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## Accumulation by reconciliation: the United States, South Africa, and peacemaking by vanquished settlers as liberal international order

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# Accumulation by reconciliation: the United States, South Africa, and peacemaking by vanquished settlers as liberal international order

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## ABSTRACT

In historicising 'transitional justice' and its place within structures of international order, I argue that intra-settler violence in North America and Southern Africa are vital, but unexplored, points of lineage. Focusing on the American Civil War and Second Boer War, I argue that distinct patterns of 'accumulation by reconciliation' emerged, as white factions made peace through new ideological commitments premised on further marginalisation/exploitation of those not considered 'white.' 'Accumulation by reconciliation' found articulate champions via American President Woodrow Wilson and South African Prime Minister Jan Smuts, leading architects of the League of Nations system and modern liberal internationalism generally. Given that transitional justice projects largely presume an order of liberal internationalism, we must consider how the forging of these presumption was influenced by the white-supremacist settler contexts of Wilson and Smuts. This genealogy thus enables a deeper conceptualisation of the limits of transitional justice.

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**KEYWORDS** Transitional justice; settler colonialism; white supremacy; the United States; South Africa

## I. Expanding the transitional justice canon

In her landmark text *Worldmaking After Empire*, Adom Getachew elaborately showcases the often-forgotten visions of African, Caribbean, and African-American scholar-statesmen who sought to build emancipatory alternatives as formal European imperialism crumbled before their eyes.<sup>1</sup> While this text makes a multitude of profoundly important points, my focus here is on her detailing of a particular aspect of the post-First World

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<sup>1</sup> A Getachew, *Worldmaking After Empire: The Rise and Fall of Self-Determination* (Princeton UP, 2019).

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War ‘counter-revolutionary moment’ that both frustrated and animated the worldmaking endeavours she so eloquently enlivens.<sup>2</sup> Here, Getachew focuses on the American President Woodrow Wilson and the South African Prime Minister Jan Smuts. Both were products of white supremacist settler colonialism who sought to universalise their presumptions of race hierarchy and paternalism through the League of Nations—an unprecedented institutional attempt to create order and governance on a global scale.<sup>3</sup> Additionally, both immensely feared the spread of the Bolshevik Revolution and in rhetorically (if not substantively) novel measures, cast their efforts to preserve racial and colonial structures via the language of liberal ‘self-determination’ in the face of this threat.<sup>4</sup> However, another key similarity between Wilson and Smuts had a direct bearing on why they viewed themselves as providentially chosen architects of this emergent system. Both were shaped by their status as part of the defeated, and arguably more viscerally racist, political community in wars between divergent white supremacist factions that occurred in greater contexts of settler colonisation. In Getachew’s words, Wilson and Smuts ‘... saw World War I as a crisis of white civilisation that they had already experienced in their domestic contexts with the US Civil War and the Boer Wars at the end of the nineteenth century.’<sup>5</sup>

In this article, I argue that this legacy could hardly be more relevant when accounting for how racialised structures became embedded within the field known as ‘transitional justice’—the broad array of practices intended to promote justice, reconciliation, and reconstruction in post-conflict and/or post-authoritarian societies. Currently, there are various defining ‘case-studies’: efforts to systematise knowledge of actual or potential measures such as criminal trials, truth commissions, reparations, public memorialisation, and governmental/security sector reform. These efforts constitute the field’s so-called ‘toolkit.’<sup>6</sup> Amongst the most famous case-studies are (Nazi) Germany, Chile, Apartheid South Africa, Rwanda, the Former Yugoslavia, Northern Ireland, Colombia, and, quite speculatively/critically, Israel-Palestine.<sup>7</sup> However, I argue that, if the limitations defining transitional justice are to be best understood, then the formative contexts of both Wilson and Smuts, individually and in combination, should be included within the consciousness of the transitional justice field. As will be detailed below, the meta-processes of reconciliation between the North and South in Wilson’s American context and the British/English-speakers and the Boers/Afrikaners in Smuts’ South African context outlined above, dealt with post-conflicts

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<sup>2</sup> *Ibid*, 37–70.

<sup>3</sup> *Ibid*, 42.

<sup>4</sup> *Ibid*, 45–49.

<sup>5</sup> *Ibid*, 42–43.

<sup>6</sup> R Teitel, *Transitional Justice* (OUP, 2020).

<sup>7</sup> For empirical appraisal, see G Bates, I Cinar and M Nalepa, ‘Accountability by Numbers: A New Global Transitional Justice Dataset (1946–2016)’ (2020) 18 *Perspectives on Politics* 161.

issues of building social trust/cohesion, developing new constitutional structures, and reshaping the international order—issues exceedingly familiar to scholars of transitional justice. In both situations, reconciliation between two white factions created disastrous results for those deemed ‘non-white’, even when certain matters of racial rectification were central to the intra-settler wars themselves (namely the abolition of American slavery). Moreover, when assessing Wilson and Smuts’ respective systemic consciousness of these greater force, it is immensely telling that both were formally trained lawyers.<sup>8</sup>

When viewing this meta-comparison through its transnational origins and influence, it is vital to understand how the US and South Africa, despite many differences, were uniquely similar as both slave-owning *and* settler colonial societies, whose formation and consolidation occurred within a greater world-system defined by ideologies of race hierarchy.<sup>9</sup> This similarity between these two societies led to strikingly analogous patterns of intra-settler conflict, reconciliation, and reformulations of race hierarchy. However, despite the many socio-legal insights that a careful analysis here might provide (especially as it concerns the racialised character of the global legal order<sup>10</sup>), such intra-white supremacist reconciliations are universally excluded as field-defining transitional justice ‘case studies’. While this exclusion might be an understandable outcome given transitional justice’s linkage to greater projects of international human rights and universal equality—projects that avowedly, if not structurally, reject race-hierarchy—it must be remembered that inclusion within the transitional justice ‘canon’ is a politically contingent endeavour, which defies any formalistic or natural criteria.<sup>11</sup> After all, the term ‘transitional justice’ itself, though universalised in its legal and normative proclamations, was the product of very specific historical and political conditions—a reality that critiques of the field have a paradoxical tendency to obscure.<sup>12</sup> Such a meta-phenomenon speaks directly to how accounting for legalistic origins can raise an unlimited array of political questions, especially given that any history of international law demands an *a priori* theory of international law.<sup>13</sup> This is a particularly sensitive topic within the transitional justice field, where the desires to establish incontestable historical records, recognise irreducibly plural regimes of

<sup>8</sup> G Osborn, ‘Woodrow Wilson as a Young Lawyer, 1882–1883’ (1957) 41 *Georgia Historical Quarterly* 126; J Hyslop, ‘Martial Law and Military Power in the Construction of the South African State: Jan Smuts and the “Solid Guarantee of Force”, 1899–1924’ (2009) 22 *Sociology Lens* 234, 235.

<sup>9</sup> G Fredrickson, *White Supremacy: A Comparative Study of American and South African History* (OUP, 1981).

<sup>10</sup> C Gevers, ‘“Unwhitening the World”: Rethinking Race and International Law’ (2021) 67 *UCLA Law Review* 1652, 1658–64.

<sup>11</sup> M Zunino, *Justice Framed: A Genealogy of Transitional Justice* (CUP, 2019) 193.

<sup>12</sup> P Arthur, ‘How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice’ (2009) 31 *Human Rights Quarterly* 321; Z Miller, ‘Embedded Ambivalence: Ungoverning Global Justice’ (2020) 11 *Transnational Legal Theory* 353.

<sup>13</sup> A Orford, *International Law and the Politics of History* (Cambridge University Press, 2021) 255–7.

memory, and delineate the appropriate role of authoritative officials exist in tension with one another.<sup>14</sup>

Having highlighted this contingency, I am left with the task of articulating why the contexts-cum-influence of Wilson and Smuts should shape an alternative narrative of transitional justice origins. First of all, the liberal understanding of race that pervades mainstream thinking on transitional justice is deeply limited in its ability to account for deeper histories and structures, to the extent that even self-avowed white supremacists can exploit its discourses and proclaim themselves as the ‘true victims.’<sup>15</sup> Relatedly, there is the role that both the US and South Africa play within the global consciousness of transitional justice. While transitional justice has long played a role in American foreign policy,<sup>16</sup> relatively recent widespread exposure of the depths of persisting racial violence and inequality in the US has raised questions of whether this nation itself is in need of a transitional justice process.<sup>17</sup> The very raising of this question of the need for transitional justice in the heart of the ‘Global North’ calls attention to how transitional justice measures have long inscribed an implicit North/South divide, whereby societies in the Global South are cast as requiring the intervention of a virtuous ‘international community’.<sup>18</sup> On this reading, perhaps no site is a better ‘case-study’ than post-Apartheid South Africa.<sup>19</sup> Here, the great hopes placed in the 1990 transition to democracy and the legal/constitutional efforts to build a ‘human rights state’<sup>20</sup> must now contend with the grave inequality that continues to plague the country along deeply racialised lines.<sup>21</sup> The renowned transitional justice measures implemented in this context, namely the Truth and Reconciliation Commission, proved limited at best and complicit at worst.<sup>22</sup>

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<sup>14</sup> B Sander, *Doing Justice to History: Confronting the Past in International Criminal Courts* (OUP, 2021).

<sup>15</sup> E Loefflad, ‘International Law for a Time of Monsters: “White Genocide”, the Limits of Liberal Legalism, and the Reclamation of Utopia’ (2024) 35 *Law and Critique* 191.

<sup>16</sup> Z Kaufman, *United States Law and Policy on Transitional Justice: Principles, Politics, and Pragmatics* (OUP, 2016); A Bird, *US Foreign Policy on Transitional Justice* (OUP, 2021).

<sup>17</sup> JH Scott, ‘Reparations, Restitution, and Transitional Justice: American Chattel Slavery & Its Aftermath, a Moral Debate Whose Time Has Come’ (2022) 14 *Wisconsin International Law Journal* 269; O Táiwò, *Does the US Need a Truth and Reconciliation Commission? A Philosophical Investigation* (Routledge, 2023).

<sup>18</sup> V Nesiáh, ‘Local Ownership of Global Governance’ (2016) 14 *Journal of International Criminal Justice* 985, 1007–8.

<sup>19</sup> P Gready, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond* (Routledge, 2011).

<sup>20</sup> M Mutua, ‘Hope and Despair for a New South Africa: The Limits of Rights Discourse’ (1997) 10 *Harvard Human Rights Journal* 63.

<sup>21</sup> T Madlingozi, ‘Social Justice in a Time of Neo-Apartheid Constitutionalism: Critiquing the Anti-Black Economy of Recognition, Incorporation and Distribution’ (2017) 28 *Stellenbosch Law Review* 123; J Modiri, ‘Conquest and Constitutionalism: First Thoughts on an Alternative Jurisprudence’ (2018) 39 *South African Journal on Human Rights* 300; J Handmaker and T Matthews, ‘Analysing Legal Mobilisation’s Potential to Secure Equal Access to Socioeconomic Justice in South Africa’ (2019) 36 *Development Southern Africa* 889.

<sup>22</sup> R Meister, *After Evil: A Politics of Human Rights* (Columbia University Press, 2011) 69–75; M Mamdani, *Neither Settler Nor Native: The Making and Unmaking of Permanent Minorities* (Harvard University Press,

Issues invoked by both the US and South Africa speak directly to the longstanding difficulties in conceptualising, let alone rectifying, socioeconomic harm within the confines of existing transitional justice practices.<sup>23</sup> This is especially true given how structures of transitional justice presume a defining dichotomy between victim and perpetrator, rendering those working this framework unable to readily consider what must be expected of the ‘third parties’ who benefit from historic and on-going structural injustice.<sup>24</sup> Through casting Wilson, Smuts, and their contexts of origin and reception as shapers of the phenomenon we now call ‘transitional justice,’ we can gain new lenses for theorising the exclusions and limitations of this field. On this point, I argue that the Wilson and Smuts drew upon experiences as vanquished settlers and, in the aftermath of the First World War, seized their grand opportunity to transform world order by entrenching their formative presumptions [the ‘formative presumptions’ of Wilson and Smits, or of the novel institutions?] surrounding race, justice, political community, and political economy through novel institutions. Projects undertaken in the name of ‘transitional justice’ (even before it was known by this name) were necessarily shaped by these greater institutional presumptions that formed the backdrop of projects to transform societies in the name of transnationally formulated liberal ideals. On this point, it is highly telling that new fields of study designed to achieve these ends, particularly ‘International Relations,’ were (in their dominant manifestations) explicitly animated by goals of preserving global white supremacy.<sup>25</sup>

By using this frame, we can better understand how a specific conception of time serves the ends of racially entrenched hierarchies as a means of removing certain issues from the presumed remit of ‘transitional justice’ as it exists in its present institutional form.<sup>26</sup> In an intimately connected capacity, we can acquire new insights into how the modern ideological construction of ‘domestic’ and ‘international’ spheres severed the ‘world of nation-states’ from the earlier (and formative) ‘world of empires,’ while preserving the dynamics of racial/colonial capitalism that built the latter system.<sup>27</sup> In analysing these temporal and spatial components, we gain new perspectives on how ‘transition’ is itself a de-radicalised alternative to

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2020) 181–90; Joshua Bowsher, ‘The South African TRC as Neoliberal Reconciliation: Victim Subjectivities and the Synchronization of Affects’ (2020) 29 *Social & Legal Studies* 41.

<sup>23</sup> M Evans, ‘Structural Violence, Socioeconomic Rights, and Transformative Justice’ (2016) 15 *Journal of Human Rights* 1.

<sup>24</sup> Meister (n 22) 23–31.

<sup>25</sup> R Vitalis, *White World Order, Black Power Politics: The Birth of American International Relations* (Cornell University Press, 2015); A Davis, V Thakur and P Vale, *The Imperial Discipline: Race and the Founding of International Relations* (Pluto P, 2020).

<sup>26</sup> Z Miller, ‘The Injustices of Time: Rights, Race, Redistribution, and Responsibility’ (2021) 52 *Columbia Human Rights Law Review* 647.

<sup>27</sup> N Tzouvala, ‘Civilisation’ in Jean d’Aspremont and Sahib Singh (eds), *Concepts for International Law: Contributions to Disciplinary Thought* (Edward Elgar, 2019) 83, 94–7.

addressing socio-political contradictions, which stands in stark contrast to any ‘revolution’ that might transcend the entrenched logics of marginalisation defining the world as we know it. After all, in its iconic post-1989 iteration, ‘transition’ was the presented alternative to ‘revolution’.<sup>28</sup> This eclipsing of revolutionary possibility was precisely the goal of Wilson and Smuts as dutiful upholders of an ideology that viewed race hierarchy as essential to the self-progressing, liberal world ‘civilisation’ they sought to build.<sup>29</sup> The present difficulty of imagining any such revolutionary transformation within the existing confines of transitional justice is a testament to the long-term success of Wilson, Smuts, and their formative contexts.

Moving forward against these presumptions, Part II develops a theory of ‘accumulation by reconciliation’ drawn from the framework of Settler Colonial Studies, materialist engagement with it, and its distinct gap regarding intra-settler wars and their reconciliation. Part III uses this framework to present a broad re-interpretation of American history up to the early twentieth century. Part IV presents a similar analysis of settler colonisation and identity-formation in Southern Africa up to the Second Boer War and subsequent formation of the Union of South Africa as a Dominion within the British Empire. Converging these observations, Part V explores how Wilson and Smuts, as products of ‘accumulation by reconciliation’, universalised their experiences against the backdrop of the greater liberal reformulation of international order following the First World War.

## II. Theorising ‘accumulation by reconciliation’

When theorising on the ‘accumulation by reconciliation’ that defined the settler colonial contexts of Wilson and Smuts, universalised through international institution-building, the framework of Settler Colonial Studies (‘SCS’) is as fitting a point as any to begin. Developed to account for colonised spaces, where indigenous peoples are prone to being ignored by reigning conceptions of colonial history and anti-colonial politics, SCS is premised on a number of core inter-linking presumptions.<sup>30</sup> Prominently articulated by Patrick Wolfe and Lorenzo Veracini, these presumptions turn on how settler colonialism is a logic of elimination and replacement as opposed to a logic of exploitation, and, on this basis, ‘invasion is a

<sup>28</sup> Meister (n 22) 69–70.

<sup>29</sup> J Kripps, ‘The Creative Advance Must be Defended: Miscegenation, Metaphysics, and Race War in Jan Smuts’s Vision of the League of Nations’ (2022) 116 *American Political Science Review* 940; C Burden-Stelly, *Black Scare/Red Scare: Theorizing Capitalist Racism in the United States* (University of Chicago Press, 2023).

<sup>30</sup> P Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (Cassell, 1999) 2–3; L Veracini, ‘“Settler Colonialism”: Career of a Concept’ (2013) 41 *Journal of Imperial and Commonwealth History* 313.



structure and not an event.<sup>31</sup> Here, even when settler colonialism exists in conjunction with, or in opposition to other modes of colonisation, it nevertheless retains its distinct character.<sup>32</sup> In particular, a prominently emphasised feature of settler colonialism is its permanence, given how settlers come to stay and become so successful in transforming societies in their image that many do not perceive them as being colonial at all.<sup>33</sup> This dynamic of permanence has certainly challenged recent efforts to implement transitional justice in settler colonial contexts, a matter profoundly articulated by critical indigenous scholars.<sup>34</sup>

When it comes to linking settler colonialism, racialisation, and the limited prospects of social transformation through transitional justice measures, scholars can gain much insight from recent placements of settler colonialism in the global history of political thought and political economy—especially as it concerns how broader connected patterns of dispossession, domination, and dependency are intrinsic to both the formation and preservation of capitalist social relations.<sup>35</sup> According to Veracini, by opening new spaces to permanent settlement, settler colonisation diffused the social tensions generated by systemic contradictions within the metropole.<sup>36</sup> This particular colonialism thus preserved, and even fortified, metropolitan socio-political orders, as would-be revolutionaries had their demands satisfied (or reformulated) in their new role as colonial settlers.<sup>37</sup> As such, this prospect of a ‘spatial fix’ held great promise to both the conservatives who viewed revolution as possible but undesirable *and* the progressives who viewed revolution as desirable but impossible.<sup>38</sup> Vital to this process was how the rules surrounding individuals’ rights to property, the core element of capitalist social relations, were indispensably clarified and refined in the context of indigenous dispossession.<sup>39</sup> A logic that, in a mutually-reinforcing capacity, was both informed by and informed patterns of dispossession in the metropole perpetuating overseas settler colonisation.<sup>40</sup>

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<sup>31</sup> P Wolfe, ‘Settler Colonialism and the Elimination of the Native’ (2006) 8 *Journal of Genocide Research* 387, 388.

<sup>32</sup> L Veracini, ‘Understanding Colonialism and Settler Colonialism as Distinct Formations’ (2013) 16 *Interventions* 615.

<sup>33</sup> L Veracini, *The Settler Colonial Present* (Palgrave, 2015).

<sup>34</sup> G Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minnesota UP, 2014).

<sup>35</sup> OU Ince, ‘Between Equal Rights: Primitive Accumulation and Capital’s Violence’ (2017) 46 *Political Theory* 885.

<sup>36</sup> L Veracini, *The World Turned Inside Out: Settler Colonialism as a Political Idea* (Verso, 2021) 9.

<sup>37</sup> *Ibid.*, 16–20.

<sup>38</sup> *Ibid.*, 8.

<sup>39</sup> B Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Duke UP, 2018); R Nichols, *Theft Is Property!: Dispossession and Critical Theory* (Duke UP, 2019).

<sup>40</sup> H Jones, ‘Property, Territory, and Colonialism: An International Legal History of Enclosure’ (2019) 39 *Legal Studies* 187; C Griffin, ‘Enclosure as Internal Colonisation: The Subaltern Commoner, Terra Nullius and the Settling of England’s “Wastes”’ (2023) *Transactions of the Royal Historical Society* 95.

This was especially true in the ‘Anglosphere’, by far the most successful, but by no means the only, settler-colonial meta-project.<sup>41</sup> Here, through the creation of a settler ‘Angloworld,’ original efforts to escape metropolitan contradictions generated new linkages between settler colonies and the metropole (as well as between different settler colonies) on issues of commercial practices, conceptions of property, systems/philosophies of government, and, of course, racialised ideologies for justifying the dispossession of indigenous peoples—all of which were cast in the language of ‘progress.’<sup>42</sup> In this way, settler colonisation, especially as its entrenchment between the sixteenth century inauguration of the transatlantic slave trade and mercantile colonialism, and the mid-nineteenth century turn to ‘free-trade’ imperialism, proved to be amongst the most pivotal facets of the greater global history of colonialism.<sup>43</sup> In the aggregate, these inter-locking forces were vital in shaping the structure and content of the globe-spanning mechanism of juridical order presently deemed ‘international law.’<sup>44</sup>

However, since the settler colonial diffusion of revolutionary tension does not transcend formative social contradictions, but rather displaces them through inherently finite spatial solutions, the re-emergence and/or adaption of underlying contradictions is an ever-present possibility.<sup>45</sup> This makes it imperative to theorise the multi-layered social relations that define settler societies, even if it means blurring the clear boundaries that exist between ‘logics of elimination’ and ‘logics of exploitation’ as they shift across time and social strata.<sup>46</sup> Here, it must be noted that while defining conflicts may exist between settler and indigenous populations, there are nevertheless ever-present tensions between settlers, as they are locked in competition within greater structures of capitalist accumulation.<sup>47</sup> In other words, while the destruction of indigenous societies might form a common foundational credence amongst settlers (and be justified by racialised theories of ‘inevitability’<sup>48</sup>), the question of *how* these societies will be destroyed, and *who* will benefit from their destruction, can be a source of contention amongst settlers—while this very contention accelerates indigenous

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<sup>41</sup> See A Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (CUP, 2018).

<sup>42</sup> J Belich, *Replenishing the Earth: The Settler Revolution and the Rise of the Angloworld, 1783–1939* (OUP, 2009) 49–70. On property rights specifically, see J Weaver, *The Great Land Rush and the Making of the Modern World, 1650–1900* (McGill-Queens UP, 2003).

<sup>43</sup> L Veracini, *Colonialism: A Global History* (Routledge, 2022) 79–90.

<sup>44</sup> M Neocleous, ‘International Law as Primitive Accumulation; Or, the Secret of Systematic Colonization’ (2012) 23 *European Journal of International Law* 941.

<sup>45</sup> G Paquette, ‘Colonies and Empire in the Political Thought of Hegel and Marx’ in Sankar Muthu (ed), *Empire and Modern Political Thought* (CUP, 2012) 292, 314–6.

<sup>46</sup> S Englert, ‘Settlers, Workers, and the Logic of Accumulation by Dispossession’ (2020) 52 *Antipode* 1647, 1663.

<sup>47</sup> *Ibid*, 1658.

<sup>48</sup> P Brantlinger, *Dark Vanishings: Discourse on the Extinction of Primitive Races, 1800–1930* (Cornell UP, 2002).

destruction and normalises said destruction as a common point of agreement amongst otherwise conflicting settler factions.<sup>49</sup> However, the violence behind these competitive processes can easily consume the settler communities to the point of outright intra-settler war. These patterns of contention are especially pronounced when forced labour (especially chattel slavery), and its intensification of racial logics, manifests in differentiated models of settler accumulation, as was the case in both the US and South Africa.<sup>50</sup> In both instances, differentiated dynamics of settlement, accumulation, and racialisation, all inseparable from the enhanced consolidation of the nineteenth-century world-system, manifested in two intra-settler armed conflicts: the American Civil War and the Boer Wars.<sup>51</sup>

The dearth of focus upon intra-settler war in SCS can be attributed to how the experience of Australasia has been the defining model for theorising settler colonialism. In the Australasian context, though experiments did exist (especially in Queensland<sup>52</sup>), forced labour practices never defined intra-settler social relations to anywhere near the same extent as the US or South Africa.<sup>53</sup> Here, the formal disavowal of chattel slavery was a lesson learned by British colonisers in the wake of American independence, which went hand-in-hand with the initial denial of indigenous land rights by treaty.<sup>54</sup> This was emblematic of a greater turn from 'spontaneous' to 'systematic' colonisation practices.<sup>55</sup> Relatedly, the imperial governance of Australasia displayed a level of uniformity absent in North America or Southern Africa, where diverse political forms raised questions of sovereignty that prompted justifications for war.<sup>56</sup> Given the absence of intra-settler war, the international perspective on violence in Australasia could not be viewed as anything but settlers against indigenous societies.<sup>57</sup>

<sup>49</sup> M Adhikari, 'Invariably Genocide? When Hunter-Gatherers and Commercial Stock Farmers Clash' (2020) 7 *Settler Colonial Studies* 192.

<sup>50</sup> On indigenous land-extraction and African labour-extraction as diverging racialisation in the US, see P Wolfe, *Traces of History: Elementary Structures of Race* (Verso, 2016) 62–3. On the divergence between South African 'racial' logics in the slaving-holding Cape region and 'tribal' logics in the native labour-disavowing Natal region, see Mamdani (n 22) 151–54.

<sup>51</sup> J Osterhammel, *The Transformation of the World: A Global History of the Nineteenth Century* (Princeton UP, 2015) 352–3.

<sup>52</sup> K Saunders, *Workers in Bondage: The Origins and Bases of Unfree Labour in Queensland 1824–1916* (U Queensland P, 2013).

<sup>53</sup> P McMichael, *Settlers and the Agrarian Question: Capitalism in Colonial Australia* (CUP, 1984)

<sup>54</sup> Wolfe (n 50) 31. On the return to treaty in the later colonisation of New Zealand, see S Banner, *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska* (Harvard UP, 2007) 84–127.

<sup>55</sup> OU Ince, *Colonial Capitalism and Dilemmas of Liberalism* (OUP, 2018) 127–30.

<sup>56</sup> D Denoon, *Settler Capitalism: The Dynamics of Dependent Development in the Southern Hemisphere* (OUP, 1983) 5.

<sup>57</sup> J Belich, *The Victorian Interpretation of Racial Conflict: The Maori, the British, and the New Zealand Wars* (Auckland UP, 1986); A Curthoys, 'Genocide in Tasmania: The History of an Idea' in AD Moses (ed), *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History* (Berghahn, 2008) 229.

Building a theory of ‘accumulation by reconciliation’ against these presumptions requires attention to how the legitimising foundations of settler societies produce a distinct theory of intra-settler war. As Adam Dahl has shown, the settler colonial origins of modern democratic theory cast much light on the longstanding philosophical quandary of how a political community based on the abstracted ‘will’ of its members comes to tangibly exist.<sup>58</sup> According to Dahl, while the violence of settler dispossession is the incontestable grounds for founding the self-proclaimed political community, said community’s purity rests upon disavowing its foundational violence as ‘violence’.<sup>59</sup> Importantly, for Dahl, this disavowal is not the same as forgetting and/or amnesia. While the latter occurs in a passive capacity, the former is a positive affirmation.<sup>60</sup> In other words, indigenous dispossession must be consciously recognised to be consciously rationalised, with the continuous ontological assertion of the settler polity being the unavoidable outcome of this reasoning process. On this basis, the ontology of sovereignty itself is inseparable from self-perpetuating racialisation.<sup>61</sup> Few facilitators of this affirmative disavowal have been as potent as the memories of intra-settler war.

Theorising this ‘intra-settler war’ requires keen attention to how it is that the greater regime of the laws of war exist not merely as technical provisions, but as an elaborate normative-cum-structural order for defining the boundary lines of legitimate violence.<sup>62</sup> It is well-acknowledged that the original laws of war were consigned to conflicts between Europeans in a manner that excluded force against non-European ‘barbarians’ and ‘savages’ from the constraints on violence in warfare.<sup>63</sup> This was one of the key ways in which these colonial ‘small wars’ have shaped vast socio-political understandings, especially as they have caused colonial powers to rethink and reformulate foundational assumptions concerning force and violence.<sup>64</sup> However, while intra-settler war certainly existed on a different plane from settler-indigenous violence,<sup>65</sup> it was also distinct from the religious and aristocratic war that defined intra-European conflicts.<sup>66</sup> Rather than a call to extinguish heretics or a duel between nobles, intra-settler wars existed in a

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<sup>58</sup> A Dahl, *Empire of the People: Settler Colonialism and the Foundations of Modern Democratic Thought* (UP Kansas, 2018) 3–4.

<sup>59</sup> *Ibid.*, 4.

<sup>60</sup> *Ibid.*

<sup>61</sup> K Nişancioğlu, ‘Racial Sovereignty’ (2019) 26 *European Journal of International Relations* 39.

<sup>62</sup> See P Kamalovitz, *The Laws of War in International Thought* (OUP, 2020).

<sup>63</sup> F Mégret, ‘From “Savages” to “Unlawful Combatants”: A Postcolonial Look at International Humanitarian Law’s “Other” ’ in Anne Orford (ed), *International Law and Its Others* (CUP, 2006) 265.

<sup>64</sup> T Barkawi, ‘On the Pedagogy of “Small Wars” ’ (2004) 80 *International Affairs* 19; P Owen, *Economy of Force: Counterinsurgency and the Historical Rise of the Social* (CUP, 2013); J McKay, *The Counterinsurgent Imagination: A New Intellectual History* (CUP, 2023).

<sup>65</sup> S Aune, *Indian Wars Everywhere: Colonial Violence and the Shadow Doctrines of Empire* (U California P, 2023).

<sup>66</sup> J Whitman, *The Verdict of Battle: The Law of Victory and the Making of Modern War* (Harvard UP, 2012).

different order of social legitimisation. Given the ideologies of a democratic settler political community, violence took on a uniquely tragic character, since it occurred between those whose bonds should have been greatest.<sup>67</sup>

Reconciliation in the wake of this violence directly connects back to the disavowal of political claims by indigenous or otherwise racialised peoples concerning the validity of the settler state. In this instance, bloodshed between those defined within a common racialised identity (ie, kindred 'blood') is sacralised as a tragedy that violence against racial outsiders must perpetually pale in comparison to. The purported 'unnaturalness' of violence between those connected by a categorisation of race directly serves to naturalise violence between (and against) allegedly alien races. By this logic, with its existential justification written in the blood of its chosen community, the survival of the settler state in the aftermath of this 'supreme' tragedy is a testament to its eternal force, and the unassailability of its foundations. While the conceptualisation of tragic fraternal violence in 'civil war' dates back to antiquity,<sup>68</sup> the commemoration of intra-settler war, and its fundamentally white supremacist grounding, provides a distinct racialisation of inter-communal violence that seamlessly fits within the greater genealogy of 'race war' central to global modernity.<sup>69</sup>

In reading this dynamic of intra-settler war as the validation of intra-settler political community into the distinct political economy of settler colonisation, it becomes possible to theorise 'accumulation by reconciliation.' The mutually presumed white supremacist resolution of the intra-settler war is depicted as a sacred event, suspended above and beyond legitimate political contestation. At a material level, this sacralisation is interwoven into the defence of the institutions that exist in the context of its entrenchment, thus rendering the hierarchies and inequities that define the settlement-associated institutions as similarly beyond the remit of acceptable debate. Threatening such fundamental orders in the name of greater social equality and solidarity (especially as they might apply in a trans-racial capacity), can be deemed an existential threat to sacred intra-settler reconciliation. A reconciliation that is portrayed as the one force holding back the potential tragedy of fratricidal war. With this presumption in place, the channels for challenging the social contradictions that led to, and were expanded through settler colonisation, can only be used through methods that uphold a model of reconciliation premised on white supremacy. In this way, capitalist social relations (especially as they are inseparable from the racialised presumptions and constitutive effects ordered through transnational patterns

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<sup>67</sup> D Armitage, *Civil Wars: A History in Ideas* (Yale UP, 2017) 9–11.

<sup>68</sup> *Ibid*, 31–2.

<sup>69</sup> A Barber, *Global Race War: International Politics and Racial Hierarchy* (OUP, 2021) 16–20.

of legality<sup>70</sup>), are shielded by this meta-phenomenon of ‘accumulation by reconciliation’. It forges a conceptual ‘whiteness’ that is to be continually realised through the purportedly non-racial process of accumulating private property.<sup>71</sup> With this theoretical sketch in place, we are well-positioned to historicise the material and ideological trajectory of ‘accumulation by reconciliation’ to the extent it impacts upon our conceptualisation of ‘transitional justice.’

### III. The United States as ‘accumulation by reconciliation’

In considering the formation of the US as an exercise in ‘accumulation by reconciliation’, it is difficult to deny that its foundations occurred through the broader patterns of dispossession, forced labour, and racialisation that were central to the intertwined early-modern processes of European overseas expansion and the rise of capitalist social relations.<sup>72</sup> A key component of the legitimising disavowal central to ultimate American independence in the late-eighteenth century was the settler mobilisation of various intellectual tools used to define the exclusive project of American nationhood. Thereby, at the level of settler imagination, frontier expansion became a vacant space of possibility limited only by virtue.<sup>73</sup> Theorists and proponents of this project—later venerated as ‘founding fathers’—thus invoked mythic conceptions of the ‘state of nature’ in an all-pervasive capacity.<sup>74</sup> Central to this discourse was the influence of abstract frameworks that configured settlement and cultivation as demands of natural law, linking an individual’s acquisition of property to a people’s acquisition of nationhood.<sup>75</sup> Perhaps no text embodied this sensibility more than Thomas Jefferson’s 1774 ‘A Summary View of the Rights of British America’, where he claimed that British denial of American settlement-based legitimacy was tantamount to Britain denying its own legitimacy, as it was similarly constituted by the Anglo-Saxon settlement of their Isle.<sup>76</sup> Such abstract universalisations proved a highly influential means of disavowing the foundational violence entailed by a concept of political community, based on forcibly asserting

<sup>70</sup> R Knox, ‘Valuing Race: Stretched Marxism and the Logic of Imperialism’ (2016) 4 *London Review of International Law* 81, 103–8.

<sup>71</sup> C Harris, ‘Whiteness as Property’ (1993) 106 *Harvard Law Review* 1707.

<sup>72</sup> See A Anievas and K Nişancıoğlu, *How the West Came to Rule: The Geopolitical Origins of Capitalism* (Pluto P 2015).

<sup>73</sup> A Rana, *The Two Faces of American Freedom* (Harvard UP, 2010) 45–62.

<sup>74</sup> M Somos, *American States of Nature: The Origins of Independence, 1761–1775* (OUP, 2019).

<sup>75</sup> W Ossipow, and D Gerber, ‘The Reception of Vattel’s Law of Nations in the American Colonies: From James Otis and John Adams to the Declaration of Independence’ (2017) 57 *American Journal of Legal History* 521, 535.

<sup>76</sup> T Jefferson, ‘A Summary View of the Rights of British America’ in J Appleby and T Ball (eds), *Jefferson: Political Writings* (CUP, 2012) 64, 77–8.

title to lands proclaimed to be unburdened by any pre-existing claims—they feudal or indigenous.<sup>77</sup>

However articulately expressed, this ideological unity did not resolve social contradictions. As Aziz Rana has shown, in the wake of independence, the US was in an analogous position to postcolonial Asia and Africa, as restless and rebellious populations called for large-scale redistribution.<sup>78</sup> Yet true to settler colonialism's diffusionist management of social contradictions, continued frontier expansion (and the prospects for property-based opportunity it brought), proved a means of addressing social unrest in the wake of American independence as those who would challenge concentrations of accumulated wealth instead sought gain as frontier settlers.<sup>79</sup> However, this prospect of expansion raised a vast array of legal and constitutional questions that became unavoidable the moment the Federal Government began administering its first non-state territories.<sup>80</sup> Especially prominent here was how, despite a unified expansionist rhetoric of 'Manifest Destiny,' this expansionist diffusion contained a defining division that stemmed directly from the 1787 compromise allowing non-slave Northern states and slaveholding Southern states to exist within a common Constitutional order.<sup>81</sup> Shaped by greater geopolitical backdrops, this division brought about two patterns of expansion premised on diverging answers to questions on the relationship between sovereignty and property.<sup>82</sup> On the northern non-slave frontier, the prospect of conflict with the British in Canada and the Russians on the Pacific coast forced the early American republic to engage in practices of great power diplomacy, elevating sovereignty as the incontestable grounding for property rights.<sup>83</sup> While the prospect of international conflict limited the power of settlers in relation to the US federal government (and created a distinct role for the US Army—a direct agent of the state—in the westward expansion process<sup>84</sup>), settlers nevertheless succeeded in entrenching exclusionary property-based legal orders within these territories.<sup>85</sup>

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<sup>77</sup> Meister (n 22) 127.

<sup>78</sup> Rana (n 73) 103.

<sup>79</sup> *Ibid*, 123; J Parisot, *How America Became Capitalist: Imperial Expansion and the Conquest of the West* (Pluto Press, 2019).

<sup>80</sup> G Ablavsky, *Federal Ground: Governing Property and Violence in the First US Territories* (OUP, 2021).

<sup>81</sup> S Lynd, 'The Compromise of 1787' (1966) 81 *Political Science Quarterly* 225; R Horseman, *Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism* (Harvard UP, 1986); D Deudney, 'The Philadelphian System: Sovereignty, Arms Control, and Balance of Power in the American States-Union, Circa 1787–1861' (1995) 49 *International Organisation* 191.

<sup>82</sup> On the New York-centred Northeast versus the New Orleans-centred Mississippi River Valley as rival sites of accumulation that complicate any overly rigid 'North-South' binary, see S Hahn, *A Nation Without Borders: The United States and Its World in an Age of Civil Wars* (Viking, 2017) 3–4.

<sup>83</sup> A Fitzmaurice, *Sovereignty, Property and Empire, 1500–2000* (CUP, 2015) 203–14.

<sup>84</sup> R Wooster, *The United States Army and the Making of America: From Confederation to Empire, 1775–1903* (UP Kansas, 2021).

<sup>85</sup> JH Tyler, *Leveraging an Empire: Settler Colonialism and the Legalities of Citizenship in the Pacific Northwest* (U Nebraska P, 2021).

The expansion vectors of the Southern slave-owning states were fundamentally different. Contrary to/In contrast to Europe's great powers, within the early decades of the nineteenth century, the governmental authorities beyond the US's southern border emerged as the independent, yet crisis-prone, republics of Latin America which US Americans viewed with varying degrees of comradery, contempt, and opportunity.<sup>86</sup> Unlike in the northwest, where the primacy of sovereignty over property emerged as an imperative of great power diplomacy, on the southern frontier—beneath the all-important Mason-Dixon Line—the inverse proved true.<sup>87</sup> This was demonstrated in 1836, when property-claiming American settlers in Mexico successfully seceded as the Republic of Texas.<sup>88</sup> Central to this dynamic of property-determined sovereignty was the institution of slavery. In this context, the Haitian Revolution (1791-1804) was a fixation amongst socially dominant Southern plantation owners who feared a similar slave uprising.<sup>89</sup> Their view of the world influenced an elaborate conception of Southern foreign policy aimed at enlisting less powerful slave societies south of the border, namely Cuba and Brazil, as clients in the hemispheric defence of slavery.<sup>90</sup> These logics of settler-based territorial acquisition and the defence of slavery came together in the most grandiose way via the 1846–48 Mexican-American War, where, in a conflict prompted by expansion-desiring Southern political elites, the acquisition of nearly half of Mexico's territory introduced the prospect of extending slavery to the Pacific Ocean.<sup>91</sup> For ambitious slave-owners, Northern Mexico was only the beginning of a cascade of planned conquests whereby Latin American territories were dominated and ultimately admitted to the Union as slave states, thus altering the South's balance of power with this new legislative representation.<sup>92</sup>

As these models of settler accumulation proved increasingly contradictory in this period of political incommensurability, the American Civil War erupted in 1861 as arguably the first modern conflict in a globalising world-system premised on popular nationalism, transnational market

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<sup>86</sup> C Fitz, *Our Sister Republics: The United States in an Age of American Revolutions* (Liveright, 2016).

<sup>87</sup> On the Mason-Dixon Line as the Pennsylvania-Maryland border, dividing contrasting visions of American nationhood, see EG Gray, *Mason-Dixon: Crucible of the Nation* (Harvard UP, 2023).

<sup>88</sup> G Horne, *The Counter Revolution of 1836: Texas Slavery & Jim Crow and the Roots of American Fascism* (International Publishers, 2022).

<sup>89</sup> Barder (n 69) 43–6; T Matthewson, 'Jefferson and the Nonrecognition of Haiti' (1996) 140 *Proceedings of the American Philosophical Society* 22.

<sup>90</sup> M Karp, *This Vast Southern Empire: Slaveholders at the Helm of American Foreign Policy* (Harvard UP, 2016).

<sup>91</sup> T Hendersen, *A Glorious Defeat: Mexico and Its War with the United States* (Hill & Wang, 2008); K Waite, *West of Slavery: The Southern Dream of a Transcontinental Empire* (U North Carolina P, 2021).

<sup>92</sup> R May, *Slavery, Race, and Conquest in the Tropics: Lincoln, Douglas, and the Future of Latin America* (CUP, 2013).



integration, and mass-scale industrial technology.<sup>93</sup> The overarching context of settler colonialism cannot be separated from the violence of this war and the distinct meaning it ultimately assumed.<sup>94</sup> This was especially true in the domain of law, where American institutions were challenged by the war—and, in a manner unique among armed conflicts, nearly every major legal issue raised in this conflict was addressed by a court.<sup>95</sup> Particularly, given the general unavailability of the racialised dehumanisation methods that justified other forms of American violence, this war entailed an unprecedented degree of discourse on legal-cum-normative parameters for legitimate uses of force.<sup>96</sup> As such, it proved eminently fitting that it was in this context that the first modern code on the laws of war was produced via the Prussian émigré Francis Lieber’s ‘General Order 100’, commissioned by Abraham Lincoln.<sup>97</sup> However, in addition to falling short of being the great humanitarian innovation it is often venerated as, this ‘Lieber Code’, when read in conjunction with Lieber’s greater theories, fits seamlessly within the character of the US as a settler empire that orders legitimate violence through a distinct civilisational hierarchy.<sup>98</sup>

This racialised-cum-juridified hierarchy of violence held much purchase as memories of loss and sacrifice (re)defined post-Civil War white American society as a vast ‘republic of suffering.’<sup>99</sup> Vitaly, this ideal of bloodshed-purified republican virtue was defined by those excluded from processes of commemorative nation-building.<sup>100</sup> Yet, to understand how ‘accumulation by reconciliation’ ascended in this context, it is necessary to understand the defeat of more radical efforts to re-order American society and politically include formerly enslaved peoples via the ‘unfinished revolution’ that was post-Civil War Reconstruction.<sup>101</sup> Explanations for this failure are legion. There was the matter of how Reconstruction demanded an intensive military commitment that strained the will and capacity of a war-weary nation.<sup>102</sup> Additionally, there was the question of how much legitimacy constitutional transformation could command amongst a defeated and occupied

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<sup>93</sup> N Onuf and P Onuf, *Nations, Markets, and War: Modern History and the American Civil War* (U Virginia P, 2006).

<sup>94</sup> See MK Nelson, *The Three-Cornered War: The Union, the Confederacy, and Native Peoples in the Fight for the West* (Simon & Schuster, 2020).

<sup>95</sup> S Neff, *Justice in Blue and Gray: A Legal History of the Civil War* (Harvard UP, 2010) 1.

<sup>96</sup> A Sheehan-Dean, *The Calculus of Violence: How Americans Fought the Civil War* (Harvard UP, 2018).

<sup>97</sup> JF Witt, *Lincoln’s Code: The Laws of War in American History* (Free Press, 2012).

<sup>98</sup> Here, it is highly revealing that massacres of indigenous peoples did not fall within the novel category of ‘war crimes’ that emerged in this context. H Kinsella, ‘Settler Empire and the United States: Francis Lieber on the Laws of War’ (2023) 117 *American Political Science Review* 629, 639.

<sup>99</sup> DG Faust, *This Republic of Suffering: Death and the American Civil War* (Knopf, 2001).

<sup>100</sup> D Blight, *Race and Reunion: The Civil War in American Memory* (Harvard UP, 2002); E Blum, *Reforging the White Republic: Race, Religion, and American Nationalism, 1865–1898* (Louisiana State UP, 2005).

<sup>101</sup> E Foner, *Reconstruction: America’s Unfinished Revolution, 1863–1877* (Harper Collins, 2015); see also K Franke, *Repair: Redeeming the Promise of Abolition* (Haymarket Books, 2nd edn 2021).

<sup>102</sup> G Downs, *After Appomattox: Military Occupation and the Ends of War* (Harvard UP, 2015).

population.<sup>103</sup> Furthermore, there was the matter of how a sweeping transformation could undermine the very legal and political order the war was waged to preserve.<sup>104</sup> However, in centring the question of ‘accumulation by reconciliation’, all of these issues are framed through the structure of the US as a capitalist settler empire that consolidated by diffusing social contradictions through dispossession and displacement.

In the post-Civil War moment, as with the post-Revolutionary moment, the disruption of existing order gave rise to radical ideas—namely the assertion that slavery’s abolition was simply the beginning of a greater eradication of domination writ large.<sup>105</sup> Yet, much like in the post-Revolutionary moment, post-Civil War tensions were diffused in great part via continued frontier expansion, a pattern of accumulation that refined numerous theories and practices of race hierarchy, especially those developed in the defeated South.<sup>106</sup> Against this greater backdrop, few moments were as impactful as the Compromise of 1877 that ended Reconstruction and restored autonomy to the Southern states in a manner that paved the way for Jim Crow segregation and mass violence against emancipated black communities.<sup>107</sup> Importantly, the great material basis of the Compromise was less the force of Southern reactionary politics, and more a deeper capitalist integration of Northern and Southern elites, whose accumulation activities were very much enabled by the white supremacist narrative of mutually honourable victory and defeat by ‘worthy’ rivals in the Civil War.<sup>108</sup> In particular, the most visceral white Southern sentiment existed amongst small-hold agrarians challenged by enhanced agricultural commercialisation in the ‘New South’. They found a convenient scapegoat in the form of racialised ‘Others’ existing outside the new commemorative nationalism fuelled by ‘accumulation by reconciliation.’<sup>109</sup> This widespread popular resentment,

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<sup>103</sup> C Nicolletti, ‘The Rise and Fall of Transcendent Constitutionalism in the Civil War Era’ (2020) 106 *Virginia Law Review* 1631, 1643–4.

<sup>104</sup> This was especially true concerning the captured Confederate President Jefferson Davis, whose prospective treason trial raised the dilemma of either undermining Constitutional due process guarantees, or risking a politically disastrous acquittal. C Nicolletti, *Secession on Trial: The Treason Prosecution of Jefferson Davis* (CUP, 2017) 25–26.

<sup>105</sup> A Gourevitch, *From Slavery to the Cooperative Commonwealth: Labor and Republican Liberty in the Nineteenth Century* (CUP, 2014) 106–9.

<sup>106</sup> HC Richardson, *How the South Won the Civil War: Oligarchy, Democracy, and the Continuing Fight for the Soul of America* (OUP, 2020).

<sup>107</sup> CV Woodward, *Reunion and Reaction: The Compromise of 1877 and the End of Reconstruction* (OUP, 1991).

<sup>108</sup> On varied dimensions of the capitalism/reconciliation nexus, see J Levy, *Ages of American Capitalism: A History of the United States* (Random House, 2021) 215–28; E Teitelman, ‘The Properties of Capitalism: Industrial Enclosures in the South and the West after the American Civil War’ (2020) 106 *Journal of American History* 879; A Beverton, ‘Transborder Capitalism and National Reconciliation: The American Press Reimagines US-Mexico Relations after the Civil War’ (2022) 21 *Journal of the Gilded Age and the Progressive Era* 40; HC Richardson, *The Death of Reconstruction: Race, Labor, and Politics in the Post-Civil War North, 1865–1901* (Harvard UP, 2004).

<sup>109</sup> S Hahn, *The Roots of Southern Populism: Yeoman Farmers and the Transformation of the Georgia Upcountry, 1850–1890* (OUP, 1983).

coupled with racialised frontier settlement and capitalist fuelling of regional unevenness on a North-South axis,<sup>110</sup> explains why some of the most radical challengers of concentrated wealth ultimately succumbed to the logics of nativism and white supremacy in this era.<sup>111</sup>

While frontier expansion provided a settler-colonial means of managing post-Civil War tensions, it contained an inherent limitation in that continental space was finite, and the frontier was largely exhausted by the end of the nineteenth century. This closure of settler expansion, and its meaning for ‘accumulation by reconciliation’, needs to be understood in reference to two greater meta-events. One of them was the great rapprochement with the British Empire following more than a century of tension and mistrust.<sup>112</sup> Deeply racialised, this reconciliation, in many ways a macrocosm of intra-American North-South relations, gave rise to an ideology of ‘Anglo-Saxonism’, whereby English-speakers cast themselves as the highest form of racial and cultural evolution, thus destined to rule the world.<sup>113</sup> This great Anglo-Saxonist rapprochement formally validated the patterns of informal innovation transfer that had long occurred between these two nation-empires.<sup>114</sup> As these patterns were largely geared toward capital accumulation, Anglo-Saxonism’s ability to recast these interactions through new narratives of political virtue and imagined future prosperity showcases yet another manifestation of ‘accumulation by reconciliation.’

Contextually, Anglo-American rapprochement cannot be separated from the greater late-nineteenth pattern of European powers suppressing violence between each other, despite bitter longstanding rivalries, when adhering to common international legal formulations governing large-scale colonial acquisition, especially in Africa.<sup>115</sup> It was against this backdrop that the other great meta-event occurred, whereby the US began pursuing a

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<sup>110</sup> Southern social realities fixated liberal paternalists in a manner both mirroring and connected to overseas imperialism, see N Ring, *The Problem South: Region, Empire and the New Liberal State, 1880–1930* (U Georgia P, 2012). Such imperial views of South were not confined to the US, see A Zimmerman, *Alabama in Africa: Booker T. Washington, the German Empire, and the Globalization of the New South* (Princeton UP, 2010).

<sup>111</sup> Rana (n 73) 216–8.

<sup>112</sup> On the resolution of the Venezuela Crisis as a reconciliation catalyst, see S Vucetic, *The Anglosphere: A Genealogy of a Racialized Identity in International Relations* (Stanford UP, 2011) 32–38.

<sup>113</sup> D Bell, *Dreamworlds of Race: Empire and the Utopian Destiny of Anglo-America* (Princeton UP, 2021).

<sup>114</sup> Belich (n 42).

<sup>115</sup> See Jörg Fisch, ‘Africa as *Terra Nullius*: the Berlin Conference and International Law’ in S Forster, WJ Mommsen, and R Robinson (eds), *Bismarck, Europe, and Africa: The Berlin Africa Conference 1884–1885 and the Onset of Partition* (OUP 1988) 347; Matthew Craven, ‘Between Law and History: the Berlin Conference of 1884–1885 and the Logic of Free Trade’ (2015) 3 *London Review of International Law* 31; CH Alexandrowicz, ‘The Partition of Africa by Treaty’ in CH Alexandrowicz, David Armitage and Jennifer Pitts (eds), *The Law of Nations in Global History* (OUP, 2017) 230. An illustration of intra-European violence prevented in this context was the diffusion of Anglo-French territorial contestation of the Upper Nile River via the 1898 Fashoda Crisis, see Patricia Wright, *Conflict on the Nile: The Fashoda Incident of 1898* (William Heinemann, 1972); TW Roberts, ‘The Comité de l’Afrique Française, the Chad Plan, and the Origins of Fashoda’ (2021) 64 *Historical Journal* 310.

pattern of activities which defined the longtime British adversaries that so much American identity was formed to repudiate: the overseas British Empire.<sup>116</sup> With the acquisition of the Philippines, Guam, Puerto Rico, and (temporarily) Cuba following the 1898 Spanish-American War, as well as the annexation of Hawaii, this imperial reality raised an array of questions on American issues of race, constitutional democracy, and humanitarian commitment.<sup>117</sup> On the one end, the justification for war with Spain, especially its widely condemned violent counterinsurgency in Cuba, proved a catalyst for grandiose proclamations of American virtue. These were contrasted against barbarous ‘Old World’ tyranny.<sup>118</sup> The humanitarian grounds for war and subsequent imperial administration (the infamous ‘white man’s burden’) provided a distinct means of rechannelling, and de-radicalising, many of the progressive energies that sought to transform American society along more egalitarian lines.<sup>119</sup> Few figures exemplified these interlinked logics of militant imperial expansionism, veneration of settler heritage, and paternalist social reformism to the same degree as twenty-sixth President Theodore (‘Teddy’) Roosevelt.<sup>120</sup> However, Roosevelt’s synthesis was far from the only formulation of a race-empire-nationhood nexus against the greater backdrop of ‘accumulation by reconciliation.’ Many feared that including colonial subjects might undermine American racial purity, especially as it concerned the constitutional question of whether said colonial subjects were, or ever could be, US citizens.<sup>121</sup> Such issues of ideal political community and its boundaries of legitimate belonging could easily complicate

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<sup>116</sup> While American entry into the overseas imperial ‘club’ is generally dated at 1898, the US influenced African colonisation much earlier, as the first major power to support the Belgian King Leopold II’s infamous effort to create an internationalised ‘free trade’ zone in the Congo, see GM Munene, ‘The United States and the Berlin conference on the partition of Africa, 1884–1885’ (1990) 19 *Transafrican Journal of History* 73; JT Gathii, ‘How American Support for Freedom of Commerce Legitimized King Leopold’s Territorial Ambitions in the Congo’ (2005) 37 *Studies in Transnational Legal Policy* 97. On a more structural level, it was rapid American expansion that convinced many Europeans that colonising Africa offered the best hope of maintaining competitiveness, see Sven Beckert, ‘American Danger: United States Empire, Eurafica, and the Territorialization of Industrial Capitalism, 1870–1950’ (2017) 122 *American Historical Review* 1137.

<sup>117</sup> AG Hopkins, *American Empire: A Global History* (Princeton UP, 2018) 494–528.

<sup>118</sup> P Amorosa, *Rewriting the History of the Law of Nations How James Brown Scott Made Francisco de Vitoria the Founder of International Law* (OUP, 2019) 57–73; After Spain’s defeat, similar civilisational logics were invoked in American suppression of new colonial subjects, especially in the Philippines, see W Smiley, ‘Lawless Wars of Empire? The International Law of War in the Philippines, 1898–1903’ (2018) 36 *Law and History Review* 511.

<sup>119</sup> Rana (n 73) 233–5.

<sup>120</sup> T Dyer, *Theodore Roosevelt and the Idea of Race* (Louisiana State UP, 1980).

<sup>121</sup> On the designation of overseas annexations as ‘unincorporated territories’ populated by ‘alien races’ without constitutional birthright citizenship, see E Román, & T Simmons, ‘Membership Denied: Subordination and Subjugation under United States Expansionism’ (2002) 39 *San Diego Law Review* 437, 457–62; see also E Love, *Race over Empire: Racism and US Imperialism, 1865–1900* (U North Carolina P, 2004).

the delicate normative order underpinning the greater structure of ‘accumulation by reconciliation.’<sup>122</sup>

This was the context that gave rise to Thomas Woodrow Wilson. Born into a prominent Southern family who lamented the loss of the antebellum socio-racial order, Wilson dedicated himself to the study of idealised governmental forms that could affirm the uniqueness of American virtue while preserving the honour of the defeated South.<sup>123</sup> Central to his method was the disavowal of any even vaguely materialist mode of analysis—a disavowal he advanced through his work as an academic.<sup>124</sup> This was apparent in his 1912 Presidential campaign where, within the confines of this unique four-way race, he advanced a vision known as the ‘New Freedom’, which depicted an idealised vision of American community that, contradictorily, sought to reconcile deregulated economic liberty with ‘freedom from’ the corporate interests that came to wield vast power over American life.<sup>125</sup> This was a marked departure from his opponents who, despite grave differences, were united against Wilson in their presentation of significantly more coherent socio-economic models.<sup>126</sup> With his blindness to material interests, Wilson—though sharing similar presumptions on civilisation and white supremacy—could present himself in diametric opposition to his nemesis Teddy Roosevelt and offer a vision of ‘America in the world’ that elevated covenant over conquest.<sup>127</sup> This attitude caused him to attend the post-First World War Paris Peace Conference with a view of himself as the supreme universal peacemaker.<sup>128</sup> However, the influence he wielded in performing this persona is best considered in relation to his innate affinity with another conference participant, who was himself an ideal specimen of ‘accumulation by reconciliation’ from a similar, but very different, context.

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<sup>122</sup> On modern American Constitution veneration as originating in this colonial controversy, see A Rana, *The Constitutional Bind: How Americans Came to Idolize a Document that Fails Them* (U Chicago P, 2024) 185–99.

<sup>123</sup> W Wilson, *Division and Reunion, 1829–1889* (Longmans, 1893).

<sup>124</sup> As a department head at Princeton University, Wilson removed the required study of political economy from the political science curriculum. K Grzybowski, ‘Woodrow Wilson on Law, State, and Society’ (1962) 30 *George Washington Law Review* 808, 811.

<sup>125</sup> W Wilson, *The New Freedom: A Call for the Emancipation of the Generous Energies of a People* (Doubleday, 1913). Wilson’s opposition to socialism can be read in close conjunction with his views that post-Civil War enfranchising of former slaves effectively disenfranchised Southern whites through ‘misgovernment.’ W Wilson, ‘The Reconstruction of the Southern States’ and ‘Socialism and Democracy’ in M DiNuzio (ed), *Woodrow Wilson: Essential Writings and Speeches of the Scholar President* (New York UP, 2006) 202, 262.

<sup>126</sup> This included William Howard Taft’s defence of vested interests via the Republican Party, Teddy Roosevelt’s effort to expand the administrative state through his Bull Moose Party, and Eugene Debs’ pursuit of socialism, see J Chace, *1912: Wilson, Roosevelt, Taft and Debs – The Election That Changed the Country* (Simon and Schuster, 2005).

<sup>127</sup> D Immerwahr, *How to Hide an Empire: A History of the Greater United States* (Bodley Head, 2019) 115.

<sup>128</sup> This posturing gained the attention of Sigmund Freud himself, see S Freud and W Bullitt, *Woodrow Wilson: A Psychological Study* (Routledge, 1966); P Weil, *The Madman in the White House: Sigmund Freud, Ambassador Bullitt, and the Lost Psychobiography of Woodrow Wilson* (Harvard UP, 2023).

#### IV. South Africa as ‘accumulation by reconciliation’

Having established the framework of ‘accumulation by reconciliation’ in the context of the US, its application to ‘South Africa’ requires several additional considerations. Regarding indigenous-settler relations, experiences were markedly different between the San and Khoikhoi peoples of the Cape region, who experienced an elimination-based settler colonialism, and the Bantu-speaking peoples of the interior, who experienced an exploitation-based colonialism of the type that defined much of the greater African continent.<sup>129</sup> Additionally, there was the matter of chattel slavery, where the forced importation of a vast diversity of populations throughout the Indian Ocean region meant they mixed with indigenous communities and white settlers, creating a unique ‘Coloured’ identity that challenged the ‘black/white’ racial binary.<sup>130</sup> Moreover, there is South Africa’s diasporic Indian population, whose coerced, but nominally ‘free’, colonial migration generated both tension and solidarity with Africans to varying degrees.<sup>131</sup> Finally, there was violent contention between Afrikaner and English-speaking white settlers who, in addition to conflicting material interests/cultures, were (unlike in the US) also divided by language and the lack of a unifying political narrative until the early twentieth century. As another distinction from the US, the conflict between white settlers came to mobilise the full military might of the imperial metropole in a manner that fundamentally redefined the character of the British Empire. This was essential to the later globalisation of ‘accumulation by reconciliation.’

To provide a broad overview of a vast and complex history, South Africa’s Cape region was colonised in the 1600s by the Dutch India Company (‘VOC’) as a supply point between Europe and their colonial enterprises in the East Indies.<sup>132</sup> Opened to property-based settlement by VOC servants,<sup>133</sup> the destruction of indigenous pastoral and hunter-gather communities was fuelled by agricultural ventures, sustained by both indigenous labour and chattel slavery.<sup>134</sup> In this unique and highly diverse environment came a hierarchical social order, where mixed and marginalised populations fell under the unifying rubric of ‘Cape Coloured’, and the transformation of the Dutch language (especially through its incorporation of Malay and

<sup>129</sup> E Oliver and W Oliver, ‘The Colonisation of South Africa: A Unique Case’ (2017) 73 *HTS: Theological Studies* 1.

<sup>130</sup> M Vink, ‘“The World’s Oldest Trade”: Dutch Slavery and Slave Trade in the Indian Ocean in the Seventeenth Century’ (2003) 14 *Journal of World History* 131; M Adhikari, *Not White Enough, Not Black Enough: Racial Identity in the South African Coloured Community* (Ohio UP, 2005).

<sup>131</sup> J Connolly, ‘Antislavery, “Native Labour,” and the Turn to Indenture in British Colonial Natal, 1842–1860’ (2023) 65 *Comparative Studies in Society and History* 500.

<sup>132</sup> N Worden (ed), *Cape Town Between East and West: Social Identities in a Dutch Colonial Town* (Jacana Media, 2021).

<sup>133</sup> R Ross, ‘The Rise of the Cape Gentry’ (1983) 9 *Journal of Southern African Studies* 193.

<sup>134</sup> M Adhikari, *The Anatomy of a South African Genocide: The Extermination of the Cape San Peoples* (Ohio UP, 2011).

African elements) gave rise to the Afrikaans language.<sup>135</sup> Yet apart from the white land-owning burgher class who ruled the lands in proximity to the VOC's key port settlement of Cape Town, other white settlers moved deeper into the interior, and through skill taught to them by the indigenous San, developed the semi-nomadic, hunting-based *Trekboer* culture.<sup>136</sup>

While the social order in the Cape steadily evolved over a century and a half, the situation changed dramatically with the 1789 outbreak of the French Revolution and subsequent wars, which reached new levels of intensity with the rise of Napoleon.<sup>137</sup> With the Netherlands occupied by Napoleon's French Empire, and the Dutch establishing a government-in-exile in the VOC's capital of Batavia on the East Indies island of Java, the British seized the Cape—temporarily in 1795, and then permanently in 1806.<sup>138</sup> With this assumption of British rule came new tensions with both indigenous peoples, particularly the Xhosa people of the Eastern Cape, and white Afrikaner settlers.<sup>139</sup> Eventually, this all-pervasive disagreement between these settlers and British colonial administrators, especially as it concerned British condemnation of Cape slavery/bonded labour (abolished in 1838),<sup>140</sup> led a significant portion of Afrikaners to undertake their mid-1830s 'Great Trek' into the interior. Via a 'Voortrekker' movement that disavowed British authority, this gave rise to a distinct 'Boer' nationalism.<sup>141</sup> However, tension continued as Britain annexed the eastern coastal region, inhabited by the Zulu people, to form the Natal colony (whose sugar plantation eventually gave rise to the import of Indian labour) in 1843. This seizure triggered a clash of settler property justifications with the Afrikaners.<sup>142</sup> Squeezed by a British-controlled Cape to the west and Natal to the east, the Boers formed two republics of debatable international legal personality in the form of the Orange Free State and the South African Republic

<sup>135</sup> P Roberge, 'Afrikaans: Considering Origins' in P Roberge (ed), *Language in South Africa* (CUP, 2002) 79.

<sup>136</sup> PJ Van der Merwe, *The Migrant Farmer in the History of the Cape Colony, 1657–1842* Roger Beck (trans), (Ohio UP, 1994 [1938]).

<sup>137</sup> For a study of the broad impacts of these events, see A Mikaberidze, *The Napoleonic Wars: A Global History* (OUP, 2020).

<sup>138</sup> T Potgieter and H Smit, 'Wasted Geography: The British Annexation of the Cape in 1795' in J Bezuidenhout and H Smit (eds), *African Military Geosciences: Military History and the Physical Environment* (African Sun P, 2018) 79.

<sup>139</sup> S Trapido, 'From Paternalism to Liberalism: The Cape Colony, 1800–1834' (1990) 12 *International History Review* 76; W Dooling, 'The Origins and Aftermath of the Cape Colony's 'Hottentot Code' of 1809' (2005) 31 *Kronos* 50; SI Blackbeard, 'Acts of Severity: Colonial Settler Massacre of *amaXhosa* and *abaThembu* on the Eastern Frontier of the Cape Colony, c.1826–47' (2015) 17 *Journal of Genocide Research* 107.

<sup>140</sup> W Dooling, 'Cape Settler Society at the Time of Slave Emancipation' (1997) 29 *Kleio* 19, 42.

<sup>141</sup> M Kriel, 'boere into Boere (Farmers into Boers): The So-Called Great Trek and the Rise of Boer Nationalism' (2021) 27 *Nations and Nationalism* 1198. On the patterns of African dispossession, see T Keegan, 'Dispossession and Accumulation in the South African Interior: The Boers and the Tlhaping of Bethulie, 1833–61' (1987) 28 *Journal of African History* 191.

<sup>142</sup> D Reid, 'Dispossession and *Legal Mentalité* in Nineteenth-Century South Africa: Grotian and Lockean Theories of Property Acquisition in the Annexations of British Kaffraria and Natalia' (2020) 11 *Settler Colonial Studies* 69.

(commonly known as the Transvaal), which, despite tensions with the British, were nevertheless key sub-imperial nodes within the greater process of capital accumulation.<sup>143</sup>

However, the contradictions of settler accumulation in this context were strained to their breaking point with the discovery of vast deposits of diamonds, and later gold, in lands populated by the Boers.<sup>144</sup> This was a direct pitting of two distinct interests within the overarching process of capital accumulation: the settler small-holders who performed the initial act of dispossession, and the transnational forces of finance and heavy industry seeking to further exploit dispossessed land.<sup>145</sup> As efforts to reconcile imperial-backed industrial extraction with identity-defining Boer traditions failed, the British resorted to outright war, first in 1880–81,<sup>146</sup> and then more conclusively in 1899–1902. During the latter period, through a bitter war of attrition, Britain destroyed the two Boer republics,<sup>147</sup> claimed the lands by right of conquest,<sup>148</sup> and waged an intensive campaign of counter-insurgency.<sup>149</sup> A massive blow to Britain's liberal idealism and its related theories of race, the Boer Wars raised a host of questions on the application of racialised methods of colonial warfare against white settlers.<sup>150</sup> After all, British suppression of the Boers involved concentration camps, the use of human shields, and substantial controversies over the laws of war—all in a highly publicised capacity.<sup>151</sup>

Given these complications, Britain had to manage how its image was presented to a diversity of audiences. There was the greater world of imperial powers who had much to gain from a shaking of British hegemony.<sup>152</sup> However, the war had tarnished Britain's reputation as the 'defender of

<sup>143</sup> T Keegan, 'The Making of the Orange Free State, 1846–54: Sub-Imperialism, Primitive Accumulation and State Formation' (1988) 17 *Journal of Imperial and Commonwealth History* 26; Gábor Szabó-Zsoldos, 'Boer Communities and the British Colonial Policy, 1846–1881: Differences between the Boer Republics from the Aspect of the British Colonial Policy' (2014) *Öt Kontinens* 83.

<sup>144</sup> M Meredith, *Diamonds, Gold, and War: The British, the Boers, and the Making of South Africa* (Simon & Schuster, 2008).

<sup>145</sup> S Trapido, 'Imperialism, Settler Identities, and Colonial Capitalism: The Hundred-Year Origins of the 1899 South African War' in R Ross, AK Mager, and B Nasson (eds), *The Cambridge History of South Africa: Volume II, 1885–1994* (CUP, 2011) 66.

<sup>146</sup> J Laband, *The Transvaal Rebellion: The First Boer War, 1880–1881* (Routledge, 2014).

<sup>147</sup> T Pakenham, *The Boer War* (Random House, 1979).

<sup>148</sup> J Westlake, 'The Nature and Extent of Title by Conquest' (1901) 17 *Law Quarterly Review* 392, 398.

<sup>149</sup> A Wessels, 'A Historical Overview of Boer Guerrilla and British Counterinsurgency Operations During the Anglo-Boer War, 1899–1902' (2023) 34 *Small Wars & Insurgencies* 328.

<sup>150</sup> D Boucher, 'British Idealism, Imperialism and the Boer War' (2020) 41 *History of Political Thought* 325.

<sup>151</sup> E Van Heyningen, 'The Concentration Camps of the South African (Anglo-Boer) War, 1900–1902' (2009) 7 *History Compass* 22; N Gordon and N Perugini, *Human Shields: A History of People in the Line of Fire* (U California P, 2020) 35–42; L Brazil, 'British War Office Manuals and International Law, 1899–1907' in E Cavanagh (eds), *Empire and Legal Thought: Ideas and Institutions from Antiquity to Modernity* (Brill 2020) 548, 567–70; L Brazil, 'Neutrality as a Contested Concept in International Humanitarian Law: Red Cross Men in the South African War, 1899–1902' (2023) 14 *Humanity* 419; K Morgan, 'The Boer War and the Media (1899–1902)' (2002) 12 *Twentieth Century British History* 1.

<sup>152</sup> See K Wilson (ed), *The International Impact of the Boer War* (Routledge, 2001).



small nations'. This was an especially prescient point given the English-dominated 'four nations' structure of the United Kingdom, whereby Wales, Scotland, and Ireland were all victims of, and participants in, Britain's Empire to varying degree.<sup>153</sup> Beyond the UK, one small nation of particular importance was the Netherlands, where many viewed the Boers as kindred blood.<sup>154</sup> This was especially important given the Dutch diplomatic role in serving as host for grand articulations of the international legal standards during this time. This included laws governing warfare such as the Hague Conventions.<sup>155</sup> Moreover, there was the question of Britain's other white settler colonies (all of which participated in the war), where Britain's heavy losses provided a propaganda opportunity to claim that settler populations with similar skills to the Boers (especially marksmanship/wilderness survival) were indispensable to Britain's imperial military might.<sup>156</sup>

Yet the one response that unified, and reconciled, these various tensions came from the US. Against the backdrop of its newfound rapprochement with the Americans, Britain depicted its war in racialised terms whereby Anglo-Saxon superiority needed to be demonstrated through triumph over the progress-averse and racially degenerate Boers.<sup>157</sup> While this Anglo-Saxonism held appeal amongst the American elite, it was less convincing to a broader white American public, who was both sceptical of overseas imperial adventurism and identified with the Boers as a fellow settler people.<sup>158</sup> One figure who proved uniquely well-positioned to reconcile these tensions was US President Teddy Roosevelt. Being of Dutch origins himself, Roosevelt had little affinity with Anglo-Saxonist proclamations of Boer racial inferiority.<sup>159</sup> Rather, for Roosevelt, both the British and Boers displayed their own respective virtuous qualities, whereby the former was the pinnacle of refinement while the latter displayed the rugged self-sufficient survivalism that progress demanded.<sup>160</sup> This was a highly fitting characterisation given how Roosevelt was both a distinct product of cosmopolitan urbanism and the

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<sup>153</sup> JS Ellis, "'The Methods of Barbarism' and the 'Rights of Small Nations': War Propaganda and British Pluralism' (1998) 30 *Albion* 49.

<sup>154</sup> V Kuitenbrouwer, *War of Words: Dutch Pro-Boer Propaganda and the South African War (1899–1902)* (Amsterdam UP, 2012).

<sup>155</sup> *Ibid.*, 206, 211, 226–8.

<sup>156</sup> J Mitcham, *Race and Imperial Defence in the British World, 1870–1914* (CUP, 2016) 67–96.

<sup>157</sup> S Anderson, 'Racial Anglo-Saxonism and the American Response to the Boer War' (1978) 2 *Diplomatic History* 219, 222. This image of Boer inferiority was coupled with presentations of the Boer as far more brutal colonisers than the British, see S Popple, 'From 'Brother Boer' to 'Dirty Boers': Colonizing the Colonizers through the Popular Representations of the Boer in the British Illustrated Journal 1899–1902' (2012) 5 *Journal of War & Culture Studies* 137

<sup>158</sup> Anderson (n 157) 220; JT Uhlman, 'Dispatching Anglo-Saxonism: Whiteness and the Crises of American Racial Identity in Richard Harding Davis's Reports on the Boer War' (2020) 19 *Journal of the Gilded Age and Progressive Era* 19; By contrast, most black Americans generally thought that British rule would be more favourable to Africans. WB Gatewood, 'Black Americans and the Boer War, 1899–1902' (1976) 75 *South Atlantic Quarterly* 226, 243–44.

<sup>159</sup> Anderson (n 157) 225.

<sup>160</sup> *Ibid.*, 232.

self-affirmed meta-persona of a legendary wilderness adventurer.<sup>161</sup> Thus, through an arguable act of supreme self-projection, for Roosevelt, reconciliation between whites in South Africa (under British imperial auspices) offered the prospect of building a uniquely providential national community comprised of the best of both peoples.<sup>162</sup> In Roosevelt's mind, while whites questioned their assimilationist capacities, these momentary uncertainties were underpinned by the more important fact there could never be any white assimilation with the vast native majority.<sup>163</sup>

When it came to the post-war reconstruction process, the basic elements of Roosevelt's vision, however implicit, arguably determined South Africa's 'accumulation by reconciliation' process on a variety of scales. As a material matter, the lands of the defeated Boer republics were quickly incorporated into an enhanced regime of capitalist social relations.<sup>164</sup> A significant component of this distinctly racialised capitalism arguably occurred in the war itself where, faced with shortages in essential goods, whites made rations to their African servants increasingly contingent upon ever greater exploitation of labour.<sup>165</sup> A social basis for racialised surplus extraction was thus an in-built presumption of the unfolding reconstruction process.<sup>166</sup> It was upon this material social basis that white reconciliation across English-speaking and Afrikaner lines established the identity of a self-governing racial-cum-political community (formalised in 1910 as the Union of South Africa) that configured Africans as the true subjects of Empire.<sup>167</sup> Much like the US, the sacralisation of this violence between settlers (and accompanying disavowal of African agency and suffering in these wars) provided a justification for supremacy.<sup>168</sup> Even the hard-won voting rights held by Coloured citizens in the Cape Colony were forfeited to satisfy the desire of defeated Boers to live in a formally white-dominated society.<sup>169</sup> Against this backdrop, perhaps no greater moment solidified 'accumulation by reconciliation' than the 1913 Native Land Act. In entrenching a whites-only property regime abiding no distinction between British and Boer, the Act consigned

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<sup>161</sup> G Russell, 'Theodore Roosevelt, Geopolitics, and Cosmopolitan Ideals' (2006) 32 *Review of International Studies* 541.

<sup>162</sup> Anderson (n 157) 223.

<sup>163</sup> Dyer (n 120) 149.

<sup>164</sup> D Denoon, ' "Capitalist Influence" and the Transvaal Government during the Crown Colony Period, 1900–1906' (1968) 11 *Historical Journal* 301.

<sup>165</sup> M Manaka, ' "From Spoiling Natives to No Work, No Food": Food Scarcity and the Controversy of Food Rations during the South African War' (2022) 50 *Scientia Militaria* 1.

<sup>166</sup> Here, even '[i]f relations between Afrikaner farmers and Africans still bore the form of earlier generations, their content was distinctively capitalist.' D Denoon, 'Capital and Capitalists in the Transvaal in the 1890s and 1900s' (1980) 23 *Historical Journal* 111, 120.

<sup>167</sup> H Reynolds and M Lake, *Drawing the Global Colour Line: White Men's Countries and the International Challenge of Racial Equality* (CUP, 2008) 210–37.

<sup>168</sup> H Siwundhla, 'White Ideologies and Non-European Participation in the Anglo-Boer War, 1899–1902' (1984) 15 *Journal of Black Studies* 223.

<sup>169</sup> F Nyika and J Fourie, 'Black Disenfranchisement in the Cape Colony, c.1887–1909: Challenging the Numbers' (2020) 46 *Journal of Southern African Studies* 455.

the vast African population to ten percent of the land, designated as ‘native reserves,’ and forbade African purchase or lease of white-owned land.<sup>170</sup>

While these were the conditions under which the four separate British colonies unified as a self-governing Imperial Dominion in 1910, the effect of these events on the greater British imperial world is difficult to overstate. Given the many questions it raised on a vast array of fronts, the British metropolitan gaze cast South Africa as an effective microcosm of Britain’s broader empire, and many of the most ambitious would-be imperial intellectuals and powerbrokers flocked there to study it as such.<sup>171</sup> This congregation ultimately gave rise to the greater ‘Round Table’ movement, which, spear-headed in and by the Dominions, provided a forum for discussions on imperial governance that would be a vital, but ultimately obscured, contribution to the development of ‘International Relations’ as an academic field.<sup>172</sup> Additionally, in a considerably less ‘top-down’ capacity, the Boer War proved vital in linking settler and metropolitan labour under the aegis of a ‘white imperial working class’. In seeking to preserve the value of white labour—especially as it might be devalued by native or imported ‘non-white’ labour—it drastically limited the prospects of inter-racial solidarity within the world’s most extensive imperial sphere.<sup>173</sup> Given this, the far-reaching effects of a process of ‘accumulation by reconciliation’ geared towards the specific conditions and tasks of constructing a white South African polity could hardly have been more global in its origins and impacts.

This was the context that produced Jan Christiaan Smuts. Born into a prominent Afrikaner family in the Cape, Smuts was formatively exposed to the British imperial metropole’s dominant intellectual and cultural ethos as a student at the University of Cambridge.<sup>174</sup> However, as his discontent grew with the Cape Colony under the leadership of Cecil Rhodes, Smuts, having produced an elaborate Afrikaner identitarian manifesto against British rule, relocated to the Transvaal interior and became Justice Minister of the South African Republic.<sup>175</sup> Commanding Boer forces against the British during the war, Smuts, in a capacity that highly influenced his outlook, remained a guerrilla fighter beyond formal capitulation.<sup>176</sup> Yet,

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<sup>170</sup> W Beinart and P Delius, ‘The Historical Context and Legacy of the Natives Land Act of 1913’ (2014) 40 *Journal of Southern African Studies* 667. This Act enabled vast ‘indirect rule’ over the African majority, see K Moguerane, ‘Black Landlords, their Tenants, and the Natives Land Act of 1913’ (2016) 42 *Journal of Southern African Studies* 243.

<sup>171</sup> V Thakur and P Vale, *South Africa, Race and the Making of International Relations* (Rowman and Littlefield, 2020) 9–15.

<sup>172</sup> Davis, Thakur, and Vale (n 25) 18–39.

<sup>173</sup> J Hyslop, ‘The Imperial Working Class Makes Itself ‘White’: White Labourism in Britain, Australia, and South Africa Before the First World War’ (1999) 12 *Sociology Lens* 398.

<sup>174</sup> R Hyam, ‘South Africa, Cambridge, and Commonwealth History’ (2001) 90 *Round Table* 401, 402.

<sup>175</sup> JC Smuts, *A Century of Wrong* (Review of Reviews, 1900).

<sup>176</sup> I Liebenberg, ‘Sociology, Biology or Philosophy of a Warrior? Reflections on Jan Smuts, Guerrilla – Being and Politics of Choices’ (2005) 33 *Scientia Militaria* 141.

upon his ultimate acceptance of defeat, Smuts acted as a leading figure who reconciled Boer with British, proving instrumental in forging the Union of South Africa as a Dominion of the British Empire that he hoped would rival Canada and Australia in its influence.<sup>177</sup> Towards this end, as a commander of British forces in Africa during the First World War and a member of British Prime Minister David Lloyd George's Imperial War Council, Smuts viewed the war as a grand source of South Africa's prestige among nations.<sup>178</sup> Moreover, like Wilson, Smuts was committed to idealism, a view that directly informed his conception of race as it applied to both reconciliation between whites and whites' liberal paternalist treatment of racial outsiders.<sup>179</sup> Following the First World War, this parallel converged in the most impactful of ways, when the two collectively brought their experience to bear on the future of world order under the auspices of the Paris Peace Conference.

## V. Universalising 'accumulation by reconciliation'

To understand Wilson and Smuts as vessels for universalising the ends of 'accumulation by reconciliation' that defined their formative contexts, it is useful to consider how the First World War was cast as an aberrant 'global race war' or 'civil war' of the white race. For certain populations, especially prominent Anglo-Americans, the First World War gave rise to a unified ideal of the 'white race' (that later configured 'ethnicity' as a model of 'non-hierarchical diversity'<sup>180</sup>). This monolithic amalgam of whiteness provided a novel alternative to views of race heavily fixated on how different European-descended peoples were themselves different racial groups upon an inescapable hierarchy.<sup>181</sup> The War's impact in bifurcating these racialised conceptions can be identified through a comparison of two of the most

<sup>177</sup> H Moolman, 'Jan Christiaan Smuts and the Union of South Africa' (1943) 12 *American Scholar* 391; PR Warhurst, 'Smuts and Africa: A Study in Sub-Imperialism' (1984) 16 *South African Historical Journal* 82.

<sup>178</sup> L Scholtz and I Scholtz, 'Die Eerste Wereldoorlog as Faktor in die Suid-Afrikaanse Toetreding tot die Internasionale Gemeenskap [The First World War as Factor in the South African Entry into the International Community]' (2016) 56 *Tydskrif vir Geesteswetenskappe* 190. It is instructive here that, in leading British imperial forces in Africa, Smuts's initial engagement against German troops in South-west Africa represented a 'civilised' engagement contrasted against his later engagements against African troops recruited by the Germans in East Africa. Bill Nasson, 'British Imperial Africa' in Robert Gerwarth and Erez Manela (eds), *Empires at War, 1911–1923* (OUP, 2014) 130; see also David Brock Katz, *General Jan Smuts and his First World War in Africa, 1914–1917: Incorporating his German South West and East Africa Campaigns* (Casemate Publishers, 2022).

<sup>179</sup> On Smuts' non-engagement with materialist accounts of race, see N Garson, 'Smuts and the Idea of Race' (2007) 57 *South African Historical Journal* 153, 177–8. Coupled with this idealism, Smuts was highly knowledgeable and skilled in the coercive application of law. Hyslop, 'Martial Law' (n 8).

<sup>180</sup> R Shilliam, 'Race and Research Agendas' (2013) 26 *Cambridge Review of International Affairs* 152, 153.

<sup>181</sup> For the Western Front-fixated Western Allies who distinguished the imperial 'small wars' from the inter-state 'Great War', the Eastern Front remained outside their memory regime. On these realities, see V Liulevicius, *War Land on the Eastern Front: Culture, National Identity, and German Occupation in World War I* (CUP, 2001); R Gerwarth, *The Vanquished: Why the First World War Failed to End, 1917–1923* (Penguin, 2017).

influential popular texts on race hierarchy in this era—Madison Grant’s *The Passing of the Great Race*, and Lothrop Stoddard’s *The Rising Tide of Colour Against World White Supremacy*. Central to Grant’s text was the configuration of race hierarchy within Europe, whereby the ‘Nordics’ reigned supreme over the lesser Europeans of ‘Latin’ and ‘Alpine’ origin.<sup>182</sup> By contrast, Stoddard’s work, produced in the aftermath of wartime, spoke of the ‘white race’ as a discrete category that humiliated itself by failing to maintain unity in its fall into mass fratricidal bloodshed—a failure that was by no means lost on the white man’s racial enemies, with whom it was inevitably destined to compete.<sup>183</sup> Grant did not disagree, and, through the introduction he provided to Stoddard’s text, effectively merged the Nordic/Latin/Alpine division with Stoddard’s depiction of the white race as a unified object of defensive fortification.<sup>184</sup>

In the wake of this greater post-war re-racialisation of world order, both Wilson and Smuts could present themselves as high priests of race-affirming reconciliation from the perspective of the vanquished (turned honourable victors) at the Paris Peace Conference. Mobilising the presumed narratives and ideologies that defined of both of their contexts, Wilson and Smuts could cast violence between idealised white political communities as mistakes that detracted from the truth of white unity, with the realisation of this mistake being etched into said political community’s mythology as nothing short of a divine covenant. Amongst the representatives of Europe’s great powers, the identities of Wilson and Smuts as settlers allowed them to cast themselves as political outsiders, yet racial insiders, who, despite the violence that shaped them, possessed a degree of innocence and idealism that could transcend the self-perpetuating mistakes of ‘Old Europe.’<sup>185</sup> The implication behind this casting was that the authoritative basis of their contribution was a vision of the world where the ‘racial truths’, uncovered through the process of settler colonialism, were needed to determine the legitimate form of international political order in the cataclysmic wake of the First World War.

This contribution fit seamlessly within the greater ‘move to institutions’ where, via the League of Nations, previously disparate projects of international law and international organisation merged into a unified vision of ‘international society’ that promised to tame power politics through measured reason coupled with devoted moral

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<sup>182</sup> M Grant, *The Passing of the Great Race: or, The Racial Basis of European History* (Charles Scribner’s Sons, 1916).

<sup>183</sup> L Stoddard, *The Rising Tide of Colour Against White World-Supremacy* (Charles Scribner’s Sons, 1920) 13–4.

<sup>184</sup> Grant, ‘Introduction’ in Stoddard (n 183) xxxi.

<sup>185</sup> W Wilson, ‘League of Nations Address before the Second Plenary Session of the Peace Conference’ in DiNuzio (n 125) 407, 409.

commitment.<sup>186</sup> Exemplifying this grandiose development, while the rhetoric of ‘civilisation’ played a vital role in shaping earlier international legal and political assertions, it was the League that elevated a juridical concept of ‘civilisation’ from discrete national/imperial spheres to a unified standard of world order.<sup>187</sup> However, this universalistic ethos was deeply limited in practice as white supremacist hierarchies persisted even between the great powers, a reality made apparent by Japan’s failed attempt to formally condemn race discrimination within the new League system.<sup>188</sup> Importantly, the cardinal opposition to Japan’s proposal came from the US and the British settler Dominions—Australia, Canada, and New Zealand (South Africa’s fellow ‘white men’s countries’)—whose longstanding fears of demographic disruption by Asian immigration were exacerbated by both the war and the feared dilution of sovereignty via international institutions.<sup>189</sup> Backed by the US, this racialised assertiveness by the Dominions quelled numerous anxieties over their questionable international legal subjectivity vis-à-vis Britain, and provided an additional vector for entrenching white supremacist settler influence over the postwar international reconstruction process.<sup>190</sup>

Against this backdrop of settler solidarity, in their roles as League architects, while Wilson and Smuts functioned according to a ‘division of labour’, in that Wilson supplied the grand vision while Smuts focused on the more pragmatic details, both brought their distinctly racialised worldview to this process.<sup>191</sup> Famously, it was Wilson who, in breaking with his nation’s pragmatic orthodoxies,<sup>192</sup> supplied extravagant flourishes on the ‘right of peoples to self-determination’ as a basis for a new international legal order that, while intended exclusively for Europeans, nevertheless derived its force from a universalistic framing that famously inspired

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<sup>186</sup> D Kennedy, ‘The Move to Institutions’ (1987) 8 *Cardozo Law Review* 847; D Gorman, *The Emergence of International Society in the 1920s* (CUP, 2012).

<sup>187</sup> E Keene, *Beyond the Anarchical Society: Grotius, Colonialism, and Order in World Politics* (CUP, 2002) 134.

<sup>188</sup> N Shimazu, *Japan, Race and Equality: The Racial Equality Proposal of 1919* (Routledge, 1998).

<sup>189</sup> N Bennett, ‘White Discrimination Against Japan: Britain, the Dominions and the United States, 1908–1928’ (2001) 3 *New Zealand Journal of Asian Studies* 91. In opposing League membership, US Senator Henry Cabot Lodge warned of consequential League support for Asian labour migration that would impoverish American workers and dilute the white race. Keene (n 187) 130; see also Stoddard (n 183) 251 (‘The question of Asiatic immigration is incomparably the greatest external problem which faces the white world.’).

<sup>190</sup> Dominion influence deeply shaped British opposition to the Japanese equality proposal. Shimazu (n 188) 117–35; On Dominion status anxiety, see Keene (n 187) 131. For Smuts, the recognition of Dominion equality was amongst the greatest achievement of the Paris Peace Conference. J Smuts, ‘Statement: Smut’s Farewell Statement on Leaving England on 18 July 1919’ in W Hancock and J van der Poel (eds), *Selections from the Smuts Papers, Volume 4: November 1918–August 1919* (CUP, 1966) 268, 273.

<sup>191</sup> G Curry, ‘Woodrow Wilson, Jan Smuts, and the Versailles Settlement’ (1961) 66 *American Historical Review* 968, 972.

<sup>192</sup> L Smith, ‘The Wilsonian Challenge to International Law’ (2011) 13 *Journal of the History of International Law* 179.

peoples who were never its intended subjects.<sup>193</sup> Smuts, by contrast, is most notable for his production of *The League of Nations: A Practical Suggestion*, which dealt with the technical constitutional questions raised by the prospect of an international organisation as extensive as the League.<sup>194</sup> However, despite differentiated focuses, Wilson and Smuts nevertheless pursued their agendas at the Paris Peace Conference in a manner that unmistakably displayed their mutual identities as products of intra-white supremacist settler conflicts. In configuring himself as a Lincoln-esque peacemaker on a global scale, Wilson came to Paris with insights produced by his close friend Fredrick Jackson Turner (the historian who famously declared that frontier expansion created a uniquely ‘American’ people) on how the lessons of American sectionalism could be used as a model for European reconstruction.<sup>195</sup> For Smuts, though more associated with Africa than Europe, a relevant object of his moral condemnation here was the prospect of racialised colonial troops, especially Africans, being deployed by whites in ‘White Men’s Wars’—a fear cultivated through his experience of Southern African wars and expanded during his First World War command of British forces in East Africa.<sup>196</sup> Largely forgotten, this issue was on the forefront of the European consciousness following the First World War as France’s occupation of Germany’s Rhineland with African troops triggered scandal replete with extensive racialised charges of sexual violence against the local population.<sup>197</sup>

Even in their disagreement, Wilson and Smuts’ distinctly racialised settler vision proved all-pervasive. This was particularly evident in their approaches to the League’s novel international hierarchy as it concerned the creation of both ‘new’ conditional sovereignty-premised states out of collapsed land empires in Central-Eastern Europe, and the placement of former German and Ottoman territories in the Middle East, Africa, and the Pacific under international trusteeship via the League of Nations’ Mandate system.<sup>198</sup> For Wilson, largely as an appeal to a domestic constituency increasingly consisting of Central-Eastern European immigrant communities, it made sense to embrace the rise of new nations in the region in the name of self-determination.<sup>199</sup> Dispensing with his older attachment to the intra-racial

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<sup>193</sup> E Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (Harvard UP, 2009).

<sup>194</sup> J Smuts, *The League of Nations: A Practical Suggestion* (Hodder and Stoughton, 2019); J Kochanek, ‘Jan Smuts: Metaphysics and the League of Nations’ (2012) 39 *History of European Ideas* 267.

<sup>195</sup> A Gaughan, ‘Woodrow Wilson and the Legacy of the Civil War’ (1997) 43 *Civil War History* 225, 240.

<sup>196</sup> J Smuts, ‘East Africa’ (1918) 51 *Geographical Journal* 129; S Marks, ‘White Masculinity: Jan Smuts, Race and the South African War’ (2001) 111 *Proceedings of the British Academy* 199.

<sup>197</sup> R Giladi, ‘The Phoenix of Colonial War: Race, the Laws of War, and the “Horror on the Rhine”’ (2017) 30 *Leiden Journal of International Law* 847.

<sup>198</sup> Smuts, *The League of Nations* (n 194) 19–26; P Potter, ‘Origin of the System of Mandates under the League of Nations’ (1922) 16 *American Political Science Review* 563.

<sup>199</sup> L Wolff, *Woodrow Wilson and the Reimagination of Eastern Europe* (Stanford UP, 2019) 20.

hierarchies of ‘Anglo-Saxonism’,<sup>200</sup> Wilson merged ‘universal’ self-determination in Europe with the American ‘melting pot’ concept. This can be viewed as a milestone in the forging of the non-hierarchical monolith that later defined American ‘whiteness’.<sup>201</sup> Smuts was not as credulous when it came to the perceived whiteness of Eastern Europeans, and even declared the Poles to be ‘kaffirs’—a notorious Afrikaans slur directed at Africans.<sup>202</sup> Such hostility must be viewed in conjunction with his championing of the German cause (its claims to maintaining its African colonies notwithstanding), especially concerning how the territorial sovereignty of new post-imperial states might be averse to German interests, populations, and memory.<sup>203</sup> While this concern for Germans stemmed for Smuts from Germany’s position as a bulwark against Bolshevism and the lessons of his own experience of wartime defeat,<sup>204</sup> there was also the matter of how longstanding German migration into Eastern Europe led to narratives of ‘civilising’ enclaves amidst ‘backwards’ native masses, which were variably analogous to whites in Southern Africa.<sup>205</sup> A lifelong devotee of German philosophy (especially Immanuel Kant) and its cultural context, it is easy to see how this parallel would have appealed to Smuts.<sup>206</sup>

Despite these attitudes, Smuts was nevertheless committed to drawing a hierarchy between European and non-European societies within the paternalistic structures of the new League system. According to his *Practical Suggestion*, while new states in Central-Eastern Europe were to be supervised by the League in its collective operation, the Mandates required a more direct and executively-empowered supervisory force via the individual sovereign state appointed as mandatory power.<sup>207</sup> While Wilson broadly agreed, the scope of a given mandate-holder’s authority nevertheless sparked controversy, particularly the question of whether the continued settler colonisation of a mandated territory was consistent with the ‘sacred trust of civilisation’.<sup>208</sup> For Wilson, though his Mandate advocacy famously demonstrated the racialised limits of his self-determination rhetoric, prospective territorial annexation proved a bridge too far.<sup>209</sup> This formed a point of disagreement between Wilson and his fellow settlers in Australia, New Zealand, and South

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<sup>200</sup> *Ibid.*, 5.

<sup>201</sup> D Roediger, *Working Toward Whiteness: How America’s Immigrants Became White: The Strange Journey from Ellis Island to the Suburbs* (Basic Books, 2005).

<sup>202</sup> A Nowak, ‘Eastern Europe and the British Imperial Imagination, 1914–1919’ (2017) 22 *Studia z Dziejów Rosji i Europy Środkowo-Wschodniej* 5, 11.

<sup>203</sup> W van der Merve, ‘General JC Smuts and the German Question, 1919–1923’ (1986) 18 *Kleio* 9.

<sup>204</sup> J Smuts, ‘To D Lloyd George’ in Hancock and van der Poel (n 190) 83.

<sup>205</sup> V Liulevicius, *The German Myth of the East: 1800 to the Present* (OUP, 2009).

<sup>206</sup> On Kant’s colonial context, see *Ibid.*, 47. On this nexus of Smuts’ racial, philosophical, and political thought, see Kripps (n 29).

<sup>207</sup> Smuts, *The League of Nations* (n 194) 22, 28–29.

<sup>208</sup> S Pedersen, ‘Settler Colonialism at the Bar of the League of Nations’ in C Elkins and S Pedersen (eds), *Settler Colonialism in the Twentieth Century* (Routledge, 2005) 113.

<sup>209</sup> *Ibid.*, 113.



Africa, who claimed captured, adjacent ex-German colonies by right of conquest.<sup>210</sup> Providing theoretical articulation to this position, to Smuts, in contrast to ‘race realists’ who sought to roll back settler colonialism and fortify the white man’s gains, the League Mandate system was not merely consistent with settler colonisation, but also provided the essential institutional grounding for enabling such expansion to continue indefinitely.<sup>211</sup> While the prospect of annexing mandated territories was certainly a point of disagreement, this very contention (and the prospects of resolving it) can nevertheless be viewed as ultimately affirming a racialised settler logic in line with the shared perception of Wilson, Smuts, and the international institutions they built.<sup>212</sup>

When considering the material force of these League institutions, especially as they were empowered to qualify sovereignty and control patterns of distribution through newfound measures for world economic governance. While often depicted as novel innovations prompted by universalistic conceptions of world order and interconnection, the base components of these varied economic governance institutions were largely developed in the contexts of colonial extraction.<sup>213</sup> As such, this hierarchy-rooted promise of shared prosperity through institutional cooperation—and the prospects for disciplining ‘unruly disruptors’—was the promise of ‘accumulation by reconciliation’ in its seemingly purest form.<sup>214</sup> Owing to an overwhelming moral idealism and/or acceptance of justified inequality, designers and implementors of these processes paid minimal attention to how the consequences of the new measures might exacerbate existing social tensions and create new ones.<sup>215</sup> As to why these material links between innovation and impact were rendered invisible, the ‘whiteness’ universalised from the vanquished settler contexts of Wilson and Smuts, especially in its crafting of idealised property-owning and market-transacting subjects, played no small part.<sup>216</sup>

However, this universalisation contained a glaring blind spot. In proclaiming whiteness as a unified category, derived through ‘accumulation

<sup>210</sup> L Smith, *Sovereignty at the Paris Peace Conference of 1919* (OUP, 2018) 128.

<sup>211</sup> Kripps (n 29) 949–50.

<sup>212</sup> J Smuts, ‘Woodrow Wilson’s Place in History’ (1921) 14 *Current History* 45.

<sup>213</sup> While often remembered as novel innovations prompted by universalistic conceptions of world order and interconnection, the base components of these varied economic governance institutions were largely developed in the contexts of colonial hierarchy and extraction. A Anievas, *Capital, the State, and War: Class Conflict and Geopolitics in the Thirty Years’ Crisis, 1914–1945* (U Michigan P, 2014) 107–38; R Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (CUP, 2019) 154–222; J Martin, *The Meddlers: Sovereignty, Empire, and the Birth of Global Economic Governance* (Harvard UP, 2022).

<sup>214</sup> N Mulder, *Economic Weapon: The Rise of Sanctions as a Tool of Modern War* (Yale UP, 2022) 82–7.

<sup>215</sup> Q Slobbodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard UP, 2017) 27–54.

<sup>216</sup> On linkages between Wilson/Smuts’ racial visions and emergent neoliberalism, see P Menon, ‘Negotiating Subjectation: The Political Economy of Protection in the Iraqi Mandate (1914–1932)’ (2021) 2 *TWAIL Review* 180, 188–90.

by reconciliation' following intra-settler wars, Wilson, Smuts, and those who embraced their views failed to consider patterns of racialisation different from their own. In central-eastern Europe, fuelled by the experience of the First World War on the Eastern Front—a profound gap in Anglo-American consciousness<sup>217</sup>—racialised vitriol spread amongst populations who, in the eyes of Wilson and (to a lesser extent) Smuts, were racially kindred.<sup>218</sup> As newly acquired statehood provided the space for such expressions, and the spectre of the Russian Revolution limited radical/materialist approaches to intercommunal difference, scientific racism and eugenics became standard political currency in Central and Eastern Europe.<sup>219</sup> Between the normalised proliferation of these theories, pressure from institutions dispensing sanctions, war debt enforcement, and harsh stabilisation measures—all of which triggered memories of the First World War blockade—the material conditions were right for a politics of extreme national chauvinism.<sup>220</sup>

When considering just how blind to this dynamic the Wilson-Smuts vision of the world truly was, perhaps no illustration was as telling as Smuts' observations on the rise of Nazism. Though notable for his claims that Germany's burden of war reparations could threaten the future of international peace, this did not translate into a trenchant analysis of material social dynamics, but rather a tepid and vaguely psychoanalytic call for greater German inclusion within the League system.<sup>221</sup> For Smuts, given the mass testimony to the First World War, the shock of the war could, under the right leadership, serve to strengthen European civilisation and racial solidarity to make the recurrence of any such war virtually unimaginable.<sup>222</sup> Accordingly, 'Europe would settle her essentially family quarrels in the end, and a state of more or less peaceful equilibrium would be reached.'<sup>223</sup> His experience of white South African reconciliation sustained this hope.<sup>224</sup> His greater concern with Asia, where 'the hand of destiny is still writing in its unknown script—in a language and in ideas which are scarcely intelligible to the West mind', underpinned his profoundly racialised conception of peace amongst

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<sup>217</sup> W Churchill, *The Unknown War: The Eastern Front* (Charles Scribner's Sons, 1931).

<sup>218</sup> Though Smuts witnessed much violence by this point, he was nevertheless shocked upon witnessing strife between Hungarians and Romanians in his diplomatic mission to Budapest. J Smuts, 'To A Clark' in Hancock and van der Poel (n 190) 118–119; see also ZL Nagy, 'The Mission of General Smuts to Budapest April, 1919' (1965) 11 *Acta Historica Academiae Scientiarum Hungaricae* 163.

<sup>219</sup> M Turda and P Weindling (eds), *Blood and Homeland: Eugenics and Racial Nationalism in Central and Southeast Europe, 1900–1940* (Central European UP, 2006).

<sup>220</sup> Mulder (n 214) 226–58.

<sup>221</sup> J Smuts, 'The Present International Outlook' (1935) 14 *International Affairs* 3, 6–8, 12.

<sup>222</sup> *Ibid.*, 11–13.

<sup>223</sup> *Ibid.*, 13.

<sup>224</sup> *Ibid.*, 10 ('Some people consider magnanimity out of place in international affairs. I have seen it in my own country recreate a position of dangerous potentialities into one of everlasting friendship between victor and vanquish').

nations.<sup>225</sup> As such, despite his opposition to antisemitism (and support for Zionism<sup>226</sup>), the reality that Nazis viewed Jews, as well as Slavs/other Europeans, as inferior races (akin to how his fellow Afrikaners viewed Africans) did not appear to be readily comprehensible to Smuts.<sup>227</sup>

By failing to understand the materiality of Nazi ideology, Smuts not only failed to predict the coming of the Second World War, but also distorted the meaning of its most extreme violence. Entrenching a racialised abstraction of consciousness, the general Wilson-Smuts vision behind ‘accumulation by reconciliation’ provided an in-built script for Western shock at the revelation of Nazi atrocities. Formally detached from the legacies of viewing the world in profoundly racialised terms, the disavowal of the most shocking manifestations of racism prompted by this revelation could be cast as liberal virtue, and Nazi violence could be cast as ‘non-Western.’<sup>228</sup> Embodying this deflective sensibility was the postwar turn to international human rights law as a morality of universalised abstraction—a project that had few champions as prominent as Jan Smuts.<sup>229</sup> Several decades later, as human rights advocates became concerned with addressing past abuses, innovative international lawyers invoked the significance of condemning Nazi atrocities via the Nuremberg Judgement, when declaring the ‘founding moment’ of their new projects of ‘transitional justice.’<sup>230</sup> Even as questions of settler colonialism in liberal democracies increasingly fell within this transitional justice framework, Smuts, Wilson, their contexts, and their legacies were nowhere to be found.

In concluding, it is worth asking what these legacies of ‘accumulation by reconciliation’ could possibly mean for current approaches to the transitional justice field. Following Mahmood Mamdani’s argument, the great issue with Nuremberg’s legacy is its elevation of individual criminal justice above and beyond any possible question of ‘political justice.’ In other words, the universalised setting of procedural individualism as an indispensable, yet unattainable, gold standard, consigned deeper imaginations of inter-communal identity, conflict, and transformation—the stuff of ‘political justice’—to the perpetual domain of second-order considerations.<sup>231</sup> However, as shown above, ‘political justice’, as it shaped the formative worlds of Wilson and Smuts, ultimately impacted the context of the liberal

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<sup>225</sup> *Ibid.*, 13. In calling for East-West friendship, Smuts could not avoid Western supremacist tropes in his very disavowal of said supremacy. *Ibid.*, 15 (‘While mindful of our duty and our responsibility as trustees for the greatest civilisation that this earth has ever known, we should avoid the assumption of superiority.’).

<sup>226</sup> G Shimoni, ‘Jan Christiaan Smuts and Zionism’ (1977) 39 *Jewish Social Studies* 269.

<sup>227</sup> Wolfe (n 50) 85–111.

<sup>228</sup> AD Moses, *The Problems of Genocide: Permanent Security and the Language of Transgression* (CUP, 2021) 277–86.

<sup>229</sup> S Dubow, ‘Smuts, the United Nations and the Rhetoric of Race and Rights’ (2008) 43 *Journal of Contemporary History* 45.

<sup>230</sup> Zunino (n 11) 132–50.

<sup>231</sup> Mamdani (n 22) 336–8.

international institutionalism assumed as the backdrop of transitional justice projects. In other words, the formative visions of ‘political justice’ that prompted the greater structural parameters of modern transitional justice presumed white supremacy and continued settler colonisation as the pillars of a just model of political reconciliation.

On this point, the explicit foreclosing of ‘political justice’ questions and the simultaneous ascent of an ostensibly ‘post-racial’ era are a testament to the encapsulated influence of the foundational white supremacist ‘political justice’ that an all-consuming fixation on individual criminal justice effectively preserves. Subordinated to individual criminal justice, no alternative ‘political justice’ has come to displace it in the transitional justice domain. This reality is starkly demonstrated by the frustrated efforts of communities in the Caribbean and Namibia to seek reparations for the consequential historic harms of slavery and colonial genocide in capacities that, owing to their critical consciousness of race, vastly exceed institutionalised transitional justice frameworks.<sup>232</sup> Given this, in confronting these legacies of entrenched white supremacy and its elision of alternatives, it must be remembered that the League of Nations that Wilson and Smuts so influenced was an organisation *for* all the world’s people; the succeeding United Nations (despite its many flaws) is an organisation *by* all the world’s people.<sup>233</sup> Thus, when it comes to exorcising the white supremacist ghosts who claimed moral superiority as those vanquished in hierarchy-affirming intra-settler wars, we are left to imagine what it would mean to implement ‘political justice’ within an institutional order that is genuinely owned and operated *by* all the world’s people.

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<sup>232</sup> See H Beckles, *Britain’s Black Debt: Reparations for Caribbean Slavery and Native Genocide* (U West Indies P, 2012); A Buser, ‘Colonial Injustices and the Law of State Responsibility: The CARICOM Claim for Reparations’ (2017) 77 *ZaōRV* 409; CS Namakula, ‘Reparations without Reparation: A Critique of the Germany–Namibia Accord on Colonial Genocide’ (2021) *African Yearbook of International Humanitarian Law* 46; S Aboudounya, ‘Demanding Reparations for Colonial Genocide using Historical Documents: Do the Herero of Namibia have Legal Evidence to Support their Demand for German Reparations?’ (2022) 32 *Journal of Namibian Studies* 145; H Melber, ‘Germany and Reparations: The Reconciliation Agreement with Namibia’ (2022) 111 *Round Table* 475; Matthias Goldmann, ‘The Ambiguity of Colonial International Law: Three Approaches to the Namibian Genocide’ (2024) 37 *Leiden Journal of International Law* 580; K Andrews, ‘The Knife is Still in Our Backs: Reparations Washing and the Limits of Reparatory Justice Campaigns’ (2024) *Development and Change* 1.

<sup>233</sup> Keene (n 187) 136.