

SLAVERY AND INTERNATIONAL LAW: THE JURISPRUDENCE OF HENRY RICHARDSON

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In the planning and writing of my work, I had witnessed more than five hundred years of human history pass before my eyes. I had seen one slave ship after another from Portugal, Spain, France, Holland, England and the United States pile black human cargo into its bowels as it would coal or even gold had either been more available and profitable at the time. I had seen them dump my ancestors at New World ports as they would a load of cattle and wait smugly for their pay for capture and transport. I had seen them beat black men until they themselves became weary and rape black women until their ecstasy was spent leaving their brutish savagery exposed. I had heard them shout ‘Give us liberty or give us death’ and not mean one word of it. I had seen them measure out medication or education for a sick or ignorant white child and ignore a black child similarly situated. I had seen them lynch black men and distribute their ears, fingers, and other parts as souvenirs to the ghoulis witnesses. I had seen it all, and in seeing I had become bewildered and yet in the process lost my own innocence.¹

Like W.E.B. Dubois, whose campaigns against slavery and discrimination are examined at the beginning of his monumental work, *The Origins of African-American Interests in International Law*, Professor Henry Richardson is not only a pre-eminent African-American intellectual, but a champion of unrepresented and marginalized people all over the world.² This is reflected by his principled and wide-ranging career, which includes his work against apartheid and his efforts to assist the new states of Africa as they struggled to establish and consolidate their newly won sovereignty in the 1960s.³ More immediately, Professor Richardson has been a source of unfailing and important support for those of us who belong to the Third World Approaches to International Law (TWAIL) network—a group of scholars dedicated to exploring the ways in which the effects of imperialism could

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1. JOHN HOPE FRANKLIN, *MIRROR TO AMERICA: THE AUTOBIOGRAPHY OF JOHN HOPE FRANKLIN* 127–28 (2005).

2. For instance, Professor Henry Richardson considers the ways in which African-American interests and the interests of the Third World states create a “New International Economic Order.” See Henry J. Richardson III, *The Gulf Crisis and African-American Interests Under International Law*, 87 AM. J. INT’L L. 42, 44 (1993) (describing African-American interests in international law).

3. See *Henry J. Richardson III*, TEMPLE UNIV. BEASLEY SCH. OF LAW, <https://www.law.temple.edu/contact/henry-j-richardson-iii/> (last visited Feb. 2, 2017) (providing a summary of Professor Richardson’s accomplishments, including holding the position of International Legal Advisor to Malawi after its independence and his participation in several anti-apartheid groups).

be overcome and international law reformulated to advance the interests of people of the Third World.⁴ It was because of the intervention of Professor Richardson, who pointed out that a Symposium of the American Journal of International Law on *The Methods of International Law*⁵ excluded any non-Western methods, that TWAIL scholars were invited by the Journal to write an article on the subject of “Third World Approaches to International Law.”⁶ The publication of this chapter, together with the works of distinguished scholars writing on other methodologies, was vitally important for the credibility and dissemination of TWAIL’s perspective at a very early stage of its current trajectory, and we have Professor Richardson to thank for this. Further, Professor Richardson has always been a source of generous support and encouragement to all of us, and his scholarship has been an inspiration. In this short essay, I attempt to examine the fraught relationship between international law and slavery, and suggest ways in which Professor Richardson’s work raises crucial and enduring issues that warrant further exploration and reflection.

The condemnation of slavery in contemporary international law is emphatic and unequivocal. The prohibition against slavery is regularly cited as a *jus cogens*, and the long campaign to abolish slavery can be read as an early example of the efforts to establish what we now recognize as international human rights law.⁷ It seems only appropriate that the Universal Declaration of Human Rights Article 3, which stipulates that “[e]veryone has the right to life, liberty and the security of person”⁸ is succeeded by Article 4, which states that “[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”⁹ This seems logical, as slavery is a complete violation of the fundamental interests in life, liberty and security that Article 3 seeks to protect. Indeed, slavery is a negation of the idea of human personality, which is after all the foundation of human rights law.¹⁰ Slavery, furthermore, has been recognized as possibly rising to

4. The many connections between Critical Race Theory, which explores the enduring effect of race in a supposedly post-racial world, and TWAIL are suggested in a volume to which Professor Richardson contributed. See generally Ruth Gordon, *Critical Race Theory and International Law: Convergence and Divergence*, 45 VILL. L. REV. 827 (2000).

5. See *Symposium, Method of International Law*, 93 AM. J. INT’L L. 291, 293–295 (1999) (describing various methods of international law, all of which originated in the Western world).

6. See Antony Anghie & B. S. Chimni, *Third World Approaches to International Law and Individual Responsibility in Internal Conflicts*, in THE METHODS OF INTERNATIONAL LAW 185, 185 (Steven Ratner & Anne-Marie Slaughter eds., 2004) (presenting Third World views on and approaches to international law).

7. See M. Cherif Bassiouni, *Enslavement as an International Crime*, 23 N.Y.U. J. INT’L L. & POL. 445, 445 (1991) (“It is well-established that prohibitions against slavery and slave-related practices have achieved the level of customary international law and have attained *jus cogens* status.”).

8. G.A. Res. 217 (III) A, art. 3, Universal Declaration of Human Rights (Dec. 10, 1948).

9. *Id.* art. 4.

10. See HANS BARTH, THE IDEA OF ORDER: CONTRIBUTIONS TO A PHILOSOPHY OF POLITICS 101 (1960) (“The economic and political order of modern slavery destroys the basic constitution of man; it is the ‘complete negation of the personality.’”).

the level of a “crime against humanity.”¹¹ The prohibition on slavery is now extended to deal with contemporary practices, such as trafficking, which resemble slavery and which can be seen as “modern slavery.”¹² Slavery can now be viewed as an atrocity, which, like the atrocity of genocide, has finally been identified as a complete negation of human dignity and a phenomenon that international law must demonstrably act against.¹³ It presents itself as a test, a challenge of international law’s commitment to protecting human dignity.

Slavery, like genocide, is an abhorrence against which international law can demonstrate its commitment to protecting human dignity and furthering the cause of international justice. A possible difference between genocide and slavery is that slavery existed—in various forms—as a recognized legal category in virtually every social system in the world.¹⁴ Raphael Lemkin, famously, had to invent the term “genocide” for what was undoubtedly a tragically common historical phenomenon.¹⁵ It is arguable, after all, that sovereignty is historically based on genocide. Sovereignty and national days are often celebrated by military parades which mark victory in battle. It would be interesting to consider how many of these victories might be viewed—if seen from the perspective of the vanquished—as involving a genocide. And yet, what is unique about slavery is that it was legally justified almost universally. As C. A. Bayly, in his magisterial work suggests,

The first half of the nineteenth century may indeed have been the heyday of the slave system, even if the slave trade came increasingly under scrutiny. One reason why slave-owners and slave-traders were able to stave off the growing attacks of abolitionists in the eighteenth and early nineteenth centuries was that practically every set of legal or religious traditions in the world gave it some degree of legitimacy. In the European case, Aristotle and Roman law notoriously accepted slavery as a natural condition, while the Church Fathers had nodded and winked in its direction. Islamic and Buddhist traditions, among others, also accepted forms of deep social dependency which bore family resemblances to the European slavery of the classical world.¹⁶

11. See Bassiouni, *supra* note 7 (indicating that slavery constitutes a “crime against humanity” when committed by public officials).

12. See *What Is Modern Slavery?*, U.S. DEP’T OF STATE, <https://www.state.gov/j/tip/what/> (last visited Feb. 2, 2017) (indicating that human trafficking is a modern form of slavery).

13. See STEVEN R. RATNER, JASON S. ABRAMS & JAMES L. BISCHOFF, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW: BEYOND THE NUREMBERG LEGACY 114–15 (3rd ed. 2009) (“Although genocide, crimes against humanity, and war crimes form the traditional core of international crimes relevant to atrocities against human dignity, . . . the prohibition against slavery . . . [is also] aimed at the preservation of human dignity.”).

14. See Emily Field Van Tassel, “*Only the Law Would Rule between Us*”: *Antimiscegenation, the Moral Economy of Dependency, and the Debate over Rights after the Civil War*, in CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR 154 (Richard Delgado & Jean Stefancic eds. 1997) (indicating various reasons why the U.S. legal system once accepted slavery).

15. Sergey Sayapin, *Raphael Lemkin: A Tribute*, 20 EUR. J. INT’L L. 1157, 1159 (2009).

16. C.A. BAYLY, *THE BIRTH OF THE MODERN WORLD: 1780–1914*, at 402 (2004).

On one hand, it is the fact that slavery was legally justified that makes slavery so singular and the campaign to abolish it so significant. If a practice that was so deeply entrenched in all societies and supported by all forms of authority—religion, sovereignty, natural law, and private law doctrines of contract and property—could be abolished, then this surely indicates that human rights might prevail against the greatest odds. On the other hand, given how entrenched slavery has been in human history, the question arises as to whether the practice itself or its effects can ever effectively be completely eradicated. In many respects, Article 8 of the International Covenant on Civil and Political Rights traces the ways in which practices similar to slavery could exist even after slavery itself had been effectively abolished.¹⁷ Thus, Article 8 already presages the problems which are now so prevalent when it asserts: “No one shall be held in servitude.”¹⁸ As detailed reports produced by various human rights organizations suggest, however, servitude is a widespread condition suffered by victims of trafficking, migrant workers, and bonded laborers all over the world.¹⁹

The relationship between international law, slavery, and human rights then raises urgent and ongoing questions and challenges. These challenges arise despite the emphatic, even defining, prohibition of slavery by international law and human rights. In this short article, I seek to explore three closely inter-related issues or aspects about that relationship. First is the question of agency and authorship: what role did slaves play in their own liberation? It is a problem that many who analyze the history of slavery continuously confront. Second is the related question of whether international law could have been and should be different if authored by slaves and their ancestors: would international law be different if authored by these “outsiders” whose oppression was justified precisely by all these systems? Finally, there arises the issue of slavery and history. Slavery is firmly viewed as a thing of the past because it has been abolished; nevertheless, its effects continue on, and are found in the present and will be found in the future. How should law respond to this? What doctrines in law and what theoretical tools would be adequate to enable us to even understand the nature of those continuities, let alone address them? This question is especially important at a time when concerted attempts are made to somehow diminish the horrors of African slavery and diffuse questions of responsibility.²⁰

International law, since its early modern beginnings in the writings of scholars such as Vitoria, Grotius and Vattel,²¹ has been principally, almost unquestionably,

17. International Covenant on Civil and Political Rights art. 8, Dec. 19, 1966, 999 U.N.T.S. 171, (entered into force Mar. 23, 1976).

18. *Id.*

19. See *What Is Modern Slavery?*, ANTI-SLAVERY INT'L, http://www.antislavery.org/english/slavery_today/what_is_modern_slavery.aspx (last visited Feb. 4, 2017) (noting that the International Labour Organization found that twenty-one million men, women and children around the world are in some form of slavery).

20. HENRY J. RICHARDSON III, *THE ORIGINS OF AFRICAN-AMERICAN INTERESTS IN INTERNATIONAL LAW* 16–17 (2008).

21. See generally Georg Cavallar, *Vitoria, Grotius, Pufendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitans?*, 10 J. HIST.

a product of Western thought and experience—particularly in situations where European countries were beginning to engage with non-European peoples in the New World, the Near and Far East, and elsewhere.²² The abolition of slavery is also presented largely as an outcome of the valiant battles waged by enlightened and humane Europeans and Americans—usually white men—to liberate the slaves.²³ Legal histories, of course, inevitably reproduce this approach as they deal, necessarily, with law-making and reform, important cases and jurisprudence—all spheres of activity that slaves were deliberately and forcefully excluded from.²⁴ Slaves who aspired to read and write were severely punished.²⁵ Subaltern Studies, a school that began as an attempt to rethink the historiography of Indian nationalism, confronts an analogous problem.²⁶ In that context, history is written by and about the elites in India who led the nation to independence.²⁷ The great difficulty arises in examining how the agency of the Indian masses might be understood within such a determining framework.²⁸

This is one of the central problems also confronted by Professor Richardson. How can the story of slavery and international law be presented in a different language, one that makes the slave the center of her own history rather than an ancillary and subordinated figure in the triumphant story of America's journey from nationhood to global superpower? Professor Richardson addresses this, first, by focusing on key events that have often been left out of more orthodox histories.²⁹ He points to the fact, for instance, that various black settlements formed in North America even in the sixteenth century.³⁰ These settlements were made up of escaped slaves and they received some form of international recognition.³¹ By 1619, Richardson goes on to argue, African people had “established communities,

INT'L L. 181 (2008).

22. See *id.* at 181–82 (explaining how these international law writers are viewed as accomplices of European colonialism and exploitation).

23. See Christopher Hitchens, *The Man who Ended Slavery*, THE ATLANTIC (May 2005), <https://www.theatlantic.com/magazine/archive/2005/05/the-man-who-ended-slavery/303915/> (describing John Brown, a New Englander, whose work as an abolitionist is described as helping to end slavery in the U.S.).

24. See RICHARDSON, *supra* note 20, at xiv–xv (outlining how African slaves in America were excluded from these systems and thus made appeals to international law for their rights). Richardson alludes to this problem at the outset of his book when he mentions the need to correct an approach whereby “white actions and perspectives dominate the narrative of Black claims to be governed by better law.” *Id.* at xv.

25. See *The Slave Experience: Education, Arts & Culture*, PUB. BROAD. SERV., <http://www.pbs.org/wnet/slavery/experience/education/docs1.html> (last visited Feb. 4, 2017) (excerpting laws forbidding slaves from learning to read or write).

26. See Ranajit Guha, *Introduction*, in A SUBALTERN STUDIES READER 1986–1995, at xiv–xv (Ranjit Guha ed., 1997) (discussing the nature of access and production of knowledge for Indian elites and masses).

27. *Id.*

28. *Id.*

29. RICHARDSON, *supra* note 20, at xiv–xvi.

30. *Id.* at xvi.

31. *Id.* at 42.

and found the means and courage to mount the first revolt on this territory against their enslavement.”³² While pointing to these developments and suggesting the ways in which they are part of a larger story of the emergence of African-American interests, Richardson acknowledges the ongoing challenges of writing this broader history.³³ But for him, these events are crucial because they signal the beginning of claims to what he terms “outside law”—a crucial concept in his analysis, for claims made to “outside law” continue through the centuries and form one of the unifying themes of African-American jurisprudence.³⁴ It is in this and other ways that Richardson argues that “African-heritage people ‘participated’ in the international legal process, even if they lacked formal standing to do so.”³⁵ His continuous effort and theme is to demonstrate how African-Americans, through their actions and their protests and resistance, shaped crucial debates and ultimately legal doctrines, even though African-Americans were excluded from official decision-making processes.³⁶ This truly is a history from below, and the detail and comprehensiveness of this history—of how black sailors brought news to black communities in North America about international debates, for instance³⁷—is striking and thought-provoking in offering a different understanding of a familiar story.

One of the most poignant and powerful devices Professor Richardson used to relate his history is his construction of a scenario in which Black delegates were invited to the Philadelphia Constitutional Convention.³⁸ Crucially, he sees them not as changing the outcome of those deliberations, but as presenting “a lens through which to view and evaluate the various international law-related proposals and debates by the Founding Fathers, and to draw some conclusions about how the outcomes of those debates were inconsistent or consistent with the clarified interests in this regard of African-Americans.”³⁹ This bold approach, which draws on the pioneering work of Derrick Bell,⁴⁰ points simultaneously to the absence of the people who had created a good part of the wealth of the states seeking independence, and the issue of how they would have conceptualized a polity which included them as equal citizens. It also raises the additional question of whether a different law, domestic or otherwise, might have developed if African-Americans

32. *Id.*

33. *Id.* at 43.

34. *Id.* at xix–xx.

35. RICHARDSON, *supra* note 20, at xxix–xxx.

36. *Id.* at 352. The actions Richardson refers to “range from protesting, refusing to eat, refusing to cooperate, or taking the opportunity to mutiny against their incarceration on board a slave ship,” as well as the actions of their leaders “in Philadelphia and elsewhere in the United States demanding the abolition of the international slave trade.” *Id.*

37. *Id.* at 150–53.

38. *Id.* at 181–84.

39. *Id.* at 184.

40. Derrick Bell was the first tenured African-American law professor at Harvard Law School and is largely credited as one of the originators of Critical Race Theory. Fred A. Bernstein, *Derrick Bell, Law Professor and Rights Advocate, Dies at 80*, N.Y. TIMES (Oct. 6, 2011), <http://www.nytimes.com/2011/10/06/us/derrick-bell-pioneering-harvard-law-professor-dies-at-80.html>.

had been allowed to engage in the official decision-making processes.

In his outstanding study of the Haitian slave revolution, Siba Grovogui asks whether human rights would be different if the fundamental principles of human rights had been authored by slaves, those who had suffered the gravest forms of inhumanity and who, indeed, were treated as property rather than persons.⁴¹ Grovogui argues that human rights would indeed have been different, and focuses on the language of the Haitian Constitution to argue that “[i]n these and other regards, Haitians subverted the entire societal order inherited from the Enlightenment.”⁴² Radically, for instance, the Haitians, having won their freedom and independence by defeating Napoleon’s army, proclaimed that all inhabitants of Haiti should be generically called “black.”⁴³ This both inverts a racial hierarchy that may be traced back to the very beginnings of Western (and indeed, in some instances, non-Western) thought, and also suggests that somehow it is blackness that is the universal category and that is connected with citizenship: “In this manner, ‘black’ became a symbol around which to organize national solidarity and public life.”⁴⁴ For Grovogui, while many of the protections and rights provided in the Haitian Constitution corresponded with those found in the United States (U.S.) Bill of Rights, the Haitian Constitution was inspired by “intuition, affect and experience” rather than the forces of science and reason that inspired the Enlightenment.⁴⁵

Richardson also closely studies the Haitian Revolution and its role in the development of African-American interests by examining, for instance, the several cases involving Haitian slaves that were heard in U.S. courts.⁴⁶ The revolution compelled courts to acknowledge, in various ways, the emergence of a sovereign country; the cases suggest “the agency of Black people in the international community, as that agency touched African-Americans and white Americans and created Black claims to different bodies of law for the rights to continue and pursue their agency towards greater freedom.”⁴⁷ Throughout his text, Richardson argues that rebellion and resistance should be regarded, in a sense, as jurisprudence, as a text that demands acknowledgement and interpretation. The Haitian Revolution, which resulted in the drafting of the Haitian Constitution and the recognition, however begrudging of this revolution and its effects the courts of

41. See Siba N. Grovogui, *To the Orphaned, Dispossessed and Illegitimate Children: Human Right Beyond Republican and Liberal Traditions*, 18 IND. J. GLOBAL LEGAL STUD. 41 (2011) (analyzing what human rights meant to Haitian slaves in the dawn of the Haitian Revolution).

42. *Id.* at 57.

43. See *id.* at 58 (arguing that the inhabitants of Haiti were called “black” as a gesture to upend the racial hierarchies underlying the system of plantation slavery).

44. *Id.*

45. See *id.* at 62 (“The former also vindicates an ascendant point today that intuition, affect, and experience are not necessarily counterproductive, as they may lead to wisdom and good decision where reason, science, and rationality may, and did, fail.”).

46. RICHARDSON, *supra* note 20, at 316–17.

47. *Id.* at 319.

the U.S. is a major event for this reason.⁴⁸ Richardson's exploration of the rights that slaves claimed through these actions, through rebellions and the seizure of ships in which they were being transported, is sustained and elaborated.⁴⁹ After his unprecedented historical study of African-American claims to justice, Richardson enumerates the rights that emerge from such claims—including the rights to family integrity, to revolt, to form communities, and to “malingering and otherwise sabotage the local slave system.”⁵⁰ The powerful account Richardson presents raises the challenge of how international law and human rights would have been authored from the vantage point of the slaves. Whether it would have been substantially similar is an interesting question, but perhaps more important is the challenge and the moral epistemology it so boldly presents. It is arguable, after all, that international law should be viewed from the perspective of the most disadvantaged and most abused victims of that very system.

The final declaration of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa states:

We acknowledge that slavery and the slave trade, including the transatlantic slave trade, were appalling tragedies in the history of humanity . . . and further acknowledge that slavery and the slave trade are crimes against humanity and should always have been so.⁵¹

The Conference was racked with contention.⁵² This clause, which was also the subject of much debate, suggests that slavery is now a crime against humanity, but was not in the past; indeed, the clause might be seen as an attempt to prevent any claims for reparations. Slavery, then, is an atrocity that contemporary international law prohibits and that could give rise to the charge of “crimes against humanity” under the Rome Statute of the International Criminal Court.⁵³ Nevertheless, the fact that slavery was not illegal at the time that the slave trade was at its most active raises issues about how that history is to be understood and addressed.⁵⁴

48. *See id.* at 318 (demonstrating that the events of the Haitian Revolution concerned American courts and reflected the divided expectation of U.S. officials generally supporting international law and comity at the time).

49. *See id.* at 318–19 (elaborating on a case taking place in about 1805 concerning an American-owned ship trading in several Haitian ports notwithstanding a French government prohibition on trade with Haiti).

50. *Id.* at 195.

51. World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Durban Declaration*, ¶ 13, U.N. Doc. A/CONF.189/12 (Sept. 8, 2001).

52. *See* Richard Gizbert, *US, Israel Pull Out of Racism Conference*, ABC NEWS (Sept. 3, 2001), <http://abcnews.go.com/International/story?id=80564> (“The United States and Israel pulled out of a global conference designed to address prejudice, racism and resentment saying the event has only exacerbated the very things it was meant to eradicate.”).

53. Rome Statute of the International Criminal Court art. 7(c), July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002).

54. The recent Jamaican claims for reparations from Britain for slavery revived once again the issue of reparations. *See* Rowena Mason, *Jamaica calls for Britain to pay billions of pounds in reparations for slavery*, GUARDIAN (Sept. 28, 2015, 7:01 PM), <https://www.theguardian.com/world/2015/sep/29/jamaica-calls-britain-pay-billions-pounds->

Here again, Richardson's work points to the aftermath of slavery and suggests ways of conceptualizing the complex relationship between past and present. For Richardson, continuity resides in the fact that African-American claims evolve and endure into the present.⁵⁵ While his massive book focuses on the origins of those claims, in other work he develops the idea in very specific contexts.⁵⁶ Thus, in his path-breaking article on African-American interests and the Gulf War, Richardson presents the range of issues and difficulties confronted by African-Americans, now ostensibly empowered to participate in the making of law and policy at all levels, in having their voices heard.⁵⁷ The idea of "claims" that is so comprehensively presented in his work is now connected, inevitably, with the question of the entity that makes these claims. He argues that a community, a people, a nation has been forged by the tragedy of slavery, and it is a community that continues to endure the after-effects of the apparent abolition of slavery: "African-Americans are a 'people' entitled to rights of self-determination, though those rights may not encompass the fullest extent of that doctrine."⁵⁸

Noting that while a minority of African-Americans, as revealed by surveys, supported the prospect of America going to war against Iraq in 1991, Richardson points out that the vast majority was opposed to such a war, and yet could not make their position cognizable in a system based on Westphalian premises of a unitary sovereign state.⁵⁹ Discussing how African-Americans had conceptualized their role in American foreign policy and international law-making more generally, Richardson, following a tradition he associates with DuBois, argues that while the official stance of the U.S. government on a particular issue would be important, it was not decisive. This is because African-American interests were autonomous. "When U.S. positions lack legitimate authority, African-Americans must independently assess the best way under international law to foster their protection and empowerment as a constituent and historically coherent people in the United States."⁶⁰ Examining Jesse Jackson's efforts to free American hostages in Iraq,

reparations-slavery (discussing Jamaica's claim for Britain to pay billions of pounds in reparations for slavery).

55. See Richardson, *supra* note 3, at 42 (arguing that due to historical context, African-Americans' interests should be autonomous from U.S. foreign policy). The Gulf War highlights a modern example of this occurrence, especially when looking at the humanitarian efforts of Jesse Jackson. *Id.* at 60.

56. See *id.* at 53 (examining this idea in relation to specific conflicts, such as the Gulf War and Persian Gulf crisis).

57. See *id.* at 57 ("The quest of peoples for fair representation and human dignity under international law should not be driven to such lengths to be heard.")

58. *Id.* at 48. It is noteworthy that Richardson writes in detail on different communities, such as maroon communities, that were made up of former slaves. See generally RICHARDSON, *supra* note 20, at 115–41.

59. Richardson, *supra* note 3, at 51, 56 (stating that African-Americans were proportionately more against the Gulf War than white Americans). A *New York Times* survey found that four out of five whites supported the war, while only one half of African-Americans did. *Id.* at 51, n.38.

60. *Id.* at 63–64.

Richardson argues that such efforts were in keeping with African-American views of justice, which corresponded with certain principles of international humanitarian law.⁶¹ Boldly, he further argues that a principle should be developed whereby a state cannot use military force in self-defense unless there has been an equitable participation of diverse peoples and minorities in the decision-making processes leading to the characterization of the situation and use of force for it.⁶² Such a principle is not found in contemporary international law.

Richardson's insistence that African-American interests, forged out of the experience of slavery, continue through to the present brings a new and evolving richness and challenge to international lawyers. The ambiguities and contradictions of the righteous claim that slavery had been abolished in the name of civilization were revealed in the nineteenth century itself. The Berlin Act of 1885 included a provision suppressing slavery and the slave trade,⁶³ and indeed, more broadly, imperial European powers justified their expansion and occupation of Africa on the grounds that they were furthering civilization and ending the slave trade.⁶⁴ Nevertheless, it was by virtue of the same treaty that the massive area of the Congo Basin was handed over to the administration of King Leopold of Belgium, who transformed that territory into the scene of massive atrocities as thousands of African laborers were killed by Belgians intent on exploiting the rich resources of that region.⁶⁵ Indeed, it was an African-American, George Washington Williams, who journeyed to the Congo and, appalled by what he witnessed there, wrote a letter that was "the first comprehensive, systematic indictment of Leopold's colonial regime written by anyone."⁶⁶ The history of the Congo continues on in a tragic mode as it is now the center of what is termed the Great War of Africa.⁶⁷

In some senses, the contemporary tendency to use slavery as a metaphor, commendable though it is, to point to the plight of thousands of victims of trafficking and forced labor should not be allowed to distract or deflect attention from the ongoing effects of the original slavery itself. The U.S. presents itself as the leader of a large-scale campaign to end human trafficking, or "modern slavery."⁶⁸ The U.S. has established an Office to Monitor and Combat Trafficking in Persons.⁶⁹ Additionally the State Department issues a very important

61. *See id.* at 65 (discussing Jesse Jackson's intervention to rescue hostages on the eve of the Gulf War, including his efforts to meet with General Powell and strategize how to meet with Saddam Hussein to release hostages).

62. *Id.* at 70.

63. General Act of the Conference of Berlin arts. VI, IX, Feb. 26, 1885, 23 Stat. 332.

64. *See id.* art. X (noting that one of the purposes of the treaty was to develop and civilize the countries being occupied, paired with the overall purpose of suppressing slavery).

65. ADAM HOCHSCHILD, *KING LEOPOLD'S GHOST: A STORY OF GREED, TERROR, AND HEROISM IN COLONIAL AFRICA* 87 (1999).

66. *Id.* at 109.

67. *See generally* Christopher Williams, *Explaining the Great War in Africa: How Conflict in the Congo Became a Continental Crisis*, 37 *FLETCHER F. WORLD AFF.* 81 (2013).

68. *What is Modern Slavery?*, *supra* note 12.

69. *Office to Monitor and Combat Trafficking in Persons: About Us*, U.S. DEP'T OF STATE, <https://www.state.gov/j/tip/about/index.htm> (last visited Feb. 5, 2017).

“Trafficking in Persons (TIP) Report” annually, one that monitors how countries are addressing the challenges of human trafficking.⁷⁰ The TIP Report is the “world’s most comprehensive resource of governmental anti-human trafficking efforts and reflects the U.S. Government’s commitment to global leadership on this key human rights and law enforcement issue.”⁷¹ This is a vital initiative. But it is also important to focus on the aftermath of slavery, the ongoing challenges confronting African-Americans, and the ways in which racial subordination persists in a supposedly post-racial world.⁷² Surely, more effective action is required to stop the everyday violence that is now being inflicted on black people. An extraordinary number of African-American men have been killed by the police force,⁷³ they are jailed in alarming numbers (blacks are six times more likely than whites to be incarcerated),⁷⁴ and their life expectancy is significantly lower.⁷⁵ According to many different social welfare indicators, African-Americans are significantly worse off than other American communities.⁷⁶ The harsh reality, and one that the U.S. has still not confronted, is that slave labor created the modern U.S. One glimpse of this indebtedness was suggested by the coverage given to the facts that Harvard Law School and Georgetown were both financed, in different ways, by the selling of human beings.⁷⁷ The desperate need, then, to assert the claims and the human rights of African-Americans is surely obvious. Racism

70. *Trafficking in Persons Report*, U.S. DEPT. OF JUSTICE, <http://www.state.gov/j/tip/rls/tiprpt/index.htm> (last visited Jan. 20, 2017).

71. *Id.*

72. See generally CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al. eds., 1995).

73. See Jon Swaine et al., *Young black men killed by US police at highest rate in year of 1,134 deaths*, GUARDIAN (Dec. 31, 2015), <https://www.theguardian.com/us-news/2015/dec/31/the-counted-police-killings-2015-young-black-men> (stating that young black men were found to be nine times more likely than other Americans to have been killed by police in America during 2015).

74. *Criminal Justice Fact Sheet*, NAACP, <http://www.naacp.org/criminal-justice-fact-sheet/> (last visited Feb. 5, 2017).

75. Lindsey Cook, *Why Black Americans Die Younger*, U.S. NEWS (Jan. 5, 2015), <http://www.usnews.com/news/blogs/data-mine/2015/01/05/black-americans-have-fewer-years-to-live-heres-why>.

76. See Eileen Patten & Jens Manuel Krogstad, *Black child poverty rate holds steady, even as other groups see declines*, PEW RESEARCH CTR. (July 14, 2015), <http://www.pewresearch.org/fact-tank/2015/07/14/black-child-poverty-rate-holds-steady-even-as-other-groups-see-declines/> (providing data showing higher rates of poverty for African-Americans); Lindsey Cook, *U.S. Education: Still Separate and Unequal*, U.S. NEWS (Jan. 28, 2015), <http://www.usnews.com/news/blogs/data-mine/2015/01/28/us-education-still-separate-and-unequal> (providing data showing lower levels of education for African-Americans).

77. Elaine McArdle, *From a slave-owning founder to the President of the United States: A look at the legacy of complexity and progress*, HARVARD LAW TODAY (Sept. 30, 2011), <http://today.law.harvard.edu/from-a-slave-owning-founder-to-the-president-of-the-united-states-a-look-at-a-legacy-of-complexity-and-progress/>; Rachel L. Swarns, *272 Slaves Were Sold to Save Georgetown. What Does It Owe Their Descendants?*, N.Y. TIMES (Apr. 16, 2016), <https://www.nytimes.com/2016/04/17/us/georgetown-university-search-for-slave-descendants.html>.

continues in different forms with devastating consequences. It is noteworthy that the United Nations has designated 2015–2024 as “International Decade for People of African Descent.”⁷⁸ For these people, recognition, human rights, and development remain a challenge—and Richardson’s work powerfully illuminates why this is so.

It is clear that Richardson is aware of the methodological and legal problems raised by his deeply researched work. It is surely the case that slave rebellions affected legal reform, and yet it is not easy to demonstrate this, given conventional canons of historical research and standards of evidence. The powerful argument that the experience of slavery has forged a community, a people that should receive some form of international recognition which exceeds that granted to minorities and that enables them to play a significant role in the foreign policy of a state, representing their own visions of international law and not just serving as minorities furthering the official policies of that state, is challenging in many ways. How should these people be characterized in the first place? What is their vision, their claim on “outside” law, their “jurisprudence of appeal,” to use his striking phrase,⁷⁹ and how does such law correspond with international law? Richardson of course is acutely aware of these issues. For instance, he makes it explicit that his proposed principle, which argues that the validity of a state’s decision to go to war should be assessed by taking into account the extent to which minority groups have been involved in the decision making process, departs from existing international law is *de lege ferenda*.⁸⁰ “There is no authority for assessing the equity of a state’s ‘internal decision processes’ to test the legality of the dispatch of military forces in the name of self-defense.”⁸¹ However, he appears to see this problem as a challenge, something that may in time be overcome by the “progressive development of international law.”⁸² This is possible: after all, surely, five hundred years ago the notion that slavery would be abolished worldwide would have appeared entirely fantastic.

Without entirely dismissing the possibility that aspects of his vision regarding legal personality and the elevation of minority rights in decisions involving self-defense may become a reality, perhaps the real value of Richardson’s jurisprudence, his detailed research, and, most of all, the compelling moral vision that animates it is precisely the fact that several parts of it appear far removed from existing international law. My argument is that it is in this way, Richardson’s work offers an enduring and powerful challenge to the conventional categories of and doctrines of international law. It is precisely because “outside law” does not fit in with conventional ideas of national law or domestic law or transnational law that it provides us with such a rich resource to rethink the world and jurisprudence.

78. 2015–2024 *International Decade for People of African Descent*, UNITED NATIONS, <http://www.un.org/en/events/africandescentdecade/> (last visited Jan. 31, 2017).

79. Richardson, *supra* note 3, at 72.

80. *Id.* at 70. *De lege ferenda* is a Latin phrase which translates to “with a view to the future law.” *Id.*

81. *Id.*

82. *Id.* at 71.

Slavery was crucial to the making of the U.S. and, more broadly, the modern world.⁸³ And yet, international law's attempts to deal with that past and its aftermath seem inadequate and inapposite, whatever the progress that has been made in abolishing slavery. The experience of slavery offers us an epistemology, a framework for imagining a different world and a lens from which to continue to think of how oppression operates in the world.

This would not have been an easy book to write, not only because of the intellectual challenges it presented, the new research that had to be done, and the conventional histories and frameworks it had to contest, but also because of the tragic subject matter itself. It is a paradox that it was only by engaging directly and deeply with the horrors of slavery that such a magnificent work could have been produced. The fact that Henry Richardson prevailed against all these difficulties, intellectual, psychological, and personal, should not make us any less complacent about the toll that such a work would have exacted from him. We must all be grateful, then, that he overcame all this adversity to produce work of such richness and depth and challenge.

83. For recent studies of this theme see SVEN BECKERT, *EMPIRE OF COTTON: A NEW HISTORY OF GLOBAL CAPITALISM* (2014); WALTER JOHNSON, *RIVER OF DARK DREAMS* (2013).