
TRANSNATIONAL RACIAL (IN)JUSTICE IN LIBERAL DEMOCRATIC EMPIRE

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On June 17, 2020, Philonise Floyd addressed the United Nations Human Rights Council, the United Nations' paramount human rights body, demanding justice for the murder of his brother and the many other Black people who have been subject to the regime of racial extra-judicial killings endemic in the United States.¹ His testimony was part of a remarkable "Urgent Debate" — an emergency special session of the Human Rights Council reserved for extreme human rights situations.² We might think of this Urgent Debate as marking a pivotal global moment in the transnational racial justice uprising that coalesced under the banner "Black Lives Matter" during the northern hemisphere summer of 2020. This Urgent Debate was unprecedented for a number of reasons. It was the first triggered by a human rights situation in a, if not *the*, global hegemon of our time, the United States. It was also the first and only to date concerning a human rights crisis in a country widely considered a liberal democratic paragon, for which the global human rights receivership processes, implicitly associated with U.N. intervention, could not possibly be intended or appropriate, at least from the perspective of other liberal democratic countries and observers. And finally, it was the first and only explicitly framed as concerning systemic racial injustice and anti-Black racism in a First World nation-state.

To the extent that racial justice advocates and legal scholars in the United States (or any other country, for that matter) are engaged in a process of reckoning with racial subordination and emancipatory horizons, the aim of my Essay is to draw a number of lessons from the Urgent Debate and attendant events that are crucial for any such reckoning. My analysis is informed by my background as a scholar, and my participation in the Urgent Debate as an independent expert appointed by the United Nations Human Rights Council to serve as the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance.

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¹ See Daniel Dickinson, "*I Am My Brother's Keeper*," *Philonise Floyd Tells UN Rights Body, in Impassioned Plea for Racial Justice*, UN NEWS (June 17, 2020), <https://news.un.org/en/story/2020/06/1066542> [<https://perma.cc/YGW8-Z76Y>].

² See *id.*

For those whose scope of analysis is typically national or domestic, I foreground *transnational* considerations. A transnational analysis is essential for assessing emancipatory possibilities for Black people living in the United States — international human rights fora within the United Nations have long been sites to which African Americans have turned to leverage domestic change.³ The Urgent Debate was the latest effort in a much longer trajectory that bears recollection and sheds important light on questions such as how domestic racial justice advocates should understand and situate the United Nations' global human rights machinery within their broader strategy. In addition, a transnational analysis is also essential for understanding possibly fundamental constraints on redressing racial subordination of Black people in the United States and in other nations. This is because the maintenance of Black racial subordination in the United States (and other countries) is properly understood as involving a transnational dimension, one that institutionally implicates the United Nations and international law as well. By this, I mean to call attention to the specific genealogy of U.N. institutions as well as the development and operation of international law, as pathways through which transnational collaboration for racial subordination of Black people (and other non-White peoples) has been achieved as well as resisted.⁴ Of particular note, this subordination has partly been achieved in the name of liberal principles, leading to the uncomfortable conclusion that certain forms of racial subordination are at least compatible with, if not defining features of, what I will call *liberal empire* even in its present-day democratic forms.

The literature on and accompanying definitions of “liberalism” are vast, but I use the term here generally to refer to the normative commitment to “securing individual liberty and human dignity through a political cast that typically involves democratic and representative institutions, the guaranty of individual rights of property, and freedom of expression, association, and conscience, all of which are taken to limit the legitimate use of the authority of the state.”⁵ The language and commitments of international human rights are quintessentially liberal, and within this frame liberalism is good (illiberalism and non-liberalism are bad),⁶ and liberal democracy is implicitly and explicitly the means through which this good is realized. These points were vividly illustrated during the Urgent Debate, when appeals to liberal democratic

³ See *infra* notes 24–32 and accompanying text.

⁴ See, e.g., PAUL GORDON LAUREN, *POWER AND PREJUDICE: THE POLITICS AND DIPLOMACY OF RACIAL DISCRIMINATION* 239–40 (1988) (describing how western powers prevented the U.N. Commission on Human Rights from taking action to address racial discrimination).

⁵ UDAY SINGH MEHTA, *LIBERALISM AND EMPIRE* 3 (1999).

⁶ In her recent book, Professor Ratna Kapur revisits human rights as the transnational expression of liberal freedom and provides a helpful overview of leading critiques of liberal rights as instantiated through human rights. RATNA KAPUR, *GENDER, ALTERITY AND HUMAN RIGHTS* 6–9, 27–47 (2018).

norms and institutions were, among other things, mobilized to shield (and effectively aid perpetuation of) U.S. domestic racial subordination. I cast the Urgent Debate as the latest illustration of how tightly liberal hegemony can keep the lid on anti-Black racism through transnational means ranging from naked geopolitical bullying to normative insistence on liberal democratic norms and institutions to obstructive bureaucratic techniques.

For racial justice and international human rights scholars and advocates in particular, I reflect on the lessons the Urgent Debate offers for the pursuit of racial justice generally and Black emancipation specifically through U.N. human rights machinery. I (and others) have critiqued the U.N. system and the international human rights movement associated with it for its normative and programmatic neglect of racial justice and equality.⁷ I will aim to show how the Urgent Debate offers a supplemental, more damning diagnosis — the international human rights frame not only is neglectful of racial justice, but also can suppress the most promising avenues for achieving this racial justice, as this frame has notably done since its inception.⁸ The actors responsible for driving this suppression are, and have often been, nations and regions forming the liberal democratic wing of the international order — the conventional purveyors of the international human rights system as a universal good.

I highlight, as others have,⁹ that racial injustice must be assessed and grappled with as a potentially defining or systemic feature of the liberal imperial project, rather than a pathology or aberration that simply requires harder work or more commitment to reform. For purveyors of international human rights law and its accompanying institutional mechanisms — no matter how well-intentioned they may understand themselves to be — the point is that racism is not outside of their systems but is instead an institutionalized feature of these systems. The challenge at hand, then, is to develop strategies and goals that account for this reality.

⁷ See, e.g., E. Tendayi Achiume, Essay, *Putting Racial Equality onto the Global Human Rights Agenda*, 15 SUR-INT'L J. ON HUM. RTS. 141, 142 (2018); E. Tendayi Achiume (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), *Rep. of the Special Rapporteur on Contemp. Forms of Racism, Racial Discrimination, Xenophobia and Racial Intolerance*, ¶ 50, U.N. Doc. A/74/321 (Aug. 21, 2019) (“As mentioned above, international law itself played an important role in consolidating the structures of racial discrimination and subordination throughout the colonial period, including through customary international law Part of the problem, then, is that international law has not fully been ‘decolonized’ and remains replete with doctrines that prevent the reparation and remediation of the inequality and injustice entrenched in the colonial era.” (footnotes omitted)).

⁸ See, e.g., STEVEN L. B. JENSEN, *THE MAKING OF INTERNATIONAL HUMAN RIGHTS* 125 (2016).

⁹ See, e.g., Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201, 201–09 (2001).

I. THE SUCCESS OF THE URGENT DEBATE

Notwithstanding the ultimate thrust of my analysis, it is important to mark the Urgent Debate as a breathtaking achievement of transnational racial justice advocacy, of the kind few, if any, would have antecedently thought possible given the geopolitical landscape of the last decade at least.

Following the murder of George Floyd, video footage documenting the final moments of his life sparked outrage and protests that began in Minneapolis and spread to over 2,000 U.S. cities¹⁰ and across the globe,¹¹ under the banner of Black Lives Matter. These protests were accompanied by demands for accountability for the many Black people who have been summarily executed by law enforcement or effectively lynched by private parties with impunity, and by demands for local and national change to dismantle structures of systemic racism in law enforcement.¹² The well-documented response of the Trump Administration, and some police departments across the country, was excessive use of force against protesters, while President Donald Trump spouted divisive, inflammatory rhetoric and incited racialized violence.¹³ This response was internationally denounced, including by a number of U.N. human rights mechanisms.¹⁴ In my capacity as Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerances, I issued a statement, joined by forty-six other independent human rights expert mechanisms, condemning the U.S. response to the Black Lives Matter protests.¹⁵ Separately, the mechanism responsible for oversight of the most comprehensive anti-racial discrimination treaty (to which the United States is a party)

¹⁰ Audra D. S. Burch et al., *How Black Lives Matter Reached Every Corner of America*, N.Y. TIMES (June 13, 2020), <https://www.nytimes.com/interactive/2020/06/13/us/george-floyd-protests-cities-photos.html> [<https://perma.cc/7VC2-UCKP>].

¹¹ Zamira Rahim & Rob Picheta, *Thousands Around the World Protest George Floyd's Death in Global Display of Solidarity*, CNN (June 1, 2020, 6:31 PM), <https://www.cnn.com/2020/06/01/world/george-floyd-global-protests-intl/index.html> [<https://perma.cc/J7UV-UYGG>].

¹² See, e.g., *UN Experts Condemn Modern-Day Racial Terror Lynchings in US and Call for Systemic Reform and Justice*, OFF. OF THE HIGH COMM'R FOR HUM. RTS. (June 5, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25933> [<https://perma.cc/7764-SNSG>].

¹³ Philip Bump, Analysis, *Over and Over, Trump Has Focused on Black Lives Matter as a Target of Derision or Violence*, WASH. POST (Sept. 1, 2020, 12:22 PM), <https://www.washingtonpost.com/politics/2020/09/01/over-over-trump-has-focused-black-lives-matter-target-derision-or-violence/> [<https://perma.cc/ME9J-X4PA>].

¹⁴ *UN Experts Condemn Modern-Day Racial Terror Lynchings in US and Call for Systemic Reform and Justice*, *supra* note 12.

¹⁵ *Statement on the Protests Against Systemic Racism in the United States*, OFF. OF THE HIGH COMM'R FOR HUM. RTS. (June 5, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25927&LangID=E> [<https://perma.cc/L5PN-NYSL>].

issued its own statement under its early warning and urgent action procedures expressing grave concern over racial violence in the U.S. criminal justice system.¹⁶ It further called upon the United States to honor its legal obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.¹⁷

As global human rights mechanisms within the United Nations brought international standards to bear on the situation in the United States, domestic movement demands for U.S. accountability were ultimately also pursued at the global level, most pointedly in a letter by over six hundred rights groups led by the ACLU and the U.S. Human Rights Network demanding that the U.N. Human Rights Council (Human Rights Council) convene a special session to investigate the situation in the United States.¹⁸ The Human Rights Council is the paramount human rights body of the United Nations, comprised of forty-seven U.N. member states. The letter requested that the aim of the special session's investigation should include a mandate for an independent inquiry into "the recent history of racist policing" in the United States and the allegations of excessive use of force against protestors and journalists.¹⁹

A request for a special session on these terms was notably bold — it made an unprecedented request, as mentioned above, for urgent international human rights intervention (by way of an independent commission of inquiry) against a liberal democratic hegemon, implicitly challenging White supremacist institutional arrangements.²⁰ Special

¹⁶ Comm. on the Elimination of Racial Discrimination, *Prevention of Racial Discrimination, Including Early Warning and Urgent Action Procedures*, OFF. OF THE HIGH COMM'R FOR HUM. RTS. (June 12, 2020), <https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Statements/USA.T5SA-K4XG>.

¹⁷ *Id.*

¹⁸ *Families, Rights Groups Demand U.N. Investigate U.S. Police Brutality, Protest Suppression*, ACLU (June 8, 2020), <https://www.aclu.org/press-releases/families-rights-groups-demand-un-investigate-us-police-brutality-protest-suppression> [<https://perma.cc/Z4SB-BBKD>] [hereinafter *Families Demand U.N. Investigate*]. Other signatories included the families of George Floyd, Breonna Taylor, Michael Brown, and Philando Castile, as well as Black Lives Matter and the NAACP. *Id.* See Sejal Parmar, *The Internationalisation of Black Lives Matter at the Human Rights Council*, EJIL: TALK! (June 26, 2020), <https://www.ejiltalk.org/the-internationalisation-of-black-lives-matter-at-the-human-rights-council> [<https://perma.cc/E532-RWG5>], for a useful overview and analysis of the movement's advocacy and what it achieved.

¹⁹ Letter from ACLU et al. to Members of the United Nations Hum. Rts. Council (June 8, 2020), https://www.aclu.org/sites/default/files/field_document/20.06.08_updated_final_signed_letter_to_unhrc_aclu_and_ushrn.pdf [<https://perma.cc/UTH3-JTZH>].

²⁰ Since its inception, the Human Rights Council has held twenty-nine special sessions, with these sessions almost exclusively scrutinizing violations during armed conflict or authoritarian political repression. *Special Sessions*, OFF. OF THE HIGH COMM'R FOR HUM. RTS., <https://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Pages/SpecialSessions.aspx> [<https://perma.cc/3SJC-TVTN>]; see also Human Rights Council Res. S-3/1, U.N. Doc. A/HRC/S-3/L.1 (Nov. 15, 2006) (Israeli military incursions in occupied Palestinian territory); Human Rights Council Res. S-15/1, U.N. Doc. A/HRC/S-15/1 (Feb. 25, 2011) (situation of human rights in Libyan Arab Jamahiriya); Human Rights Council Res. S-23/1, U.N. Doc. A/HRC/RES/S-23/1 (Apr. 1, 2015).

sessions have overwhelmingly investigated states in the Middle East and Africa, the only exceptions being those that focused on the global food crisis, the 2009 financial crisis, Myanmar, Sri Lanka, and the 2010 Haiti earthquake.²¹ Furthermore, no member of the U.N. Security Council has been the focus of a special session during its time on the Security Council,²² and certainly no permanent member of the Security Council had, until 2020, been the subject of a special session. In this sense, the coalition was requesting that a familiar tool be used in an atypical manner and against a geopolitical heavyweight (the United States) that regularly shields itself from international intervention.²³

(atrocities committed by Boko Haram); Human Rights Council Res. S-28/1, U.N. Doc. A/HRC/S-28/L.1 (May 18, 2018) (violations of international law in the context of large-scale civilian protests in the occupied Palestinian territory); Human Rights Council Res. 39/2, U.N. Doc. A/HRC/RES/39/2 (Sept. 27, 2018) (situation of human rights of Rohingya Muslims and other minorities in Myanmar).

²¹ Though special sessions are convened for discrete events, several nations have been subject to multiple sessions. The primary subjects of the special sessions have been: Israel (8); Syria (5); Myanmar (3); Darfur (1); Democratic Republic of Congo (1); Sri Lanka (1); Haiti (1); Côte d'Ivoire (1); Libya (1); Central African Republic (1); Islamic State of Iraq and Syria (1); Boko Haram (1); Burundi (1); South Sudan (1); 2008 Global Food Crisis (1); 2009 Financial Crisis (1). *Special Sessions*, *supra* note 20. The mechanism eventually used to respond to the coalition's demand, the urgent debate, is even more rarely used than the special session. There were three urgent debates on Syria from 2012 to 2018 and an urgent debate on Israel in 2010. See Press Release, Hum. Rts. Council, Human Rights Council Decides to Hold Urgent Debate on Syria's Eastern Ghouta, (Mar. 2, 2018), <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22744> [<https://perma.cc/M2PK-WEJC>]; *Urgent Debate on the Human Rights Situation in Syria — Opening Statement by Ms. Navi Pillay, High Commissioner for Human Rights*, OFF. OF THE HIGH COMM'R FOR HUM. RTS. (May 29, 2013), <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13372&LangID=E> [<https://perma.cc/KL7N-H56D>]; Press Release, Hum. Rts. Council, Human Rights Council Continues Urgent Debate on Israeli Raid on Humanitarian Aid Flotilla Bound for Gaza, (Feb. 29, 2012), <https://www.ohchr.org/EN/NewsEvents/Pages/TheHRCholdsanurgentdebateonSyria.aspx> [<https://perma.cc/JDH8-9BSR>]; *Human Rights Council Continues Urgent Debate on Israeli Raid on Humanitarian Aid Flotilla Bound for Gaza*, UNITED NATIONS (June 2, 2010), <https://www.un.org/unispal/document/auto-insert-203094> [<https://perma.cc/YU9C-JSNX>]. In September 2020, months after the urgent debate on systemic racism in policing, there was another urgent debate on the human rights situation in Belarus — this was the first time any European state had been scrutinized under an urgent debate or special session. Press Release, Hum. Rts. Council, Human Rights Council Holds Urgent Debate on the Situation of Human Rights in Belarus, (Sept. 18, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26260&> [<https://perma.cc/2QQY-BYGG>].

²² The Special Session on Boko Haram examined abuses in Eastern Nigeria during Nigeria's time on the Security Council, but the session's final resolution did not overtly mention any abuses by Nigerian authorities. See Press Release, Hum. Rts. Council, Human Rights Council Concludes Special Session on Atrocities Committed by the Terrorist Group Boko Haram, (Apr. 1, 2015), <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=15790&LangID=E> [<https://perma.cc/CM9M-SASC>].

²³ My analysis in this Essay focuses on the ways in which liberal democratic hegemons thwart racial justice through the international system. But it is important to note that hegemons that are not liberal democracies, such as China and Russia, are also beneficiaries of certain institutionalized geopolitical privileges such as their Security Council veto powers.

Prominent voices within this coalition self-consciously situated their appeal within a broader historical trajectory. Jamil Dakwar, director of the ACLU's Human Rights Program, for example, stated plainly: "This accountability appeal to the United Nations follows the legacy of great Black leaders such as W.E.B. Du Bois, Martin Luther King, Jr., and Malcolm X who believed in internationalizing the struggle for human rights and racial justice in the United States."²⁴ As early as 1947, the NAACP's *An Appeal to the World*, drafted by Du Bois, was one of the first submissions by a nongovernmental organization requesting human rights investigation of a U.N. member state.²⁵ This and other early petitions laid the groundwork for the 1951 *We Charge Genocide* petition, which was submitted to the United Nations General Assembly by the Civil Rights Congress (CRC).²⁶ While earlier petitions had requested investigation into racial discrimination on the basis of human rights principles, the CRC's petition directly invoked the newly enacted Genocide Convention to charge the United States with "conspiracy to genocide, as demonstrated by evidence of the suffering and deaths of 10,000 blacks and the ways they were uniformly segregated, despoiled, impoverished and denied equal protection as result of deliberate, all-pervasive policy of the government and those who controlled it"²⁷

²⁴ *Families Demand U.N. Investigate*, *supra* note 18. Sejal Parmar notes:

What motivated the human rights organisations to appeal to the Council members essentially reflected why such civil rights leaders had sought to internationalise their cause in the 1940s and 1960s: the failure of national laws, policies and institutions to effectively provide justice and accountability for African Americans; "the interlocking nature of the problems" faced by anti-racism movements; a desire for the US government to protect human rights at home and not simply profess them abroad; and a belief in the proper "functioning" and role of the UN system itself.

Parmar, *supra* note 18. U.S. movement actors have continued to engage international human rights law to challenge racial discrimination. For examples, see COLUMBIA L. SCH. HUM. RTS. INST., *ADVANCING RACIAL JUSTICE AND HUMAN RIGHTS: RIGHTS-BASED STRATEGIES FOR THE CURRENT ERA* 19–21 (2019), https://web.law.columbia.edu/system/files/private_file/advancing_racial_justice_and_human_rights_-_2018_hri_cle_conference_report.pdf [<https://perma.cc/3HTT-4T7A>]. In 2014, the family of Michael Brown and other activists argued that Brown's killing and the subsequent police response violated the United States' obligations under the Convention Against Torture. See Justin Hansford & Meena Jagannath, *Ferguson to Geneva: Using the Human Rights Framework to Push Forward a Vision for Racial Justice in the United States After Ferguson*, 12 HASTINGS RACE & POVERTY L.J. 121, 123 (2015).

²⁵ Gay J. McDougall, *Toward a Meaningful International Regime: The Domestic Relevance of International Efforts to Eliminate All Forms of Racial Discrimination*, 40 HOW. L.J. 571, 573–74 (1997).

²⁶ See Sharon K. Hom & Eric K. Yamamoto, *Collective Memory, History, and Social Justice*, 47 UCLA L. REV. 1747, 1795 (2000).

²⁷ *Id.* at 1797. The CRC marshaled an immense amount of evidence in support of its charge, including documentation of 152 killings of Black men and women and 344 additional instances of racial violence in the six years preceding the petition. Susan A. Glenn, "We Charge Genocide": The 1951 Black Lives Matter Campaign, UNIV. OF WASH. MAPPING AM. SOC. MOVEMENTS PROJECT, https://depts.washington.edu/moves/CRC_genocide.shtml [<https://perma.cc/N3E9-5P64>].

“We Charge Genocide” internationalized racial justice struggles in the United States as inherently connected to other global movements. Copies of the petition were sent to “virtually all third world governments” and the CRC explicitly linked the U.S. racial liberation to imperialism and foreign aggression.²⁸ While expressing solidarity with the victims of U.S. military action, the petition states: “We solemnly warn that a nation which practices genocide against its own nationals may not be long deterred, if it has the power, from genocide elsewhere. White supremacy at home makes for colored massacres abroad. Both reveal contempt for human life in a colored skin.”²⁹ Through its petition, the CRC advanced transnational solidarity between Black movements in the United States and anti-imperialist movements in the Third World by highlighting the transnational nature of U.S. racial oppression.³⁰

In another move that itself has historical antecedents in Third World national solidarity with Black racial justice advocates in the Civil Rights era,³¹ the Africa Group within the Human Rights Council made a formal request to the President of the Human Rights Council for a special session in the form of an Urgent Debate to address what the request described as “current racially inspired human rights violations, systemic racism, police brutality and violence against peaceful protests.”³² The Africa Group cited the international outcry against the situation in the

²⁸ Hom & Yamamoto, *supra* note 26, at 1796, 1801 (“By linking domestic and international struggles and world peace with oppression at home, by naming the linkages between genocide at home and genocide abroad, the CRC created the discursive and political space to build multiracial and international coalitions. . . . By linking domestic and international struggles, the Genocide Petition opene[d] the macrojustice lens to include the distributive outcomes within a society and the distributive outcomes between societies, which are intrasocietal equality and an international equality. Indeed the CRC was a prototype of a domestic U.S. civil rights NGO that addressed and transcended its national geography and politics, that understood the indivisibility of civil, political, economic, social, and cultural rights, and that made the connection between human rights, peace, and imperialism.” *Id.* at 1801.)

²⁹ (1951) *We Charge Genocide*, BLACKPAST (July 15, 2011), <https://www.blackpast.org/global-african-history/primary-documents-global-african-history/we-charge-genocide-historic-petition-united-nations-relief-crime-united-states-government-against> [<https://perma.cc/8W2K-NGBJ>].

³⁰ For a recent analysis of the transnational racialization of U.S. state violence and what the recent racial justice uprisings should mean for U.S. military and counterterrorism activities abroad, see Asli Bâli, *Defund America's Endless Wars*, JUST SEC. (July 29, 2020), <https://www.justsecurity.org/71723/defund-americas-endless-wars> [<https://perma.cc/882W-NVDH>].

³¹ See TOYIN FALOLA & RAPHAEL CHIJOKE NJOKU, UNITED STATES AND AFRICAN RELATIONS, 1400S TO THE PRESENT 204–05 (2020); Andrew Friedman, *Decolonization's Diplomats: Antiracism and the Year of Africa in Washington, D.C.*, 106 J. AM. HIST. 614, 616 (2019); Renee Romano, *No Diplomatic Immunity: African Diplomats, the State Department, and Civil Rights, 1961–1964*, 87 J. AM. HIST. 546, 554 (2000).

³² Press Release, Hum. Rts. Council, Human Rights Council Concludes Urgent Debate on Current Racially Inspired Human Rights Violations, Systemic Racism, Police Brutality and Violence Against Peaceful Protests, (June 18, 2020), <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25974&LangID=E> [<https://perma.cc/559X-JK7D>].

United States — including my statement and the civil society petition — as stressing the urgency of an intervention by the apex member state human rights body of the U.N. system. Though the Africa Group’s request framed systemic racism against people of African descent in policing as a thematic and transnational crisis, it centered the situation in the United States. The request acknowledged George Floyd’s murder and the resulting protests as the catalyst for the debate, and it contextualized Floyd’s death as an outcome of systemic racism — a global problem that was manifest in this U.S. national context.

As far as Human Rights Council sessions go, it is worth noting again that the focus on both the United States and systemic anti-Black racism was far from typical. Subtly, Ambassador Dieudonné W. Désiré Sougouri of Burkina Faso, who authored the request on behalf of the Africa Group, pushed back against the exceptionalism that normally shields the United States from human rights scrutiny: “After the widespread indignation over this situation, it would be inconceivable that the Human Rights Council not deal with these questions, which are very relevant in accordance with its mandate.”³³

The request of the Africa Group — undoubtedly aided by the impressive global civil society mobilization, the forceful statements of U.N. independent experts, treaty body and secretariat mechanisms, as well as the global Black Lives Matter protests — was ultimately accepted.

For all of these reasons, in any accounting, the occurrence of the Urgent Debate ought to be acknowledged as a remarkable success of U.S. and transnational racial justice advocates in definitively placing systemic racism in law enforcement on the agenda of the global human rights system and simultaneously shifting the global conversation on racial justice in ways that were inconceivable until the Urgent Debate ultimately unfolded. Movement actors — many of them based in the United States — shifted the discourse among U.N. member states and human rights officials beyond condemnation of individual racist acts, typical of what I have called elsewhere *the prejudice approach* of the global system,³⁴ to acknowledgment of persisting systemic racism as an

³³ *Urgent Debate Request “Racially Inspired Human Rights Violations,”* UN WEB TV, at 1:00 (June 15, 2020), <http://webtv.un.org/search/urgent-debate-request-racially-inspired-human-rights-violations-43rd-regular-session-human-rights-council-/6164225890001> [<https://perma.cc/TPJ2-X2MD>] (statement of Dieudonné W. Désiré Sougouri).

³⁴ The prejudice approach frames racism and xenophobia “primarily as a problem of individuals engaging in apolitical, prejudice-motivated acts.” E. Tendayi Achiume, *Governing Xenophobia*, 51 VAND. J. TRANSNAT’L L. 333, 365 (2018). In centering individual actors as the primary agents of racism, this approach obscures “broader social, economic, political, and legal structures” that constitute systemic racism. *Id.* Historically, the U.N. system has used the prejudice approach to challenge personal intolerance while avoiding criticism of state structures. *Id.* at 368 (“To be clear, punishing individual perpetrators of xenophobic acts and taking measures to promote tolerance or counteract xenophobic attitudes have a critical role to play in the global fight against xenophobia.

endemic structural feature even of the liberal democratic hegemons whose human rights records rarely occupy Human Rights Council sessions. The achievements of these movement and civil society actors, and the transnational antiracist mobilization they initiated, arguably mark the most successful external pressure applied on the global human rights system to reset its racial justice agenda since the historic 2001 Durban World Conference Against Racism and the events leading up to it. An important question is, however, to what effect?

II. THE FAILURES OF THE URGENT DEBATE OR SYSTEMIC RACISM, LIBERAL BUSINESS AS USUAL

For many involved in the process, the best possible outcome of the Urgent Debate would have been a resolution mandating an independent commission of inquiry focusing on the United States, and another thematically focused on systemic racism in law enforcement as a transnational phenomenon. On the one hand, none were under any illusions that an independent international commission would undo centuries' worth of systemic racism in U.S. law enforcement. But on the other hand, an independent commission of inquiry held the potential to complement local and national processes geared toward accountability and redress for racial injustice.³⁵ Indeed, at the start of the Urgent Debate, the Africa Group proposed a draft resolution in this vein.³⁶ It centered systemic anti-Black racism in U.S. law enforcement as an urgent human rights crisis, a crisis that inhered in structural flaws embedded in the U.S. legal system, as well as in other parts of the world.³⁷ The strengths of this draft resolution, however, were perhaps predictably obliterated

However, to have a prejudice approach as the bedrock of international cooperation to address xenophobia is folly, given how deeply implicated international law and the exercise of nation-state sovereignty are in the problem of xenophobia. Policing prejudice among individuals does not account for these other two important factors.”)

³⁵ See E. Tendayi Achiume, *The UN Should Establish a Commission of Inquiry on Systemic Racism and Law Enforcement in the United States*, JUST SEC. (June 16, 2020), <https://www.justsecurity.org/70811/the-un-human-rights-council-should-establish-a-commission-of-inquiry-on-systemic-racism-and-law-enforcement-in-the-united-states> [<https://perma.cc/N7MA-EPZ7>].

³⁶ The draft authorized an independent international commission of inquiry which would: [E]stablish the facts and circumstances relating to the systemic racism, alleged violations of international human rights law and abuses against Africans and people of African descent in the United States of America and other parts of the world recently affected by law enforcement agencies, especially those incidents that resulted in the deaths of Africans and of people of African descent, with a view to bringing perpetrators to justice.

Human Rights Council Draft Res. 43/1, U.N. Doc. A/HRC/43/L.50, ¶ 3 (June 17, 2020), <https://undocs.org/A/HRC/43/L.50> [<https://perma.cc/U5GS-V29A>] [hereinafter Draft Resolution].

³⁷ *Id.* ¶ 1 (“[The Human Rights Council] [*s*]trongly condemns the continuing racially discriminatory and violent practices perpetrated by law enforcement agencies against Africans and people of African descent, and the structural racism endemic to the criminal justice system in the United States of America and other parts of the world recently affected . . .”).

by a combination of geopolitical bullying and what we might think of as liberal defusion (I elaborate on what I mean by this shortly), led in the main by the United States, the European Union, and other actors forming part of the geopolitical formation known within the United Nations as the Western European and Other States Group (WEOG).³⁸

At the conclusion of the Urgent Debate, the Human Rights Council adopted a consensus resolution that was a shadow of the Africa Group's strong proposal.³⁹ Rather than authorizing an independent commission of inquiry for the United States, the Human Rights Council directed the High Commissioner of Human Rights to prepare a thematic report on systemic anti-Black racism in law enforcement.⁴⁰ The progression from an unpublished draft of the resolution,⁴¹ to the introduced Draft Resolution, to the finalized Human Rights Council Resolution illustrates the gradual erosion of accountability for the United States driven by the WEOG.

There is far more to be said about the Urgent Debate than that it was ultimately a failure. Failure suggests that something, perhaps the human rights system, did not work the way that it should have. Civil society organizations were rightly devastated and noted that the outcome of the resolution was “demonstrative of the complicity of many states, particularly Western ones, ‘in maintaining and perpetuating entrenched systems of racism and white supremacy.’”⁴² The civil society indictment of the Debate's outcome as demonstrating transnational

³⁸ The WEOG is comprised of twenty-eight member states and the United States as an observer state. *Regional Groups of Member States*, UNITED NATIONS, <https://www.un.org/dgacm/en/content/regional-groups> [<https://perma.cc/F574-95SP>]. The WEOG is unique in that membership is driven by geopolitics rather than geography; the grouping includes Canada, Australia, New Zealand, and Israel. PERMANENT MISSION OF SWITZ. TO THE UNITED NATIONS OFF. & TO THE OTHER INT'L ORGS. IN GENEVA, *THE HUMAN RIGHTS COUNCIL: A PRACTICAL GUIDE* 25 (2014). Seven members of the WEOG are represented on the Human Rights Council at any one time, though nonmember observer states can participate in resolution drafting and debate. *Id.* at 6. During the Urgent Debate, the WEOG representatives on the Council were Australia, Austria, Denmark, Germany, Italy, the Netherlands, and Spain; and several other observers from the WEOG participated in the Urgent Debate. See *Election of the Human Rights Council (17 October 2019)*, UNITED NATIONS (Oct. 17, 2019), <https://www.un.org/en/ga/74/meetings/elections/hrc.shtml> [<https://perma.cc/6XT6-ZZ6A>]. Beyond the WEOG, there are four other U.N. regional groupings: the African Group (13 seats on the HRC), the Latin American and Caribbean Group (8 seats), the Asia-Pacific Group (13 seats), and the Eastern European Group (6 seats). *Id.*

³⁹ Human Rights Council Res. 43/1, U.N. Doc. A/HRC/RES/43/1 (June 19, 2020), <https://undocs.org/A/HRC/RES/43/1> [<https://perma.cc/7DHB-3D7K>] [hereinafter HRC Resolution].

⁴⁰ *Id.* ¶ 3.

⁴¹ Unpublished Human Rights Council Draft Res. (June 15, 2020), (on file with author) [hereinafter Unpublished Draft].

⁴² Parmar, *supra* note 18 (quoting *Joint NGO Statement Following the Adoption of HRC Resolution on Systemic Racism and Police Violence Following the Urgent Debate*, ACLU (June 23, 2020), https://www.aclu.org/sites/default/files/field_document/20.06.23_end_of_session_hrc43_final_written.pdf [<https://perma.cc/7N4H-G8FC>]).

complicity in the maintenance of White supremacy in the United States also warrants elaboration.

As Professor Sejal Parmar notes, resolution negotiations were beset by “behind-the-scenes influence, ‘extreme pressure,’ and even ‘bullying’ of Council member states — particularly from many members of the Western European and Other States Group (WEOG) . . . towards ensuring that the outcome resolution was generic rather than focussed upon the US, and did not provide for a commission of inquiry.”⁴³

Although the United States had withdrawn from the Human Rights Council two years earlier,⁴⁴ some diplomats reported informally that the United States had threatened their capitals with cuts to international aid if they insisted on the commission of inquiry. In the period of formal and informal negotiations among Human Rights Council member states, I had conversations with diplomats, civil society actors, and even U.N. functionaries who noted the use of political and economic threats by the United States and some of its WEOG allies designed to eliminate the possibility of an international inquiry focused on the United States.⁴⁵

In addition to the exercise of naked political and economic power, which was a largely extralegal, non-normative means of shielding the United States from scrutiny of its systems of racial subordination, shielding was also achieved through an official discourse of liberal democratic internationalism that cannot similarly be labeled extralegal or non-normative. Here I call attention to the *normative* terms on which the racial justice demands of the movement were defused because, from a legal perspective and a broader racial justice advocacy perspective, a central part of what is at stake are the normative terms of vision that supply the blueprint for achieving racial justice. Movement demands were defused the way an explosive might be defused — these demands were stripped of their potency and rendered sufficiently ordinary in order to be amenable to quotidian liberal domestic justice and accountability processes.

⁴³ *Id.* (first quoting *Statement on the Human Rights Council Urgent Debate Resolution*, OFF. OF THE HIGH COMM’R FOR HUM. RTS. (June 19, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25977&LangID=E> [<https://perma.cc/V63C-4CQY>]; and then quoting *ACLU Comment on U.N. Passage of Resolution on Police Brutality*, ACLU (June 19, 2020), <https://www.aclu.org/press-releases/aclu-comment-un-passage-resolution-police-brutality> [<https://perma.cc/J44D-LWHP>]).

⁴⁴ Michael R. Pompeo, *Remarks on the UN Human Rights Council*, U.S. DEP’T OF STATE (June 19, 2018), <https://2017-2021.state.gov/remarks-on-the-un-human-rights-council/index.html> [<https://perma.cc/3MSS-4RX9>] (withdrawing the United States from the Human Rights Council).

⁴⁵ In an ultimately futile attempt to mitigate this geopolitical bullying, I issued a public statement with the Working Group of Experts on People of African Descent condemning it. *Statement on the Human Rights Council Urgent Debate Resolution*, *supra* note 43 (“We call on any countries that are relying on their geopolitical dominance to prevent decisive action, to demonstrate a genuine commitment to undoing systemic racism by halting their undue pressure on delegations seeking to push for change.”).

During the drafting process, the liberal defusion process proceeded apace — revisions eliminated mentions of the United States, narrowed focus onto individual violations, downplayed the seriousness of the relevant human rights violations, and weakened calls for accountability of perpetrators. For example, overt references to the United States in the final resolution’s operative paragraphs were removed, leaving only one reference to Minnesota and a roundabout mention of the United States in the preamble.⁴⁶ In the unpublished draft of the resolution, operative paragraph 1 originally read:

[The Council s]trongly [c]ondemn[s] the continuing racial discriminatory and violent practices perpetrated by law enforcement agencies against Africans and of People of African Descent and structural racism endemic to the criminal justice system, in the *United States of America* and other parts of the world recently affected⁴⁷

In the final draft, operative paragraph 1 specifically invokes George Floyd’s death, but removes reference to the United States, delinking structural racism from national context:

[The Council s]trongly condemns the continuing racially discriminatory and violent practices perpetrated by law enforcement agencies against Africans and people of African descent, *in particular which led to the death of George Floyd on 25 May 2020 in Minnesota*, as referred to in the ninth preambular paragraph above, and the deaths of other people of African descent, and *also condemns the structural racism in the criminal justice system*⁴⁸

Operative paragraph 3 was also edited to eliminate a specific focus on violations in the United States, leaving an ambiguous mandate to report on “those incidents that resulted in the death of George Floyd and other Africans and of people of African descent” without clear geographic or analytical guidance.⁴⁹ Operative paragraph 5, which originally vested strong factfinding powers in a commission of inquiry, was gutted. The draft resolution, which specifically laid out the need for an independent international commission of inquiry “with a view to bringing perpetrators to justice,”⁵⁰ had called upon “the Government of the United States of America and other parts of the world recently affected, and all relevant parties to cooperate fully with the commission of inquiry, and to facilitate its access.”⁵¹ The strength of this mandate was weakened in the final resolution, which instead “[c]alls upon *all States*

⁴⁶ HRC Resolution, *supra* note 39.

⁴⁷ Unpublished Draft, *supra* note 41, ¶ 1 (emphasis added).

⁴⁸ HRC Resolution, *supra* note 39, ¶ 1 (emphasis added). The only remaining reference to the United States is a preambular reference to the Organization of African Unity’s denouncement of Floyd’s death.

⁴⁹ *Id.* ¶ 3.

⁵⁰ Draft Resolution, *supra* note 36, ¶ 3.

⁵¹ *Id.* ¶ 5.

and all relevant stakeholders to cooperate fully with the High Commissioner in the preparation of the report.”⁵²

Eventually, the consensus resolution eliminated the reference to persecutors, focusing only on depersonalized accountability and redress for victims.⁵³ This change conceptualizes accountability as an abstract goal with no connection to individual violations or systemic actions. The Council’s final resolution was stripped of the institutional resources, symbolic weight, and investigatory authority that would have accompanied a commission of inquiry. It was, as I and the U.N. Working Group of Experts on People of African Descent highlighted at the time, a “diluted consensus resolution that . . . amount[ed] to lip service in the face of the urgency of [the] moment.”⁵⁴

Implicit in the discourse and framing by the WEOG during the Debate was also a designation of the brutal anti-Black racism that fueled the racial justice uprisings as insufficiently serious human rights violations to warrant international accountability mechanisms. During an informal consultation hosted by the Africa Group, several Western delegations, including the United Kingdom, argued that the situation in the United States did not justify a commission of inquiry, as commissions were reserved for more serious violations.⁵⁵ In lieu of addressing the situation in the United States, Western delegations generalized the problem.⁵⁶ They highlighted systemic racism and police brutality as a

⁵² HRC Resolution, *supra* note 39, ¶ 5 (emphasis added).

⁵³ *See id.* ¶ 3 (commissioning a report to “contribute to accountability and redress for victims”).

⁵⁴ *Statement on the Human Rights Council Urgent Debate Resolution*, *supra* note 43. This outcome was deeply disappointing to civil society organizations:

Leading civil society organisations, including the ACLU and the ISHR, later issued releases indicating their view that the resolution is a “failure,” a real “[impediment to] genuine justice and accountability at the international level for issues of systemic racism and police violence in the US,” and even demonstrative of the complicity of many states, particularly Western ones, “in maintaining and perpetuating entrenched systems of racism and white supremacy.”

Parmar, *supra* note 18 (quoting *Joint NGO Statement Following the Adoption of HRC Resolution on Systemic Racism and Police Violence Following the Urgent Debate*, *supra* note 42; then quoting *HRC43 | High Commissioner and Independent Experts to Examine Killing of George Floyd, Systemic Racism and Police Violence*, INT’L SERV. FOR HUM. RTS. (June 19, 2020), <https://www.ishr.ch/news/hrc43-high-commissioner-and-independent-experts-examine-killing-george-floyd-systemic-racism> [<https://perma.cc/F932-HGLS>] (alteration in original); and then quoting *Joint NGO Statement Following the Adoption of HRC Resolution on Systemic Racism and Police Violence Following the Urgent Debate*, *supra* note 43).

⁵⁵ Summary of Informal Consultation: African Group Draft Resolution on Police Brutality and Human Rights Violations Against People of African Descent (June 16, 2020) (on file with author) [hereinafter Summary of Informal Consultation].

⁵⁶ Professor Lawrence Hill-Cawthorne offers an insightful analysis of how WEOG states used the framing of the global nature of racism to undercut a robust response by the Human Rights Council. Lawrence Hill-Cawthorne, “*Racism Will Not Pass*” . . . , EJIL:TALK! (July 20, 2020), <https://www.ejiltalk.org/racism-will-not-pass> [<https://perma.cc/HJ9H-YD7K>].

transnational, thematic concern,⁵⁷ while also deflecting attention away from the United States.⁵⁸ This generalizing rhetoric was combined with a specific liberal formulation of the United Nations' commitment to solidarity. Statements appealed to action that could "unite us, rather than divide us"⁵⁹ and ambassadors warned that "singling out" any country was unhelpful,⁶⁰ as if the Urgent Debate had not been called in the wake of historic uprisings specifically condemning racism in U.S. policing. The "us" that would be divided by condemnation of the United States can only be understood as WEOG. The avowedly liberal bloc's concerns about not "singling out" any country are hardly, if ever, expressed by WEOG members when allegations of human rights violations from the Third World or elsewhere are before the Human Rights Council. In fact, the very nature of human rights accountability is predicated on "singling out" or naming specific perpetrators. In an echo of the United States' own discourse on racial justice, states heard urgent calls for accountability in the United States and essentially responded: "*All Racism Matters.*"⁶¹

⁵⁷ See, e.g., United Nations, *Urgent Debate on Racially Inspired Human Rights Violations — 40th Meeting, 43rd Regular Session Human Rights Council*, UN WEB TV, at 48:57 (June 17, 2020), <http://webtv.un.org/search/urgent-debate-on-racially-inspired-human-rights-violations-40th-meeting-43rd-regular-session-human-rights-council/6165006613001> [https://perma.cc/3U6E-6GHB] (statement of Ms. Vesna Batistić Kos of Croatia (on behalf of the European Union)).

⁵⁸ See, e.g., *id.* at 01:55:10 (statement of Mr. Robert Müller of Austria (on behalf of the European Union)) ("However, let's be clear. Racism is not limited to one country in the world, but it is a global problem. . . . [W]e welcome this opportunity for the Human Rights Council to reaffirm our joint commitment for action.").

⁵⁹ United Nations, *A/HRC/43/L.50 Vote Item:1 — 44th Meeting, 43rd Regular Session Human Rights Council*, UN WEB TV, at 20:38 (June 19, 2020), <http://webtv.un.org/search/ahrc43l50-vote-item1-44th-meeting-43rd-regular-session-human-rights-council/6165730318001> [https://perma.cc/S55G-4BPW] (statement of Mr. Michael Freiherr Von Ungern-Sternberg of Germany).

⁶⁰ See, e.g., *id.* at 15:08 (statement of Mr. Petr Gajdušek of the Czech Republic (on behalf of the European Union)) ("Yet, the EU believes that racism is a global problem, and the singling out of a specific countr[y] does not help recognizing the larger scope of the issue."); *id.* at 20:41 (statement of Mr. Michael Freiherr Von Ungern-Sternberg of Germany) ("Hence, we are against singling out one state. We believe that a better and stronger resolution would have been possible if its scope was widened. We are convinced that a report with a broader approach and less focus on one specific case would have been more appropriate."); United Nations, *Item:1 Explanation of Votes — 44th Meeting, 43rd Regular Session Human Rights Council*, UN WEB TV, at 07:37 (June 19, 2020), <http://webtv.un.org/search/item1-explanation-of-votes-44thmeeting-43rd-regular-session-human-rights-council/6165730299001> [https://perma.cc/WX73-LW6E] (statement of Ms. Deyana Kostadinova of Bulgaria) ("The successful outcome and gradual improvement of the situation will not happen if we are singling out one country. In a polarized world, this will deepen the divisions among us and will fail to unite us against this common problem."). In informal consultations, Australia's delegation also advanced this argument. Summary of Informal Consultation, *supra* note 55.

⁶¹ See *UN Rights Body Should Create International Inquiry into Systemic Racism and Police Violence in the US*, HUM. RTS. WATCH (June 18, 2020, 9:27 AM), <https://www.hrw.org/news/2020/06/18/un-rights-body-should-create-international-inquiry-systemic-racism-and-police> [https://perma.cc/SR3F-8QQQ] ("Black Lives Matter. That is also the message at the heart of the African Group resolution. Yet some states are seeking to strip all references to the United States

All in all, the outcome of the Urgent Debate was an anemic shadow of the proposals that had galvanized the convening. As I have argued elsewhere, the WEOG statements during the session ultimately communicated “the persisting unequal worth of Black people, and the pernicious exceptionalism that is reserved for the countries in the global north that are in effect the most defensive of institutionalized [W]hite supremacy.”⁶²

As mentioned above, the normative frame, in which the situation in the United States was contested during the Urgent Debate, was a liberal frame. During the Urgent Debate, WEOG delegations relied on liberal democratic legal and institutional bona fides of the United States to eliminate the international commission of inquiry from consideration. For example, Australia’s official statement proclaimed that “[t]he United States is an open, liberal democracy, governed by the rule of law and we have confidence in their transparent justice systems to address these issues appropriately.”⁶³ From the Netherlands to Poland, European nations expressed their confidence in “rule of law”⁶⁴ and identified “ongoing public discussion”⁶⁵ in the United States as a clear indication that U.S. institutions were capable of resolving systemic racism.⁶⁶ Even as these and other WEOG delegations decried the killing of George Floyd, they ultimately rejected the most profound shifts demanded by the transnational racial justice uprisings, and indeed the demands that led to the Urgent Debate in the first place, which were charges of *systemic racism* within law enforcement and criminal justice, liberal democratic institutions within the United States. That the killing of George Floyd and the circumstances that led to the racial justice uprisings could be understood as compatible with well-functioning U.S. liberal institutions

from the resolution, which would transform it into an ‘all lives matter’ text, and risk making it so vague as to be meaningless.”)

⁶² E. Tendayi Achiume, *Black Lives Matter and the UN Human Rights System: Reflections on the Human Rights Council Urgent Debate*, EJIL: TALK! (Dec. 15, 2020), <https://www.ejiltalk.org/black-lives-matter-and-the-un-human-rights-system-reflections-on-the-human-rights-council-urgent-debate> [https://perma.cc/CDC8-WYCK].

⁶³ United Nations, *supra* note 57, at 1:19:39 (statement of Ms. Sally Mansfield of Australia).

⁶⁴ *Id.* at 1:13:27 (statement of Ms. Monique T.G. Van Daalen of the Netherlands) (“The Netherlands has full confidence in the rule of law in the United States of America and its democratic institutions to effectively deal with these important issues.”).

⁶⁵ United Nations, *supra* note 60, at 3:29 (statement of Mr. Zbigniew Czech of Poland) (stating that “[t]he ongoing public discussion is proof of the strength of the American democracy and commitment to freedom of expression” and contrasting this with “authoritarian regimes” elsewhere).

⁶⁶ *See id.* at 9:11 (statement of Mr. Michal Kaplan of the Czech Republic) (“We have no doubt that the United States has strong and independent mechanisms in place to ensure accountability and reform domestically. Unlike in many parts of the world, the issue of police brutality and racial discrimination is a topic of open discussion, and covered by a free press. . . . The High Commissioner should not be tasked by this Council with reporting on events, which will be properly investigated and addressed in the United States, and should not prioritize the issue in all future reports to the Human Rights Council.”).

and the rule of law cannot but signal a fundamental perceived (and actual) compatibility between remarkable levels of Black racial repression and liberal order.⁶⁷ Movement actors called attention to anti-Black racism as *endemic* to the very normative regime that WEOG delegates pledged could be relied upon to combat this racism. Implicit in the discourse and framing of the WEOG was also a designation of international human rights intervention as per se unsuitable for liberal democratic states.

On the one hand, the WEOG statements above might simply be treated as empty rhetoric — window dressing mobilized to cover up the wrongdoing of a superpower. But I would argue that the liberal democratic rhetoric of the WEOG does more work than serve as mere window dressing for disingenuous politics. It goes further and reinforces the view that liberal democracy of the form presently instantiated in the United States is capable of addressing anti-Black subordination, completely eliding the myriad ways in which this and prior instantiations of liberal democratic order in the United States have been predicated upon or been compatible with gross anti-Black racial subordination. The rhetoric also does the important work of obscuring what we might think of as the imperial dimensions of liberalism, which are fundamentally racialized and must be assessed not only at the U.S. domestic level, but also transnationally.

Empire is by no means a hegemonic analytical frame in international legal scholarship, much in the same way that it is not hegemonic in U.S. constitutional analysis. Critical traditions within international law, however, especially Third World Approaches to International Law (TWAIL) scholarship, have done the most to center empire in international legal theory. In the last few years especially, there has been renewed momentum within TWAIL to engage with race alongside empire as analytically indispensable for theorizing transnational forms of inequality and injustice, especially as facilitated by international law, policies, and institutions.⁶⁸ On the domestic front, too, scholars have provided compelling analyses of why legal theory and advocacy for racial justice require greater attention to an imperial lens that situates the

⁶⁷ Recall that the protests were not only about the racist human rights violations, but also about the pervasive impunity for these violations, which is constitutionally and legislatively buttressed by the U.S. legal order. See *supra* notes 10–12 and accompanying text.

⁶⁸ A forthcoming issue of the UCLA Law Review serves as an example bringing together the work of TWAIL and CRT scholars in this vein, and building on early similar work begun at a 2000 symposium hosted by Professor Ruth Gordan at Villanova. Symposium, *Transnational Legal Discourse on Race and Empire*, 67 UCLA L. REV. 1386 (2021); Symposium, *Critical Race Theory and International Law: Convergence and Divergence*, 45 VILL. L. REV. 827 (2000).

United States legally, politically, and economically as a settler colony alongside its identity as a liberal democracy.⁶⁹

Professor Aziz Rana in particular has written persuasively about how a failure of U.S. constitutionalism to confront its settler colonial foundations, and its concomitant insistence on a “civic” rather than a “settler” constitutional identity, has been a fundamental constraint on the sort of reckoning that might put the United States on a path to substantive emancipation for racial and ethnic minorities in this country. He writes:

The [U.S.’s] identitarian shift from settler to civic nation has meant that Americans have never properly confronted the country’s colonial infrastructure or the living legacy of its settler history. As a consequence, today’s vision of the country as intrinsically — if incompletely — liberal systematically deemphasizes those forms of economic and political subordination that continue to mark the experience of historically marginalized communities.⁷⁰

He identifies the historical emergence of a civic rhetoric of American universalism in the early twentieth century as “an adaptation rather than a rejection of the settler past.”⁷¹ Adaptation is achieved in part through the rearticulation of the settler colonial project as liberal universalism.⁷²

The position advanced by WEOG during the Urgent Debate is, in important respects, a recapitulation of the move Rana identifies within U.S. constitutionalism — the WEOG insistence on liberal democratic rule of law’s capacity to address systemic racism masks the racialized settler colonial foundations of liberal institutions of law enforcement.⁷³ It relegates the Human Rights Council to the role of insulating liberal democracies from international accountability for racial injustice by virtue of their status as liberal democracies, irrespective of the racial hierarchies sustained by liberal democratic regimes. Yet as critical scholars

⁶⁹ See, e.g., AZIZ RANA, *THE TWO FACES OF AMERICAN FREEDOM 1-19* (2010); NATSU TAYLOR SAITO, *SETTLER COLONIALISM, RACE, AND THE LAW: WHY STRUCTURAL RACISM PERSISTS 41-56* (2020). It is arguably no coincidence that events in the United States — a settler colony constitutionally founded on the legal, political, and economic subordination of non-Whites — precipitated an Urgent Debate on these terms. But it is worth noting that the popular and advocacy momentum that precipitated the debate included protests against anti-Black racism in European metropolitan imperial nation states, territorially located at some distance from the non-White territories they had formerly colonized, but no less defined by their respective imperial encounters.

⁷⁰ Aziz Rana, *Colonialism and Constitutional Memory*, 5 U.C. IRVINE L. REV. 263, 268 (2015).

⁷¹ *Id.* at 276.

⁷² See *id.* at 281 (recalling how for Black radicals fighting for racial justice in the civil rights era, “[b]y cloaking basic structural features of the American experience from public debate, [the civic framing of the country] allowed those features to persist in shaping the opportunities and experiences of historically subordinated communities”).

⁷³ See, e.g., Jill Lepore, *The Invention of the Police*, NEW YORKER (July 13, 2020), <https://www.newyorker.com/magazine/2020/07/20/the-invention-of-the-police> [https://perma.cc/52D9-SAKA].

have taken great pains to highlight, it should not be forgotten that the liberal project is an imperial project,⁷⁴ which is to say that in its historical and contemporary manifestations it has always sustained political and economic interconnection among groups and individuals on unequal terms, including on the basis of race. Indeed, even the history of the international human rights framework for combatting racial discrimination is fraught with liberal opposition to the very framework.⁷⁵ Confronting these imperial dimensions reveals what we might think of as the benefits structure of liberalism — its intended outcomes, beneficiaries, and subordinates — and how this benefits structure tends to operate even within the international human rights framework where racial justice is concerned. Indeed, the terms of the Urgent Debate should remind purveyors of the international human rights system of

⁷⁴ As Professor Duncan Bell notes in the introduction to his recent edited volume, *Empire, Race and Global Justice*, the “fraught relationship between liberalism and empire” has been the subject of a large body of scholarship by historians of political thought. Duncan Bell, *Introduction, in EMPIRE, RACE AND GLOBAL JUSTICE* 1, 1–4 (Duncan Bell ed., 2019). Within this literature, three positions have been salient: (1) a rejection thesis that “posits that liberalism and imperialism are mutually exclusive, that authentic liberals cannot be imperialists[,]” which is rarely explicitly adopted by political theorists today, *id.* at 4; (2) a necessity thesis, according to which “imperialism is an integral feature of liberal political thought,” and to be a liberal is to be committed to the legitimacy of liberal empire, *id.* at 4; and (3) a contingency thesis positing that “liberal normative commitments do not necessarily entail support for empire[,]” and that different strands of liberalism variably advance or resist imperial commitments, *id.* at 5. Bell’s analysis provides a useful literature review of leading scholarship in the respective three traditions. My analysis is premised on the third thesis.

⁷⁵ In the narration of the history of international human rights law it is often a neglected fact that the International Convention on the Elimination of Racial Discrimination (ICERD) was the first major international human rights treaty, preceding even the International Covenant on Civil and Political Rights. JENSEN, *supra* note 8, at 125. Newly independent Third World nation states served as the driving force behind ICERD, in the face of overt and covert opposition of First World nation states reluctant to see the colonial staples of racial injustice and inequality placed on the transnational human rights agenda. In 1962, nine African nations introduced a resolution that called for the creation of a Convention on the Elimination of All Forms of Racial Discrimination. *Id.* at 105 & n.7. The effort was buoyed by a coalition of African and Asian states, and “[d]ecolonization was its source of energy.” *Id.* at 108. In this sense, the negotiation of ICERD accelerated the international human rights legal framework. *See id.* at 110. This process proceeded despite some concerns from Western nations and efforts to delay the implementation of the Convention. *Id.* at 137 (“Neither the two superpowers nor countries such as the United Kingdom and France were very interested in the expansion of human rights into international law but it happened anyway — despite their unease and lack of political readiness when the process took off in 1962. Human rights would gradually become a parameter in the Cold War competition and the big powers would have to adapt to this new reality. The important point is that they were pushed forward to this situation by smaller states, especially from the Global South.”); *see also id.* at 277 (“Decolonization was — through its structural transformation of international politics — a decisive factor that actually enabled human rights to emerge despite significant opposition to become a significant factor for international diplomacy and politics in the past decades.”). Whereas Third World nation states are typically cast as backward or recalcitrant on human rights issues, their initiative — including with respect to the Urgent Debate — has been quintessential in framing racial injustice and inequality as a fundamental human rights concern.

Professor Makau Mutua's damning critique of the imperial and racialized nature of the system, including the system's rendering of liberal democracies as per se human rights saviors.⁷⁶

CONCLUSION

In his analysis, Rana recalls the arguments of Black radicals in the civil rights era to highlight the salience of imperial dynamics embedded in liberal discourse and institutions in the United States that both sustain racial subordination and obscure the transnational solidarities that might be essential to undoing that subordination.⁷⁷ The Urgent Debate, among other things, serves as a reminder of the salience of transnational dimensions of even domestic racial subordination, and as a caution regarding how international human rights frameworks can defuse radical claims for racial justice through liberal rearticulation rather than illiberal refutation of their underlying premises. In the end, the language and institutions of equality do the work of preserving inequality rooted in institutionalized White supremacy.

What does this mean, then, for domestic racial justice advocates who may be considering transnational racial justice advocacy through U.N. mechanisms? It means, I think, that at a minimum, engagement with these mechanisms must be characterized by the same radical abolitionist, decolonial tactics and strategies that proved the most powerful at the national level during the racial justice uprisings.

⁷⁶ See Mutua, *supra* note 9, at 207–08.

⁷⁷ See Rana, *supra* note 70, at 280–84.