¹³³ Between 1948 and 1966, UN membership had increased from 58 to 122 states, many of whom were newly independent Asian and African states.¹³⁴ Consequently, the authorship of the Covenants was more *representative* compared to the UDHR, even though important states like China, Malaysia, and Saudi Arabia did not participate.¹³⁵ Postcolonial states led by Liberia, Jamaica, the Philippines, Ghana, and Costa Rica formed the biggest voting bloc at the General Assembly¹³⁶ allowing the Covenants to support the recognition and codification of a number of important protections including the right to be free from racial discrimination, the right to health,¹³⁷ and the right to self-determination.¹³⁸

¹²⁹ Aristoteles Constantinides, 'Questioning the Universal Relevance of the Universal Declaration of Human Rights' (2008) 62/63 Cuadernos Constitucionales de La C tedra Fadrique Furi  Ceriol 49.

¹³⁰ WEB Du Bois (ed), *An Appeal to the World* (NAACP 1947).

¹³¹ Gerald Horne, *Black and Red: WEB DuBois and the Afro-American Response to the Cold War, 1944-1963* (State University of New York 1986); Carol Anderson, *Bourgeois Radicals: The NAACP and the Struggle for Colonial Liberation, 1941-1960* (Cambridge University Press 2015).

¹³² Johannes Morsink, 'Article 1: Born Free and Equal' in Article by Article: The Universal Declaration of Human Rights for a New Generation (University of Pennsylvania Press 2022).

¹³³ Jensen (n 30).

¹³⁴ UN, 'Growth in United Nations Membership, 1945-Present' <www.un.org/en/sections/member-states/growth-united-nations-membership-1945-present/index.html> accessed 23 April 2024.

¹³⁵ Yogesh Tyagi, 'Influence of the ICCPR in Asia' in Daniel Moeckli, Helen Keller, and Corina Heri (eds), *The Human Rights Covenants at 50: Their Past, Present, and Future* (Oxford University Press 2018); Sarah Joseph, Melissa Castan, and Jenny Schultz, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (2nd edn, Oxford University Press 2005).

¹³⁶ Jean H Quataert, *Advocating Dignity: Human Rights Mobilizations in Global Politics* (University of Pennsylvania Press 2009).

¹³⁷ Daniel Ricardo Quiroga-Villamarin, '  An Atmosphere of Genuine Solidarity and Brotherhood  : Hernan Santa-Cruz and a Forgotten Latin American Contribution to Social Rights' (2019) *Journal of the International History of Law* 71

¹³⁸ Article 1 of both the ICCPR and ICESCR recognize the right to self-determination. The fight against racism and apartheid was also the driving force behind the first human rights treaty to be adopted after the UDHR—the ICERD.

However, the emphasis on the participation of negatively racialized delegates confuses tokenism for *epistemic inclusion* of those who are negatively racialized.¹³⁹ By placing reliance merely on facial representation, such accounts both conflate the mere ‘representation’ of postcolonial states with the epistemic representation of those marginalized because of their race¹⁴⁰ and blur counter-stories of those who were not allowed to reach the hallowed halls of the Commission of Human Rights where the UDHR was negotiated precisely because of their racial status.¹⁴¹ Illustratively, the Indian delegation that was involved in drafting the UDHR and later the ICESCR was led by delegates including Vijayalakshmi Pandit, Hansa Mehta, R Venkataraman, and MR Masani¹⁴²—all of whom were privileged caste, affluent diplomats trained in law in elite schools abroad.¹⁴³ The success of Pandit (the sister of India’s first Prime Minister Jawaharlal Nehru)—with many lauding her for combining the ‘best of the East’ with a familiarity of the west¹⁴⁴—inspired the selection of similarly elite diplomats, all of whom fit the moulds of worldly European diplomats while still embracing their Indian origins.¹⁴⁵ The most famed Chinese delegate to the Commission of Human Rights, PC Chang, has often been credited for bringing ‘antiracist Asian values such as Confucianism’ to the Commission’s drawing board when drafting ESCRs.¹⁴⁶ However, Chang’s contributions during the drafting were all geared towards advancing the developmental interests of the Chiang Kai-shek government—much less towards importing Confucianist teachings into the UDHR.¹⁴⁷ Chang was chosen as China’s delegate on account of his training in American universities, his expertise in cultural translations, and his diplomatic experience, as opposed to his grounding in Confucian thought.¹⁴⁸ In her sociological study of the contemporary state of Indian diplomatic services, Kira Huju notes how Asian diplomats were merely Asian in ‘blood and colour, but English in taste, opinions, morals, and intellect’.¹⁴⁹

¹³⁹ Balakrishnan Rajagopal, ‘Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy’ (2006) 27 *Third World Quarterly* 767.

¹⁴⁰ Jensen (n 30).

¹⁴¹ Rajagopal (n 139).

¹⁴² Miloon Kothari, ‘Remembering India’s Contributions to the Universal Declaration of Human Rights’ (*The Wire*, 20 December 2018) <<https://thewire.in/rights/remembering-indias-contributions-to-the-universal-declaration-of-human-rights>> accessed 23 April 2024.

¹⁴³ *ibid*; Sanjoy Ghose, ‘Rights For “Human Beings”, Not Just for “Men”: The Amazing Life of Hansa Mehta’ (*The Wire*, 28 December 2020) <<https://thewire.in/rights/hansa-mehta-universal-declaration-of-human-rights>> accessed 23 April 2024; Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).

¹⁴⁴ RL Khipple, *The Woman Who Swayed America* (Lion Press 1946).

¹⁴⁵ Niraja Gopal Jayal, ‘Hansa Mehta: An Early Indian Feminist’ (*South Asia @LSE*, 12 September 2022); Sanjoy Hazarika, ‘Man in the News: India’s Mild New President: Ramaswamy Venkataraman’ *The New York Times* (New York, 17 July 1987); V Lawrence Sundaram, *A Great Indian Jesuit, Fr Jerome D’Souza, 1897-1977: Priest, Educationist, and Statesman* (Gujarat Sahitya Prakash 1986).

¹⁴⁶ Fernand de Varennes, ‘The Fallacies in the “Universalism versus Cultural Relativism Debate” in Human Rights Law’ (2006) 1 *Asia-Pacific Journal on Human Rights and the Law* 71.

¹⁴⁷ Pierre-Etienne Will, ‘The Chinese Contribution to the Universal Declaration of Human Rights, 1947-48’ in Mireille Delmas-Marty and Pierre-Étienne Will (eds), *China, Democracy, and Law: A Historical and Contemporary Approach* (Brill 2012).

¹⁴⁸ *ibid*.

¹⁴⁹ Thomas B Macaulay, ‘Minute on Indian Education (1835)’ in Mia Carter and Barbara Harlow (eds), *Archives of Empire, Volume I: From the East India Company to the Suez Canal* (Duke University Press 2003).

A closer inspection reveals that the selection of such local elites was also informed by colour, an identity category that imports the same eurocentric logic as race, to ensure that communities disadvantaged by birth are placed at the bottom of socio-economic and epistemic hierarchies.¹⁵⁰ Evidence of this motive can be found in the circumstances of Pandit's appointment as the leader of the Indian delegation to the Commission of Human Rights. Pandit was selected by snubbing other equally competent but caste-oppressed Indian thinkers such as Dr BR Ambedkar.¹⁵¹ Ambedkar was the chairman of the drafting committee of the Indian constitution. He was an internationally renowned spokesperson for equality and the abolition of caste in India, his impassioned advocacy drawing from his own lived experiences as a caste-oppressed Dalit.¹⁵² Around the time of the negotiations of the UDHR, Ambedkar was actively mobilizing with Black civil society organizations and forming networks of antiracism activists including sociologist Du Bois to invite the UN's attention to the shared struggles of Black Americans and Dalits.¹⁵³ However, Ambedkar was restrained from speaking on behalf of India at diplomatic forums by former Prime Minister Jawaharlal Nehru.¹⁵⁴ The story of Pandit's selection at the expense of Ambedkar's voice shows that while material representation of non-European faces and voices certainly challenges the whiteness of international legal spaces, it is unconcerned with challenging the eurocentrism ingrained within postcolonial societies. This is further corroborated by the contents of the contributions made by postcolonial delegates. As the previous section showed, it was primarily postcolonial states that were eager to embed grammars of civilization and developmentalism into human rights. Postcolonial delegations were also often issued specific instructions not to invite attention towards their state's own colour-based discriminatory practices.¹⁵⁵

5. Steps forward

Seeing the ICESCR through the lens of race exposes the eurocentrism of the Covenant, and shows how the Covenant has failed to challenge the racist framework of international law. It also prompts questions about how—if at all—the ICESCR can be reimaged as an antiracist instrument.

¹⁵⁰ Ahmed Memon, 'English in Taste, Indian in Blood': Caste Hegemony in the Making of British International Legal Thought' (2024) 12 London Review of International Law 23.

¹⁵¹ Khushi Rathore, 'Excavating Hidden Histories: Indian Women in the Early History of the United Nations' in Rebecca Adami and Dan Plesch (eds), *Women and the UN: A New History of Women's International Human Rights* (Routledge 2021).

¹⁵² Anurag Bhaskar, *The Foresighted Ambedkar* (Penguin Books 2024).

¹⁵³ BR Ambedkar, 'Letter to WEB Du Bois' (1946) in Dr Ambedkar Life and Mission (Ministry of Culture, Government of India) <<http://indianculture.gov.in/ebooks/dr-ambedkar-life-and-mission>> accessed 23 April 2024.

¹⁵⁴ Bhaskar (n 152); Team Dharma, 'How Prime Minister Jawaharlal Nehru Ousted Dr BR Ambedkar from the Cabinet: The Full Story' (*The Dharma Dispatch*, 14 April 2019) <<https://www.dharmadispatch.in/history/how-prime-minister-jawaharlal-nehru-ousted-dr-b-r-ambedkar-from-the-cabinet-the-full-story>> accessed 23 April 2024.

¹⁵⁵ Indian delegate Hansa Mehta was specifically instructed not to raise internal issues such as caste at the Commission of Human Rights. GS Bajpai, 'Letter to Hansa Mehta' (22 January 1947) Nehru Memorial Museum and Library, New Delhi.

For this to happen, it is imperative for the Covenant's interpretive bodies to *name* racism. As Theo van Boven explains, 'only when named and acknowledged can racism be recognized, identified, and addressed effectively'.¹⁵⁶ Following the adoption of the Covenant, seldom do the interpretive bodies of the Covenant illuminate the links between racism and large-scale violations of ESCRs. In the context of Kenya, the Committee on Economic, Social, and Cultural Rights—the chief interpretive body of the ICESCR—ruled that the marginalization of ethnic minorities, especially nomadic pastoralists, was violative of the Covenant.¹⁵⁷ Similarly, responding to Bolivia's periodic reports, the CESCR noted that Indigenous populations 'suffer from inadequate access to basic education, adequate housing, and health services'.¹⁵⁸ In both cases, the Committee stopped short—arguably deliberately—from characterizing such marginalization as racism. As a principle, the Committee's deliberate sparse references to racism ensure that racism continues to be relegated to the extraordinary rather than the everyday of international law. The Covenant is not alone in taking this position, as most states themselves prefer to deny racism altogether. In 1994, when the Special Rapporteur for Racism surveyed states in preparation for their report, sixteen out of thirty states denied the existence of racism in their territories altogether.¹⁵⁹ Nonetheless, simply because racism is unspoken does not mean that states remain unaware of racism. Indeed, claims rooted in racism have come before the CESCR and Special Procedures on several occasions.¹⁶⁰ Giving name to racism is therefore the first step to take.

There is no doubt that defining racism is challenging and has to be undertaken with great care. It is crucial not to be too ascriptive with the definition of racism, as it is likely to risk reifying eurocentric notions of discrimination, identity, and thought itself. The contemporaneous practice of sister institutions within and outside of the UN framework can prove quite instructive in this respect. In 1978, for instance, the UNESCO defined racism as including 'racist ideologies, prejudiced attitudes, discriminatory behaviour, structural arrangements and institutionalised practices resulting in racial inequality as well as the fallacious notion that discriminatory relations between groups are morally and scientifically justifiable'.¹⁶¹ By contrast, the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance defined racism as 'any theory, doctrine, ideology, or set of ideas that assert a causal link between the phenotypic or genotypic characteristics of individuals or groups and their . . . traits, including the false concept of racial superiority' and acknowledges that racism leads to 'racial inequalities, and to the idea that discriminatory relations between groups are morally and scientifically justified'.¹⁶² Specifically for the ICESCR,

¹⁵⁶ Cohen, *Denial and Acknowledgement: The Impact of Information about Human Rights Violations* (Stanley Center for Human Rights, Hebrew University 1995); Theo van Boven, 'Discrimination and Human Rights Law: Combating Racism' in Sandra Fredman (ed), *Discrimination and Human Rights: The Case of Racism* (Oxford University Press 2001).

¹⁵⁷ CESCR, 'Concluding Observations: Kenya' (3 June 1993) UN Doc E/C.12/1993/6.

¹⁵⁸ CESCR, 'Concluding Observations: Bolivia' (21 May 2001) UN Doc E/C.12/1/Add.60.

¹⁵⁹ UNGA Resolution 49/147 (23 December 1994) UN Doc A/RES/49/147.

¹⁶⁰ The Special Procedures alone have received nearly 500 complaints alleging human rights violations rooted in racism. <<https://spcommreports.ohchr.org/TmSearch/Results>> accessed 22 January 2026.

¹⁶¹ Declaration on Race and Racial Prejudice (adopted by the General Conference of UNESCO at its 20th Session, Paris, 27 November 1978).

¹⁶² Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance (adopted 5 June 2013) OAS Treaty Series A-68, Article 1.

it is important to highlight the links between racism and economic and social discrimination, a complementarity that the former Special Rapporteur of Racism Glele Ahanhanzo from Benin has already explored.¹⁶³ Ahanhanzo's report also clarified how racism is perpetuated by state institutions through economic and social segregation. Since Ahanhanzo's report, the Council of Europe,¹⁶⁴ the Organization of American states,¹⁶⁵ and domestic courts¹⁶⁶ have followed suit.

In naming racism, interpretive bodies such as the CESCER must engage with their own racist origins as well and acknowledge that international law has historically, if not also in present time, benefited from racist ideologies.¹⁶⁷ Some might say that international law is incapable of being antiracist. As Cheryl Harris notes, 'the law has established and protected an actual property interest in whiteness itself'.¹⁶⁸ Even if ridding itself of its racial origins is impossible for the law, a genuine acceptance of the ways in which international human rights law constitutes racism is still achievable. Indeed, on some occasions, the CESCER and Special Procedures have flagged the racism entrenched in domestic legal systems.¹⁶⁹ A similar understanding of how international legal systems entrench racism is what is missing. Acknowledging international law's complicity in sustaining racism in such a way is crucial to decentre white epistemologies and find ways to offer space for racially marginalized epistemologies in international legal discourse.¹⁷⁰

This chapter is an effort to peel back the laudatory and emancipatory narrative associated with the Covenant, only to find that the Covenant—in spite of proscribing racial discrimination in the protection of ESCRs—retains eurocentric grammars, and in combination, these grammars do very little to challenge racism itself. Whether it is racial amnesia or the reification of race as an identity or the continued invocation of civilization and economic development, the Covenant joins the ranks of many international legal instruments that are hard-wired to facilitate white domination over racialized peoples. Despite these antecedents, this chapter is a nudge for us all to hold on to the Covenant's promise of antiracial solidarity and attempt to rescript its purposes rather than allowing it to remain a relic of its eurocentric origins.

¹⁶³ UNGA, 'Report on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance by Maurice Glélé-Ahanhanzo, Special Rapporteur' (1 July 1994) UN Doc E/CN.4/1994/66.

¹⁶⁴ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22.

¹⁶⁵ Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance (n 163), Article 4(xii) recognizes the race-based denial of access to economic, social, and cultural rights as an act of racism.

¹⁶⁶ *R v Parks* [1993] 15 OR (3d) 324; *R v Hamilton* [2004] OJ No 3252 (CA).

¹⁶⁷ Bradley (n 57); Kimberlé Williams Crenshaw, 'Race Liberalism and the Deradicalization of Racial Reform' (2017) 130 Harvard Law Review 2298.

¹⁶⁸ Cheryl I Harris, 'Whiteness as Property' (1993) 106 Harvard Law Review 1707; Kimberlé Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color' (1991) 43 Stanford Law Review 1241.

¹⁶⁹ OHCHR, 'Communication to the United States of America' (2024) AL USA 7/2024 <<https://spcomm.reports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28835>> accessed 23 April 2024.

¹⁷⁰ Michelle Staggs Kelsall, 'Disordering International Law' (2022) 33(3) European Journal of International Law 729.