

ALL PEOPLES HAVE A RIGHT TO SELF- DETERMINATION: HENRY J. RICHARDSON III'S LIBERATORY PERSPECTIVE ON RACIAL JUSTICE

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*Notwithstanding [] oppression . . . subordinated peoples can have a
jurisprudence on which they act without a dominating people or group's
permission.*

Henry J. Richardson III[†]

I. BLACK LIVES MATTER

Professor Henry J. Richardson III has always told us that Black lives and Black resistance matters. The phrase “Black Lives Matter” emerged in 2013 in conjunction with the acquittal of George Zimmerman, a “neighborhood watch” vigilante, who shot and killed Trayvon Martin in Sanford, Florida, as the 17-year-old walked home from a convenience store.² The following year, it was invoked to protest the police killings of African Americans, perhaps most notably Eric Garner in New York City; Michael Brown in Ferguson, Missouri; and 12-year-old Tamir Rice in Cleveland.³ In July 2016, Black Lives Matter protests again swept the country in the wake of the killings of two Black men, Alton B. Sterling and Philando Castile, by the police in Baton Rouge, Louisiana, and St. Paul, Minnesota.⁴

The killings and the protests continue unabated, and today the phrase refers generally to a widespread and decentralized movement of resistance to the wanton

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** The author has made unique stylistic choices in terms of abbreviations and hyphenation, which may differ from other articles and stylistic formatting of this issue.

1. Henry J. Richardson III, *Mitchell Lecture, October 27, 2010*, 17 BUFF. HUM. RTS. L. REV. 1, 13 (2011) [hereinafter Richardson, *Mitchell Lecture*].

2. Tabatha Abu El-Haj, *Defining Peaceably: Policing the Line Between Constitutionally Protected Protest and Unlawful Assembly*, 80 MO. L. REV. 961, 962 n.7 (2015).

3. See generally Linda Sheryl Greene, *Before and After Michael Brown—Toward an End to Structural and Actual Violence*, 49 WASH. U. J.L. & POL'Y 1 (2015).

4. On Sterling and Castile, see Editorial, *When Will the Killing Stop?* N.Y. TIMES (July 8, 2016). On related international protests, see Ishaan Tharoor, *Black Lives Matter is a global cause*, WASH. POST (July 12, 2016) (noting solidarity protests in Britain, Germany, the Netherlands, and Canada).

killing of young African Americans, particularly by the police, as well as police brutality, racial profiling, and race-based disparities within the criminal justice system.⁵ Scrutiny of these practices inevitably leads us to deeper questions of institutionalized racism. Thus, as Professor Charles R. Lawrence III observes, “Black Lives Matter articulates the everyday violence visited on black communities by the savage inequalities of segregated schools, by unemployment, and an ever-increasing wealth gap, by our disproportionate numbers in prisons and our declining numbers in universities and the professions.”⁶ Going further, he notes, the phrase “challenges the continuing legacy of *Plessy*’s ratification of ‘status property’ in whiteness” and “contests *Brown*’s protection of white expectations of race-based privilege.”⁷

A nuanced and multidimensional understanding of the concept that Black Lives Matter has undergirded all of Professor Richardson’s scholarship and so it should come as no surprise that his assessment of the relationship between African Americans and international law bears directly on how we can protect our communities, and particularly our youth, from wanton and often state-sanctioned racial violence. The scope and depth of Professor Richardson’s scholarship on African Americans’ involvement with international law is breathtaking. His analyses are simultaneously grounded in the theoretical frameworks and *realpolitik* of the international legal order, as well the history of African American resistance movements, reflecting the wisdom garnered from decades of research as well as direct participation in these spheres.

One could take a tribute to Professor Richardson’s work in innumerable directions. Like other legal scholars of color addressing the intersection of race and international law, I have relied upon and benefitted from his insights for decades. However, it is only in stepping back to consider the body of Professor Richardson’s work and its implications that I have come to fully appreciate the significance of two aspects of his work for our struggles against racial subordination at home: his situating of Black freedom struggles in the historical context of colonialism and his insistence that African Americans and other peoples “encapsulated” within extant states⁸ have an internationally recognized right to self-determination. This essay addresses the creative potential of these precepts for the liberation of peoples of color within the United States.

5. For additional information on such killings, see Sandhya Somashekhar, et al., *Black and Unarmed*, WASH. POST (Aug. 8, 2015), <http://www.washingtonpost.com/sf/national/2015/08/08/black-and-unarmed/>.

6. Charles R. Lawrence III, *The Fire This Time: Black Lives Matter, Abolitionist Pedagogy and the Law*, 65 J. LEGAL EDUC. 381, 403–04 (2015).

7. *Id.* at 403 (referencing *Plessy v. Ferguson*, 163 U.S. 537 (1896) and *Brown v. Board of Education*, 347 U.S. 483 (1954)).

8. Henry J. Richardson III et al., *Rights of Self-Determination of Peoples in Established States: Southern Africa and the Middle East*, 85 AM. SOC’Y INT’L L. PROC. 541, 541–42 (1991) [hereinafter Richardson, *Rights of Self-Determination*]; see also text accompanying note 48 *infra*.

II. COLONIALISM

In a work directly relevant to the recent and widespread protests over the killings of young African Americans by the police, Professor Richardson addressed the 1992 Los Angeles riots—or urban rebellions, depending on one’s perspective⁹—that followed the acquittal of the police officers whose brutal assault on Rodney King had been videotaped and widely viewed by American audiences.¹⁰ In *The International Implications of the Los Angeles Riots*,¹¹ Professor Richardson documents how various states responded to these urban uprisings: France, Japan, South Korea, Iraq, Libya, Cameroon, Benin, Nigeria and also the Vatican.¹² These ranged, he notes, “from ascribing direct policy causality to Washington . . . to more ambiguous calls for undefined civil harmony on some unspecified foundation of American power, wealth and other value and legal arrangements,” and included calls for the United States “to follow its own principles of justice” in the context of racism as a more general threat to world peace.¹³

Using these examples, Professor Richardson demonstrates that the world was paying close attention to Black community responses to racism in the United States—just as it is today¹⁴—and that the injustices being protested fell under the jurisdiction of international law.¹⁵ What is most striking about this analysis, however, is that the “riots” are assessed within the broader framework of colonialism. According to Professor Richardson, when considering the realities of life in South Central Los Angeles communities, the context in which “crime, ‘disturbances,’ racial and other riots, looting, and even momentary public order breakdowns” are evaluated must “include judicious considerations of histories, parallels and trends in various colonial territories prior to the formal dissolution of

9. See Sophie Body-Gendrot, *Public Disorders: Theory and Practice*, 10 ANN. REV. L. & SOC. SCI. 243, 244 (2014) (internal citation omitted) (“[T]he word riot ‘embodies a political judgment rather than an analytical distinction.’”).

10. The civil unrest at issue resulted in 52 deaths, over 2,300 injuries, more than 16,000 arrests, and the destruction of some 4,000 businesses. Over 20,000 law enforcement personnel were deployed to suppress the uprisings, which have been described as a “targeted, systematic, and widespread” response to pervasive police brutality and persistent failures of the legal system to render justice. See Melvin L. Oliver, James H. Johnson, Jr. & Walter C. Farrell, Jr., *Anatomy of a Rebellion: A Political-Economic Analysis*, in READING RODNEY KING/READING URBAN UPRISING 117–41, 118–20 (Robert Gooding-Williams ed., 1993) (insisting that “multicultural rebellion” is a more accurate descriptor than “riots”).

11. Henry J. Richardson III, *The International Implications of the Los Angeles Riots*, 70 DENV. U. L. REV. 213 (1992–1993) [hereinafter Richardson, *Los Angeles*]. On the Rodney King case and the response to the acquittals of the police officer, see generally Abraham L. Davis, *The Rodney King Incident: Isolated Occurrence or a Continuation of a Brutal Past?* 10 HARV. BLACKLETTER J. 67 (1993).

12. Richardson, *Los Angeles*, *supra* note 11, at 220–33.

13. *Id.* at 233.

14. See Tharoor, *supra* note 4 and accompanying text (noting global protests in solidarity with the Black Lives Matter movement).

15. Richardson, *Los Angeles*, *supra* note 11, at 220 (discussing possible investigation of police brutality and racism in Los Angeles by the United Nations Human Rights Commission despite opposition from the United States).

the former European empires.”¹⁶ This framing reveals one of Professor Richardson’s most significant contributions to our struggles for racial justice in the U.S.

According to Professor Richardson, “a convenient benchmark” for assessing the civil unrest in Los Angeles in 1992 in a global context is the year 1955, “the year of the Bandung Conference that gave the third world its first infusion of global self-consciousness.”¹⁷ In 1955, most of Africa—virtually all of sub-Saharan Africa—was under colonial rule.¹⁸ Sudan, Morocco, and Tunisia would be recognized as independent states in 1956, Ghana in 1957, and Guinea in 1958,¹⁹ but it was not until 1960, when sixteen African states became independent, that the tide of colonial rule truly began to recede.²⁰ This is an extraordinarily significant framework to invoke in explaining an American “riot.” Professor Richardson is not drawing parallels between colonialism in Africa and slavery or legalized apartheid in the United States. He is telling us, in his always diplomatic and understated way, that if we truly want to understand the conditions in Los Angeles in 1992 (and, by extension, Ferguson, Missouri, in 2014 or Baltimore, Maryland, in 2015²¹), we need to consider the dynamics of colonialism in Africa in 1955.²²

What is it about colonialism that is most relevant? Professor Richardson provides a summary of the dynamics of colonial relations so that we can draw our own conclusions. He notes that, as a general rule, colonial territories were dominated by European minorities whose “cultures [were] influential on but separate from those of majority indigenous populations,” but which nonetheless

16. *Id.* at 216.

17. *Id.* For background, see Tayyab Mahmud, *Geography and International Law: Towards a Postcolonial Mapping*, 5 SANTA CLARA J. INT’L L. 525, 558–60 (2007); see generally JAMIE MACKIE, *BANDUNG 1955: NON-ALIGNMENT AND AFRO-ASIAN SOLIDARITY* (2005).

18. Ruth Gordon, *Saving Failed States: Sometimes a Neocolonialist Notion*, 12 AM. U. J. INT’L L. & POL’Y 903, 907 n.14 (1997).

19. See *The United Nations and Decolonization, Trust and Non-Self-Governing Territories (1945-1999)*, UNITED NATIONS, <http://www.un.org/en/decolonization/nonselvgov.shtml> (last visited Feb. 27, 2007) (listing dates of independence of former colonies).

20. See Gordon, *supra* note 18, at 955 n.267 (“This trend eventually led to decolonization and the admission of non-European states into international society.”). For a timeline of membership in the United Nations, corresponding to such independence, see *Growth in United Nations membership, 1945-present*, <http://www.un.org/en/members/growth.shtml> (last visited Apr. 4, 2017). On the problematic nature of the way in which these “post-colonial” states were established, see generally Makau Wa Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 16 MICH. J. INT’L L. 1113 (1995).

21. See Sheryl Gay Stolberg & Stephen Babcock, *Scenes of Chaos in Baltimore as Thousands Protest Freddie Gray’s Death*, N.Y. TIMES (Apr. 25, 2015) (noting how Grey’s death exacerbated the already tense relationship between the African American community and the Baltimore police); Jelani Cobb, *Chronicle of a Riot Foretold*, NEW YORKER (Nov. 25, 2014), <http://www.newyorker.com/news/daily-comment/chronicle-ferguson-riot-michael-brown> (discussing the Ferguson “riots”). For background see generally Richard Rothstein, *From Ferguson to Baltimore: The Fruits of Government-Sponsored Segregation*, 24 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 205 (2015) [hereinafter Rothstein, *From Ferguson to Baltimore*].

22. Richardson, *Los Angeles*, *supra* note 11, at 216.

“controlled the legal, military, economic, administrative, transport and financial resources and systems in the territories.”²³ More particularly, “[f]rom the purview of the colonial elite an accurate understanding of any breakdown in public order along the axis of ‘disturbance’ to ‘crime’ to ‘insurrection’ to ‘revolution’ was crucial to maintaining their rule.”²⁴ The colonizers’ standard response, he observes, “was to resolutely drain such incidents of all political content of pleas for economic empowerment,” instead “assert[ing] the criminality of the acts, their lack of local roots and their aberrational character.”²⁵ In their master narrative, this “criminality” was contrasted with “the allegedly known contentment of the ‘natives’ with the *status quo*” of “minimal local governmental positions under co-optive and watchful metropolitan eyes.”²⁶

Why did the colonial elites engage in such counterproductive measures, ones that, with hindsight, we recognize as having fueled movements for decolonization across the continent? Professor Richardson suggests that “[w]rapped in an envelope of racism,” the colonizers were ignorant of “native politics” and “fear[ful] of being removed from comfortable lifestyles.”²⁷ The peoples’ demands for “any substantial change in dignity, wealth and power relations” were simply “beyond the pale of rationality.”²⁸ Such demands were to be suppressed—by military force, if necessary—and the protestors’ actions “scrubbed of political, economic or racial meaning” by criminalizing those who challenged colonial domination.²⁹

There are clear parallels between the responses of colonial administrators to “disturbances” by the colonized and those of U.S. law enforcement and political leaders to the uprisings of the most dispossessed in American society in 1992 and today.³⁰ When U.S. cities have gone up in flames—from the hundreds of urban rebellions of the mid- to late 1960s to Miami in 1980, Los Angeles in 1992, or Ferguson in 2014³¹—those who have taken to the streets have been depicted as

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 216–17.

28. Richardson, *Los Angeles*, *supra* note 11, at 217.

29. *Id.*

30. See Joseph B. Doherty, *Us vs. Them: The Militarization of American Law Enforcement and the Psychological Effect on Police Officers and Civilians*, 25 S. CAL. INTERDISC. L.J. 415, 417–42 (2016) (discussing the physical, psychological and economic ramifications of the use of military equipment and tactics by local law enforcement officers); see generally Ashley M. Eick, *Forging Ahead from Ferguson: Re-evaluating the Right to Assemble in the Face of Police Militarization*, 24 WM. & MARY BILL RTS. J. 1235 (2016).

31. See generally REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968) [hereinafter KERNER COMMISSION REPORT]; BRUCE D. PORTER AND MARVIN DUNN, *THE MIAMI RIOT OF 1980: CROSSING THE BOUNDS* (1984); James H. Johnson, Jr. & Walter C. Farrel, Jr., *The Fire This Time: The Genesis of the Los Angeles Rebellion of 1992*, 71 N.C. L. REV. 1403 (1993); Monica Davey et al., *National Guard Troops in Ferguson Fail to Quell Disorder*, N.Y. TIMES (Aug. 19, 2014).

violent criminals or the dupes of outside agitators.³² From the 1968 Report of the National Advisory Commission on Civil Disorders (also known as the “Kerner Commission”)³³ to the U.S. Justice Department’s 2015 Report on policing in Ferguson,³⁴ official investigations of these uprisings consistently note that while “unrest” is generally triggered by particular instances of police misconduct, it is more accurately attributed to pervasive and deeply institutionalized racial disparities.³⁵ Yet, with equal consistency, the political, economic and racial factors underlying popular discontent are acknowledged only in passing.³⁶ Fundamental changes to the status quo are unthinkable, and resistance is to be quashed by the militarized power of the state so that the privileged may maintain their “comfortable lifestyles.”³⁷

Turning to the underlying conditions that generate “riots,” Professor Richardson describes Los Angeles as a diverse community comprised of Black, Hispanic, Asian and Anglo citizens and immigrants, but nonetheless one in which “[p]ower, especially economic power, and authority remain[s] white-dominated in

32. See Gail Sullivan, *Ferguson Isn't the First: A History of Curfews in Times of Racial Tension*, WASH. POST (Dec. 30, 2014) (noting that officials blamed the Watts “riots” of 1965 on “outside agitators”); INVESTIGATION OF THE FERGUSON POLICE DEP’T, U.S. DEP’T OF JUSTICE, CIVIL RIGHTS DIVISION 5 (Mar. 4, 2015), <http://apps.washingtonpost.com/g/documents/national/department-of-justice-report-on-the-ferguson-mo-police-department/1435/> [hereinafter INVESTIGATION OF THE FERGUSON POLICE DEP’T] (noting the insistence of Ferguson police and city officials that the public outcry over Michael Brown’s death was “attributable to ‘outside agitators’ who do not reflect the opinions of ‘real Ferguson residents’”); see generally Bruce D’Arcus, *Dissent, Public Space and the Politics of Citizenship: Riots and the “Outside Agitator”*, 8 SPACE & POLITY 355 (2004).

33. KERNER COMMISSION REPORT, *supra* note 31.

34. INVESTIGATION OF THE FERGUSON POLICE DEP’T, *supra* note 32.

35. See Sullivan, *supra* note 32 (noting that an investigation into the Watts “riots” attributed causation to high unemployment, substandard housing, and inadequate schools). For background, see generally Rothstein, *From Ferguson to Baltimore*, *supra* note 21. For additional background on the Miami uprisings, see generally U.S. COMMISSION ON CIVIL RIGHTS: CONFRONTING RACIAL ISOLATION IN MIAMI (June 1982), <https://babel.hthitrust.org/cgi/pt?id=mdp.39015016888375;view=1up;seq=5>.

36. Thus, for example, the “welfare” reforms instituted in the wake of the urban rebellions of the 1960s were soon rolled back in favor of the “war on crime” and its progeny, the “war on drugs.” The result was skyrocketing incarceration rates. See Natsu Taylor Saito, *For “Our” Security: Who Is an “American” and What Is Protected by Enhanced Law Enforcement and Intelligence Powers?*, 2 SEATTLE J. FOR SOC. JUST. 23, 41–46 (2003) (discussing the impact of the war on drugs on Black communities).

37. Richardson, *Los Angeles*, *supra* note 11, at 217. As psychologist Kenneth Clark testified to the Kerner Commission, referencing riots and investigatory reports dating back to 1919, “it is a kind of Alice in Wonderland—with the same moving picture reshown [sic] over and over again, the same analysis, the same recommendations and the same inaction.” Charles Sumner Stone, Jr., *Thucydides’ Law of History, or From Kerner, 1968 to Hacker, 1992*, 71 N.C. L. REV. 1711, 1712 (1993) (citing KERNER COMMISSION REPORT at 483). Moreover, as Ta-Nehisi Coates observes, not only is state violence regularly disregarded, one of the things that “cannot be said” is that much social change has only occurred when the people, in desperation, turn to violence. Ta-Nehisi Coates, *Barack Obama, Ferguson, and the Evidence of Things Unsaid*, THE ATLANTIC (Nov. 26, 2014), <http://www.theatlantic.com/politics/archive/2014/11/barack-obama-ferguson-and-the-evidence-of-things-unsaid/383212/>.

ways little touched by existing racial integration.”³⁸ As a result, it is the site of “frontiers between the First and Third Worlds, development and underdevelopment, economic aspirations and institutionalized economic achievement, poverty and fantasies of material success, powerlessness and expected comfortable empowerment.”³⁹ Much the same could be said, of course, of virtually any major American metropolis and, generally speaking, of the country as a whole. Professor Richardson’s assessment of Black communities is equally applicable to American Indian, Native Hawaiian, Alaska Native, Puerto Rican and Pacific Islander communities, for they not only suffer from the worst of the economic and political disempowerment he describes, they also remain very directly colonized as the United States continues to occupy their lands and appropriate their resources.⁴⁰

In looking towards the future, Professor Richardson observes that the Los Angeles “riots” need to be understood as an integral part of “the mighty struggle by international capitalism,” a struggle “not only to externalize the profits and expansive arrangements of international capital through international legal and national policy systems, but also to internalize within the human mind its privileges” by, among other things, “modify[ing] the moral imperatives pertinent to peoples of color.”⁴¹ In this context, he says, “Los Angeles, notwithstanding its territorial location, *is* the periphery. Its demand for a massive reallocation of economic opportunities, infrastructure, respect for peoples of color, new approaches to knowledge and reasoning and supporting rights and legal principles, comprise a demand from the periphery only slightly removed.”⁴² By contrasting the metropolitan center—the heart of a colonial empire—to its periphery, Professor Richardson situates his analysis squarely within the paradigm of colonial domination and exploitation.⁴³

38. Richardson, *Los Angeles*, *supra* note 11, at 215.

39. *Id.*

40. For a summary, see Natsu Taylor Saito, *Tales of Color and Colonialism: Racial Realism and Settler Colonial Theory*, 10 FLA. A & M U. L. REV. 1, 13–14, 35–39 (2014) [hereinafter Saito, *Tales of Color and Colonialism*] (discussing racial classifications and hierarchy as a function of colonization within the U.S.); Natsu Taylor Saito, *Asserting Plenary Power Over the “Other”: Indians, Immigrants, Colonial Subjects, and Why U.S. Jurisprudence Needs to Incorporate International Law*, 22 YALE L. & POL’Y REV. 427, 437–47, 451–58 (2002) [hereinafter Saito, *Asserting Plenary Power Over the “Other”*] (discussing the plenary power doctrine with regard to American Indians and external colonies of the U.S.). See generally Ediberto Román & Theron Simmons, *Membership Denied: Subordination and Subjugation Under United States Expansionism*, 39 SAN DIEGO L. REV. 437 (2002); HAUNANI-KAY TRASK, *FROM A NATIVE DAUGHTER: COLONIALISM AND SOVEREIGNTY IN HAWAII* (2d ed. 1998); JOSÉ TRIÁS MONGE, *PUERTO RICO: THE TRIALS OF THE OLDEST COLONY IN THE WORLD* (1997).

41. Richardson, *Los Angeles*, *supra* note 11, at 234.

42. *Id.* at 234–35.

43. See JÜRGEN OSTERHAMMEL, *COLONIALISM: A THEORETICAL OVERVIEW* 9 (2005) (“Modern empires generally had separate colonial authorities in the metropolis to supervise administration on the periphery[.]”). See also IMMANUEL WALLERSTEIN, *THE MODERN WORLD SYSTEM: CAPITALIST AGRICULTURE AND THE ORIGINS OF THE EUROPEAN WORLD-ECONOMY IN THE SIXTEENTH CENTURY* 336 (vol. I 1974) (“the Americas became the *periphery* of the

Professor Richardson thus provides a richly nuanced analysis through which we can understand that explicitly colonial dynamics inform relations of power and privilege in the United States today.⁴⁴ To the extent this perspective is accurate, it implies that the liberation of “encapsulated peoples” within the United States entails not simply an extension of constitutional rights, but the deconstruction of colonial institutions of power and privilege. This brings us to what are, from my perspective, the most interesting questions raised by Professor Richardson’s insights: Are African Americans and other peoples of color in the United States engaging in, or even considering, decolonization? Are we moving toward genuine liberation, rather than simply asking for superficial adjustments to the status quo? In other words, will we take our right to self-determination seriously, and act on it?

III. SELF-DETERMINATION

Amongst colonized peoples in Africa and Asia in 1955, “ideas about self-determination, freedom, an equitable share of the territory’s economic resources and control of their own lives for their own ends was long discussed by, made coherent in and increasingly served as the focus of committed organization.”⁴⁵ There were, according to Professor Richardson, “clear signs that self-determination, nationhood and ridding the territory of foreign occupiers in the search for a better life were ideas of concrete and intensifying currency,” even as the colonizers maintained a “willful blindness” to these emerging trends.⁴⁶

Can contemporary protest movements or civil uprisings be characterized as demands for self-determination or decolonization? Professor Richardson does not make this claim. He does, however, recognize that many people of color in the U.S. are struggling not just for equal rights within extant political and economic structures, but to construct equitable and sustainable social structures that will allow their communities to survive and to flourish.⁴⁷ For those engaged in this process, he provides two foundational precepts: (1) American Indians and African Americans—and perhaps other “racial” groups within the United States—are most accurately characterized as “peoples encapsulated within established states”⁴⁸

European world-economy in the sixteenth century while Asia remained an *external arena*”) (italics in original). For a broader assessment of the phenomenon addressed by Professor Richardson, see generally JONATHAN KRIECKHAUS, *DICTATING DEVELOPMENT: HOW EUROPE SHAPED THE GLOBAL PERIPHERY* (2006).

44. The structural distinction I see is between the classic colonialism of European powers in Africa and Asia, where the colonizers by and large intended to exploit the lands, resources and populations of “their” territories, and the settler colonialism that still exists in North America, where the colonizers came to stay. See Natsu Taylor Saito, *Race and Decolonization: Whiteness as Property in the American Settler Colonial Project*, 31 HARV. J. RACIAL & ETHNIC JUST. 31, 46–48 (2015) (describing settler colonial theory); Saito, *Tales of Color and Colonialism*, *supra* note 40, at 23–28 (discussing types of colonialism and colonial ideology). On the underlying theoretical structure, see generally LORENZO VERACINI, *SETTLER COLONIALISM: A THEORETICAL OVERVIEW* (2010).

45. Richardson, *Los Angeles*, *supra* note 11, at 216.

46. *Id.* at 216–17.

47. *Id.* at 235.

48. Richardson, *Rights of Self-Determination*, *supra* note 8, at 541.

rather than as “minorities”; and (2) *all* peoples, including those over whom extant states claim jurisdiction, have an internationally recognized right to self-determination.

The distinction between “minorities” and “peoples” emphasized by Professor Richardson has profound legal implications, for “minorities” are protected against discrimination or exclusion by states, but “peoples” have a right to self-determination. Why is this significant? To quote the Convention on the Elimination of All Forms of Racial Discrimination, minorities—i.e., groups identified by “race, colour, descent, or national or ethnic origin”—may not be subjected to “any distinction, exclusion, restriction or preference . . . 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 any dimension of “public life.”⁴⁹ This is a tremendously important principle but, standing alone, it does not affect any changes in the distribution of power; it simply prohibits those exercising that power in the public realm from discriminating between people on the basis of their identity.

Self-determination provides an entirely different conception of rights.⁵⁰ Common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights states, “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”⁵¹ This article goes on to note that self-determination entails the right of all peoples to “freely dispose of their natural wealth and resources . . . based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”⁵² According to the 1970 Declaration of the Principles of International Law Concerning Friendly Relations and Cooperation Among States, “[t]he establishment of a sovereign and independent state, the free association or integration with an independent state, or the emergence of any other political status freely determined by a people constitute modes of implementing the right of self-determination of that people.”⁵³ In other

49. Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195. The Convention entered into force in 1969 and was ratified by the U.S. in 1994. For information on the status of treaties, see *Multilateral Treaties Deposited with the Secretary-General*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=_en [hereinafter UNITED NATIONS TREATY COLLECTION].

50. See Geoff Gilbert, *Autonomy and Minority Groups: A Right in International Law?* 35 CORNELL INT’L L.J. 307 (2002) (discussing the relationship between self-determination and minority rights in international law).

51. International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 1 ¶ 1, 999 U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, art. 1 ¶ 1, 993 U.N.T.S. 3 [hereinafter ICESCR]. Both treaties entered into force in 1976. The U.S. ratified the ICCPR in 1992; it signed but has never ratified the ICESCR. UNITED NATIONS TREATY COLLECTION, *supra* note 49.

52. ICCPR, *supra* note 51, art. 1 ¶ 2; ICESCR, *supra* note 51, art. 1 ¶ 2.

53. G.A. Res. 2625, annex, General Assembly Declaration of the Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the

words, self-determination can take many forms, but they all involve empowerment rather than equal treatment at the hands of the state.⁵⁴

As Professor Richardson explains, the right to self-determination “remains authoritative as international jus cogens,”⁵⁵ i.e., a norm from which no derogation is permitted. Moreover, he notes, “[i]t is no longer limited to freedom from overseas colonialism and foreign occupation, if it ever was.”⁵⁶ Does this mean it is a right that can be exercised by people of color within the U.S.? Who constitutes a “people” with a recognized right to self-determination? Legal scholar Richard Falk notes that much hinges on

whether the criteria relied upon to clarify the right to self-determination are to be determined in a top-down manner through the mechanisms of statism and geopolitics or by a bottom-up approach that exhibits the vitality and potency of emergent trends favoring the extension of democratic practices and the deepening of human rights.⁵⁷

According to Professor Richardson, states cannot be relied upon to recognize which groups have a right to self-determination under international law because “so much current state practice in this connection aims to . . . falsely label candidate groups ‘minorities’ instead of ‘peoples.’”⁵⁸

Professor Richardson argues that in determining who constitutes a people, “there is a progression in law that can be set up and pushed a little further than we have pushed it.”⁵⁹ The right to self-determination, he explains, has gone beyond addressing the situation of “peoples entrapped in colonial regimes” to those struggling to be “free from racial domination, whether within established states, such as South Africa, or in other circumstances.”⁶⁰ It extends, he argues, to “African-Americans [as] a ‘people’ entitled to rights of self-determination, though those rights may not encompass the fullest extent of that doctrine.”⁶¹ This echoes the 1976 Universal Declaration of the Rights of Peoples (Algiers Declaration),

Charter of the United Nations (Oct. 24, 1970). *See also* Richardson, *Rights of Self-Determination*, *supra* note 8, at 541 (addressing international expectations about the right to self-determination).

54. *See* Gilbert, *supra* note 50, at 339–40 (arguing that self-determination may be exercised by those otherwise classified as “minorities” through various forms of “autonomy”).

55. Henry J. Richardson III, “Failed States,” *Self-Determination, and Preventive Diplomacy: Colonialist Nostalgia and Democratic Expectations*, 10 *TEMP. INT'L & COMP. L.J.* 1, 41 (1996) [hereinafter Richardson, “Failed States”].

56. *Id.*

57. Richard Falk, *Preface* to *IN PURSUIT OF THE RIGHT TO SELF-DETERMINATION: COLLECTED PAPERS AND PROCEEDINGS OF THE FIRST INTERNATIONAL CONFERENCE ON THE RIGHT TO SELF-DETERMINATION AND THE UNITED NATIONS* 6 (Y. N. Kly & Diana Kly eds., 2000).

58. Richardson, “Failed States,” *supra* note 55, at 48. *See also* Erica-Irene A. Daes, *An Overview of the History of Indigenous Peoples: Self-Determination and the United Nations*, 21 *CAMBRIDGE REV. INT'L AFFAIRS* 7, 12–13 (2008) (noting that the description of peoples as “minorities” is a common strategy employed by states).

59. Richardson, *Rights of Self-Determination*, *supra* note 8, at 556.

60. *Id.*

61. Henry J. Richardson III, *Gulf Crisis and African-American Interests Under International Law*, 87 *AM. J. INT'L L.* 42, 48 (1993).

which states that “[e]very people has an imprescriptible and unalienable right to self-determination . . . “ including “the right to break free from any colonial or foreign domination, whether direct or indirect, *and from any racist regime*.”⁶²

In response to attempts by “internal” peoples to exercise their right to self-determination, governments often invoke the protection of “territorial integrity or political independence” promised states by the United Nations Charter.⁶³ However, as Professor Richardson points out, this limitation on the right to secession applies “only when the government of the state is transparently representative of the diverse groups and peoples in that state.”⁶⁴

From the Chechens against Russia, to the Georgians against the old Soviet Union and the new Russia, to black South Africans against the Afrikaners, the Chiapas rebels against Mexico, the Ogoni in Nigeria, to the Native Americans in the United States and the Quebecois against Canada, the claims of these peoples or groups to either enjoy more autonomy within existing states or to form new sovereign states have been shouted out around the world.⁶⁵

Thus, he explains, we are approaching “a threshold” of applying that law to “claims by peoples, whether encapsulated peoples or not, whose decision about their own political destiny for a variety of reasons has not yet been made, or has not yet been made fairly.”⁶⁶

One could view Professor Richardson’s exposition of the right to self-determination simply as an insightful descriptive overview of recent geopolitical changes and the resulting evolution of international law. I believe, however, that in his calm, methodical manner, combining well-known facts with important questions, Professor Richardson is compelling us to look directly at the elephant in the room: what does self-determination mean for peoples involuntarily incorporated into states? More particularly, what options are available to those forced to live under governments that deploy state power to oppress and exploit them, in states that are not “transparently representative of the diverse groups and peoples” over whom they claim jurisdiction?⁶⁷

These are *the* questions underlying most armed conflicts in the world today, as well as the ongoing threats to stability and security that stem from poverty, “underdevelopment” and multiple forms of discrimination.⁶⁸ They are also

62. Universal Declaration of the Rights of Peoples, Algiers, arts. 5, 6, July 4, 1976, http://www.algerie-tpp.org/tpp/en/declaration_algiers.htm (emphasis added).

63. U.N. Charter, art 2, ¶ 4.

64. Richardson, “*Failed States*,” *supra* note 55, at 42.

65. *Id.* at 44.

66. Richardson, *Rights of Self-Determination*, *supra* note 8, at 556.

67. Richardson, *Failed States*, *supra* note 55, at 42.

68. See Bernard Nietschmann, *The Fourth World: Nations Versus States*, in REORDERING THE WORLD: GEOPOLITICAL PERSPECTIVES ON THE TWENTY-FIRST CENTURY 237 (George J. Demko & William B. Wood eds., 1994) (noting that in 1993 there were 97 wars between states and the internal nations they were attempting to control, as compared to just one war between states). On the connection between poverty, “development” and global violence, see MARK

questions that must be confronted by those struggling for racial justice within the U.S. today. As framed by Professor Richardson, African Americans and other peoples of color within the U.S. may be viewed, under international law, as encapsulated peoples—some might say “internally colonized” peoples⁶⁹—who have an internationally recognized right to self-determination when states rely on claims of “territorial integrity notwithstanding a lack of equity and equal rights in their own internal laws.”⁷⁰ This means that our struggles, legal and political, need not be limited to the confines of constitutional equal protection.⁷¹ Rather, we have an internationally recognized right to “freely determine [our] political status and freely pursue [our] economic, social and cultural development.”⁷²

Erica-Irene Daes, a Special Rapporteur for the U.N.’s Sub-Commission on Human Rights and former chair of the U.N.’s Working Group on Indigenous Populations, emphasizes that

it is very important to think of self-determination *as a process*. *The process of achieving self-determination is endless*. This is true of all peoples—not only indigenous peoples. Social and economic conditions are ever-changing in our complex world, as are the cultures and aspirations of peoples. For different peoples to be able to live together peacefully, without exploitation or domination—whether it is within the same state or in two neighboring states—they must continually renegotiate the terms of their relationships.⁷³

DUFFIELD, GLOBAL GOVERNANCE AND THE NEW WARS: THE MERGING OF DEVELOPMENT AND SECURITY 109–125 (2001).

69. See KWAME TURE & CHARLES V. HAMILTON, BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA 5 (1967) (“[B]lack people in this country form a colony, and it is not in the interest of the colonial power to liberate them.”); HAROLD CRUSE, REBELLION OR REVOLUTION 74 (Univ. of Minn. 2009) (1968) (“[t]he Negro has a relationship to the dominant culture of the United States similar to that of colonies and semi-dependents to their particular foreign overseers”); ROBERT L. ALLEN, BLACK AWAKENING IN CAPITALIST AMERICA: AN ANALYTIC HISTORY 2 (1990) (“The fact of black America as a semicolon, or what has been termed *domestic colonialism*, . . . [is] the most profound conclusion to be drawn from a survey of the black experience in America.”); Robert Blauner, *Internal Colonialism and Ghetto Revolt*, 16 SOCIAL PROBLEMS 393, 393 (1969) (“It is the experience of colonization that Afro-Americans share with many of the non-white people of the world.”). Rodolfo Acuña described Chicana/os as internally colonized, most explicitly in the first edition of his OCCUPIED AMERICA: THE CHICANO STRUGGLE TOWARD LIBERATION (1972); for further discussion of internal colonization in Chicano communities, see Tomás Almaguer, *Toward the Study of Chicano Colonialism*, AZTLÁN: CHICANO J. OF SOC. SCI. & ARTS 7 (1971); Mario Barrera, Carlos Muñoz & Carlos Ornelas, *The Barrio as an Internal Colony*, 6 URBAN AFFAIRS ANN. REVS. 465 (1972).

70. Richardson, *Rights of Self-Determination*, *supra* note 8, at 555.

71. On the limitations of domestic law in this respect, see Saito, *Tales of Color and Colonialism*, *supra* note 40, at 64–79.

72. ICCPR, *supra* note 51, art. 1 ¶ 1; see also *supra* notes 50–54 and accompanying text.

73. Erica-Irene A. Daes, *Striving for Self-determination for Indigenous Peoples*, in PURSUIT OF THE RIGHT TO SELF-DETERMINATION: COLLECTED PAPERS & PROCEEDINGS OF THE FIRST INTERNATIONAL CONFERENCE ON THE RIGHT TO SELF-DETERMINATION OF THE UNITED NATIONS, 50, 57–58 (Y.N. Kly & D. Kly eds., 2001) (emphasis in original). See Howard J. Vogel, *Reframing Rights from the Ground Up: The Contribution of the New U.N. Law of Self-Determination to Recovering the Principle of Sociability on the Way to a Relational Theory of International Human Rights*, 20 TEMP. INT'L & COMP. L.J. 443, 478 (2006) (“The right to self-

Professor Richardson is not saying what African Americans, or any other racially identified groups within the United States, *should* be doing in order to combat racialized injustice. Instead, he is clarifying that international law recognizes the right of peoples, including those trapped within extant states, to self-determination. Moreover, he is clear that “international public order” will be furthered not by suppressing movements for self-determination, but by “directly reaffirming the right of self-determination and thereby upholding an international public order of human dignity.”⁷⁴ In other words, we have options available to us that go far beyond those we normally envision and—as discussed in the following section—we have the capacity to exercise those options.

IV. MOVING FORWARD

Professor Richardson’s remarkable body of scholarship demonstrates very concretely that *if* we choose to pursue a path to internal decolonization, we have the tools at our disposal. Having established that peoples of color in the U.S. have a wide range of rights under international law, including the right to self-determination, Professor Richardson does not engage in rhetorical exhortations to exercise those rights. Instead, he provides us with a wealth of examples demonstrating that African Americans have invoked such rights, consistently, for some four hundred years. Through those examples, he allows us to see that peoples commonly depicted as dispossessed and disempowered have had, in fact, a significant impact not only on the international legal order but also on the relations of power and privilege directly affecting their lives.⁷⁵

As the late Professor Robert Cover reminded us, “[t]he position that only the state creates law . . . confuses the status of interpretation with the status of political domination.”⁷⁶ Professor Richardson is clear that we need not accede to state-imposed political domination. With his precise, historical and never polemical narrative, he emphasizes our agency in the construction of our histories and the shaping of an evolving international legal order. He acknowledges “that peoples can be subordinated not only by the oppression that directly coerces them, but also by the historiography of that oppression by subsequent influential historians who will, for the moment, hold that people’s history in the palms of their hands.”⁷⁷ However, we need not be constrained by the historical or legal frameworks

determination serves the well-being of groups who define themselves as a people by addressing the conditions under which they live and are governed through an on-going process of negotiation of the terms on which they live with their neighbors.”).

74. Richardson, “*Failed States*,” *supra* note 55, at 7.

75. See HENRY J. RICHARDSON III, *THE ORIGINS OF AFRICAN-AMERICAN INTERESTS IN INTERNATIONAL LAW* (2008) [hereinafter RICHARDSON, *ORIGINS*] (tracing African American involvement with international law from the origins of the slave trade to 1812); Richardson, *Gulf Crisis*, *supra* note 61 (applying this analysis to a contemporary crisis); Richardson, *Mitchell Lecture*, *supra* note 1 (summarizing the significance of the relationship between African Americans and international law over time).

76. Robert M. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4, 4–5 (1983).

77. Richardson, *Mitchell Lecture*, *supra* note 1, at 12–13.

imposed upon us. Instead, we “can have a jurisprudence on which [we] act” without seeking “permission” from those in power.⁷⁸

This is why Professor Richardson’s magnum opus, *The Origins of African-American Interests in International Law*, is such a powerful work. It is a richly detailed, nuanced historiography tracing the utilization of “outside” law—including but not limited to that which may have been recognized at the time as international law—by African Americans resisting enslavement, contesting the legality of the slave trade, and otherwise challenging the subordination of Afrodescendant peoples within the United States.⁷⁹ While his detailed exposition ends with the War of 1812, Professor Richardson demonstrates the impact of these “origins” by connecting them, genealogically, to the legendary scholar activist Dr. W.E.B. DuBois’ 1946 testimony urging the United States’s ratification of the United Nations Charter,⁸⁰ as well as Dr. Martin Luther King, Jr.’s 1967 condemnation of the Vietnam War for violating international law.⁸¹

Substantively, *Origins* demonstrates the significance of international law to anti-colonial struggles in the United States and around the world, as well as the impact that Black Americans have had on the shaping of the international legal order. But Professor Richardson’s analysis goes much deeper. He points out that “colonial aims and doctrines persist” in international law, which “continues to be racialized as between Northern Tier peoples and states pursuing various versions of an imperial project, and racialized ‘other’ peoples and states in the Southern Tier” as well as “diasporic peoples . . . within the North’s own territories and cities.”⁸² Today’s international legal system derives from European colonial power and continues to serve the interests of the world’s most powerful states.⁸³ As a result, it may provide legal norms and perhaps even remedial measures superior to those available to us under domestic law, but it cannot be relied upon—at least not yet—to adequately support and protect the liberation movements of those who

78. *Id.* at 13. See Henry J. Richardson III, *The Black International Tradition and African American Business in Africa*, 34 N.C. CENT. L. REV. 170, 178–79 (2010) [hereinafter Richardson, *The Black International Tradition*] (“subordinated peoples can evolve a jurisprudence on which they act, without a dominating people or group’s permission”).

79. See generally RICHARDSON, *ORIGINS*, *supra* note 75.

80. *Id.* at xxxi–xlii, 441–42. For background on debates concerning the ability of the U.N. Charter to alleviate racial oppression in the U.S., see Henry J. Richardson III, *Two Treaties, and Global Influences of the American Civil Rights Movement, Through the Black International Tradition*, 18 VA. J. SOC. POL’Y & L. 59, 74–80 (2010) [hereinafter Richardson, *Two Treaties*].

81. RICHARDSON, *ORIGINS*, *supra* note 75, at xiii–xiv. For a more detailed analysis of Dr. King’s efforts, see generally Henry J. Richardson III, *From Birmingham’s Jail to Beyond the Riverside Church: Martin Luther King’s Global Authority*, 59 HOW. L.J. 169 (2015); Henry J. Richardson III, *Martin Luther King, Jr. as an International Human Rights Leader*, 52 VILL. L. REV. 471 (2007).

82. Henry J. Richardson III, *Critical Perspectives on Intervention*, 29 MD. J. INT’L L. 12, 14 (2014).

83. See *id.* (noting the continuing contestation between the global North and South over developments in international law); see also ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2005) (arguing that non-Western states and peoples continue to be subjected to an international legal regime that promotes and safeguards Western interests).

remain colonized.

This is what makes Professor Richardson's emphasis on the Black International Tradition's claims to "outside" law so important.⁸⁴ These were, and have always been, not simply appeals for more equitable treatment under existing law, but "claims/demands to be governed by a *better* outside law."⁸⁵ In other words, "encapsulated" peoples within the United States have the right and the ability to appeal to both domestic and international law, but need not be constrained by the limits of legal systems that were constructed, in large measure, to facilitate the very hierarchies of power and privilege being contested. We not only "*can* have a jurisprudence on which [we] act" without seeking "permission" from those in power,⁸⁶ we have, for centuries, demanded, created, and utilized a jurisprudence far more liberatory than that "allowed" us.⁸⁷

This is an incredibly empowering message for those struggling against racial discrimination within the United States and for those who continue the 500-year resistance to the colonial invasion, appropriation and occupation of Indigenous lands.⁸⁸ It speaks directly, for example, to the thousands of people who travelled across the country in 2016 to join the water protectors encamped near the Standing Rock Sioux Reservation in North Dakota, determined to prevent the completion of a 1200-mile "Dakota Access" oil pipeline that is destroying Indigenous lands and sacred sites and threatens widespread ecological harm.⁸⁹ Those joining the camps—Indigenous people from hundreds of nations throughout the Americas, environmentalists, and activists from a diverse range of groups, including the Black Lives Matter movement—have been supported by massive demonstrations in more than a hundred cities across the United States.⁹⁰

84. For summaries, see RICHARDSON, ORIGINS, *supra* note 75, at 442–45; Richardson, *The Black International Tradition*, *supra* note 78, at 171–72. For additional examples, see Henry J. Richardson III, *Reverend Leon Sullivan's Principles, Race, and International Law: A Comment*, 15 TEMP. INT'L & COMP. L.J. 55 (2001) (addressing the movement to overturn apartheid in South Africa); Richardson, *Two Treaties*, *supra* note 80, at 67 (discussing the U.S.'s invasion of Iraq in 2003). On the colonial nature of the war in Iraq, see generally Henry J. Richardson III, *The Danger of the New Legal Colonialism*, 104 AM. SOC'Y INT'L L. PROC. 393 (2010).

85. RICHARDSON, ORIGINS, *supra* note 75, at xxi (emphasis added).

86. Richardson, *Mitchell Lecture*, *supra* note 1, at 13 (emphasis added).

87. On the significance of accurate understandings of legal history in this process, see Henry J. Richardson III, *Excluding Race Strategies from International Legal History: The Self-Executing Treaty Doctrine and the Southern Africa Tripartite Agreement*, 45 VILL. L. REV. 1091, 1091–99 (2000) (discussing race in international legal history).

88. See generally GORD HILL, 500 YEARS OF INDIGENOUS RESISTANCE (2009).

89. See Dan Gunderson, *At Standing Rock, protest camp becomes a movement*, MPR NEWS (Sept. 14, 2016), <https://www.mprnews.org/story/2016/09/14/standing-rock-protest-camp-becomes-movement> [hereinafter Gunderson, *At Standing Rock*] (describing the development of the Standing Rock protests); Katie Herzog, *NODAPL Photos: Anti-pipeline protesters across America stand with Standing Rock*, GRIST (Sept. 14, 2016), <http://grist.org/article/photos-anti-pipeline-protesters-across-america-stand-with-standing-rock/> [hereinafter Herzog, *NODAPL Photos*] (providing photos of protests).

90. See Gunderson, *At Standing Rock*, *supra* note 89 (documenting protests around the U.S.); Herzog, *NODAPL Photos*, *supra* note 89 (providing photos of protests around the U.S.).

Today's protest movements demonstrate a willingness to directly confront state and corporate power; a refusal to accommodate a status quo that relentlessly destroys lives and communities, lands and cultures. Tens of thousands of people have taken to the streets demanding to be governed by better law, and this has produced tangible results. Thus, for example, although the grand jury convened in Ferguson, Missouri failed to indict the officer who shot Michael Brown,⁹¹ the U.S. Department of Justice documented routine violations of the Constitution and federal law by the Ferguson police, illustrating how the city's "law enforcement practices are shaped by [its] focus on revenue rather than public safety needs" and confirming that "African Americans experience disparate impact in nearly every aspect of Ferguson's law enforcement system."⁹² In the wake of widespread protests over Freddie Gray's killing by the Baltimore police in 2015, the DOJ issued another scathing report documenting pervasive racial discrimination in police practices that routinely involved unconstitutional stops, searches, arrest, and the use of unreasonable force.⁹³ Such reports do not "fix" the abuses of state power being contested, but they illustrate the power of the people to insist that the state respect their dignity and adapt its jurisprudence to better meet their needs.

Similarly, in September 2016, the massive resistance to the Dakota Access Pipeline resulted in executive intervention that, in essence, overruled a federal district court's decision to allow construction to continue while the Standing Rock Sioux Tribe's request for a preliminary injunction was being litigated.⁹⁴ Going further, the DOJ, the Army and the Interior Department jointly acknowledged "the need for a serious discussion on whether there should be nationwide reform with respect to considering tribes' views on these types of infrastructure projects" and proposed formal consultations on the adequacy of the existing statutory framework for "the protection of tribal lands, resources, and treaty rights."⁹⁵ The federal government is not going to dismantle the colonial paradigm upon which the state relies for its existence as well as its wealth and power, but it has been forced by the

91. U.S. DEP'T OF JUSTICE, REPORT REGARDING THE CRIMINAL INVESTIGATION INTO THE SHOOTING DEATH OF MICHAEL BROWN BY FERGUSON, MISSOURI POLICE OFFICER DARREN WILSON, (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf.

92. U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIVISION, INVESTIGATION OF THE FERGUSON POLICE DEP'T, 1-2, 62 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

93. U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIVISION, INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT (2016), <https://www.justice.gov/opa/file/883366/download>.

94. *See Joint Statement from the Department of Justice, the Department of the Army and the Department of the Interior Regarding Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, U.S. DEP'T OF JUSTICE, OFFICE OF PUBLIC AFFAIRS (Sept. 9, 2016), <https://www.justice.gov/opa/pr/joint-statement-department-justice-department-army-and-department-interior-regarding-standing> [hereinafter *Joint Statement*] (noting that the Army would not authorize continued construction pending further legal review); *see also* *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 2016 WL 4734356 (D.D.C. Sept. 9, 2016) (holding that the tribe failed to demonstrate that irreparable damage to its cultural resources would result if the Corps was enjoined from issuing permits).

95. *Joint Statement*, *supra* note 94.

resistance of Indigenous peoples and their allies to acknowledge that it is failing to adequately respect Indigenous rights.

Such victories, while important, do not adequately describe the significance of the resurgence of popular protest that we have been witnessing. These nascent movements, and many others less well known, are rooted in and carry forward long traditions of resistance to invasion, occupation, enslavement, apartheid, and racial subordination in U.S. history. The mainstream media, elected officials and the courts have responded as if the protesters' goals were limited to ensuring that governmental agencies and actors comply with basic constitutional rights as well as their own administrative policies and procedures. However, those actively engaged in struggle are articulating much deeper analyses and much more profound goals. Bernadine Dohrn and Bill Ayers observe that "young Black activists are showing us once again what it means to step into history as subjects, not objects . . . challenging a system not attuned to their needs, or the needs of their communities,"⁹⁶ and the same could be said of those organizing on many other fronts.

In August 2016, after a year of consultation amongst more than sixty organizations, the Movement for Black Lives (M4BL) presented a comprehensive policy paper identifying six demands, or goals, supplemented by forty specific proposals and thirty-four policy briefs.⁹⁷ As summarized by history professor, Robin D.G. Kelley, their platform is "aimed at ending all forms of violence and injustice endured by black people; redirecting resources from prisons and the military to education, health, and safety; creating a just democratically controlled economy; and securing black political power within a genuinely inclusive democracy."⁹⁸ This vision extends far beyond "protest" to meaningful structural change.

Similarly, the pipeline protests are not simply about stopping one more environmentally and culturally devastating construction project. They represent a refusal to accept one more incursion into Indigenous sovereignty, summarized by Regina Brave, an Oglala Lakota elder, as follows: "[I]f you want to protest here, you must incorporate [this] belief: We are Nations. We are enacting our sovereign right to say what happens to our children, our water and our land."⁹⁹ The occupation is a very concrete expression of a fundamental responsibility to protect the land and the life it supports, unconstrained by colonial law or power. The power of people in the streets and out on the plains, people willing to confront the

96. Bernadine Dohrn & William Ayers, *Young, Gifted, and Black: Black Lives Matter!*, in CONTEMPORARY YOUTH ACTIVISM: ADVANCING SOCIAL JUSTICE IN THE UNITED STATES 79–92, 83 (Jerusha Conner and Sonia M. Rosen, eds., 2016).

97. See *Platform*, THE MOVEMENT FOR BLACK LIVES, <https://policy.m4bl.org/> (describing the platform of the Black Lives Matter movement).

98. Robin D.G. Kelley, "What Does Black Lives Matter Want," *Boston Review* (Aug. 17, 2016), <https://bostonreview.net/books-ideas/robin-d-g-kelley-movement-black-lives-vision> (exploring the Black Lives Matter movement).

99. Sacred Stone Camp, FACEBOOK (Sept. 19, 2016), <https://www.facebook.com/SacredStone/photos/a.1696414397314258.1073741828.1570124769943222/1773968226225541/?type=3> (quoting Regina Brave).

evisceration of their future and that of their children with any means available to them, has once again become visible.

This message is not lost on the younger generation—nor on those intent on maintaining the status quo—and the question becomes what will it take to sustain and grow movements capable of fundamental, liberatory change. As we move forward, we can learn much from what Professor Richardson has articulated about the inherent right and ability of African Americans and other peoples of color within the United States to be self-determining. Should we choose to move beyond demands for equitable treatment and frame our struggles in terms of decolonization and self-determination, he has laid the foundation for us. Professor Richardson does not presume to undertake that task for us for, by definition, one cannot dictate how others should exercise their right to self-determination. Rather, he identifies tools available in international law to aid us in that process and provides examples from which we can take inspiration and guidance. What we do with these gifts is up to us.