

The Colonialism That is Settled and the Colonialism That Never Happened

by *Andrea Smith*

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While both Black and Native studies scholars have rightfully argued that it is important to look at the distinctness of both anti-Blackness and Indigenous genocide, sometimes this focus on the distinctness obscures how, in fact, they are mutually reinforcing. There is much to be said about these interconnections, and this work has been explored by many in this blog series, in the #decolonizesaam Twitter discussion on anti-Blackness, and elsewhere. Here, I want to focus on how anti-Blackness and Indigenous genocide are connected through colonialism, and further expand on how colonialism constructs both the labor of Indigenous and Black peoples, in particular and different ways, in order to secure the settler state. In this article I want to focus on how settler colonialism is enabled through the erasure of colonialism against Black peoples as well as the erasure of Indigenous labor, with a particular emphasis on some of the legal proceedings that undergird these processes.

I begin my analysis with the infamous [Dred Scott](#) (1857) decision. In this decision, Justice Daniel explains in his concurring opinion, that Black peoples have the ontological status of property that derives from their origins in Africa, the property of Europe. Consequently, this ontological status does not change simply because one's owner relinquishes his property rights. Black peoples remain property whether or not an individual owns them.

Now, the following are truths which a knowledge of the history of the world, and particularly of that of our own country, compels us to know—that *the African negro race never have been acknowledged as belonging to the family of nations* [italics mine]; that as amongst them there never has been known or recognized by the inhabitants of other countries anything partaking of the character of nationality, or civil or political polity; that this race has been by all the nations of Europe regarded as subjects of capture or purchase; as subjects of commerce or traffic; and that the introduction of that race into every section of this country was not as members of civil or political society, but as slaves, as *property* in the strictest sense of the term.

But it has been insisted, in argument, that the emancipation of a slave, effected either by the direct act and assent of the master, or by causes operating in contravention of his will, produces a change in the *status* or capacities of the slave, such as will transform him from a mere subject of property, into a being possessing a social, civil, and political equality with a citizen. In other words, will make him a citizen of the State within which he was, previously to his emancipation, a slave.

It is difficult to conceive by what magic the mere *surcease* or renunciation of an interest in a subject of *property*, by an individual possessing that interest, can alter the essential character of that property with respect to persons or communities unconnected with such renunciation.

Because Africa is deemed the property of Europe, Africa must then appear as always, already colonized. Native studies is often articulated as concerned being primarily with colonization (and, subsequently, decolonization) while Black studies is articulated as concerned primarily with race (and, subsequently, anti-racism). However, this distinction is itself a product of anti-Blackness. The colonization of Africa must disappear so that Africa can appear as ontologically colonized. According to Justice Daniel, since only “nations” can be colonized, nations in Africa can never have existed. It is only through the disavowal of colonization that Black peoples can be ontologically relegated to the status of property. Within the Dred Scott decision, Native peoples by contrast, are situated as potential citizens. Native peoples are described as “free” people, albeit “uncivilized.” While because of their child-like primitive state, they are not worthy of citizenship at the moment, they may eventually become citizens if they were to renounce their relationship to their Native nation and demonstrate the “maturity” required to become a citizen. Native peoples can claim a certain kind of nation; however, it is nation that must disappear. Thus, Native peoples’ apparent proximity to whiteness should not be understood as a pathway to freedom but as a pathway to genocide. Indigenous nations are supposed to disappear into whiteness (or, to borrow from Maile Arvin, to be [possessed by whiteness](#)) in order to effectuate their genocide.

As Robert Nichols notes in his essay in [Theorizing Native Studies](#), settler colonialism sets the very terms of its contestation. And the terms of contestation set by settler colonialism is anti-racism. That is, the way we are supposed to contest settler democracy is to contest the gap between what settler democracy promises and what it performs. But as Nichols notes, contesting the racial gap of settler democracy is the most effective way of actually ensuring its universality. Thus, borrowing from this analysis, settler colonialism does not merely operate by racializing Native peoples, positioning them as racial minorities rather than as colonized nations, but also through domesticating Black struggle within the framework of anti-racist rather than anti-colonial struggle. Anti-Blackness is effectuated through the disappearance of colonialism in order to render Black peoples as the internal property of the United States, such that anti-Black struggle must be contained within a domesticated anti-racist framework that cannot challenge the settler state itself. Why, for example, is Martin Luther King always described as a civil rights leader rather than an anti-colonial organizer, despite his clear anti-colonial organizing against the war in Vietnam? Through anti-Blackness, not only are Black peoples rendered the property of the settler state, but Black struggle itself remains its property – solely containable within the confines of the settler state.

Thus, the colonialism that never happened – anti-Blackness – helps reinforce the colonialism that is settled – the genocide of Indigenous peoples. For the so-called ‘Indian problem’ to disappear, the United States must itself appear hermetically sealed from both internal and external threats that would threaten its legitimacy and continued existence.

Indigenous peoples must be made to disappear as internal threats, made to exist in a constant state of vanishing, in no position to unsettle the settler state. Meanwhile the external threat posed by a global Black anti-colonial struggle is made to disappear by rendering Africa as the property of the United States and, subsequently, no longer external to it. Anti-Blackness, then, is not only constitutive of the settler nation of the United States, but integral to the normalization of its continuance.

The colonialism that is settled and the colonialism that never happened are further effectuated through colonial constructs of labor. In [Johnson v. M'Intosh](#) (1823), the Supreme Court held that, while Indigenous people had a right to occupancy, they could not hold title to land on the basis of the doctrine of discovery. The European nation that "discovered" the land had the right to legal title. Native peoples were disqualified from being "discoverers" because they did not properly work: "The tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness." As they did not work, Native peoples had the ontological status of things to be discovered – the status of nature.

Similarly, in *Lowe v. United States* (1902), the court held that the Kickapoo, who had relocated to Mexico during the Civil War, did not have the legal ability to remain there without the permission of the United States in part because of their status as non-workers. Because Native peoples are legally incompetent (i.e. non-workers) they cannot create property in/on land and, subsequently, they cannot acquire a domicile.

Only those who are *sui juris* can acquire a domicile; married women can not acquire domicile other than that of their husbands; children under age can not acquire domicile separate from that of father or guardian; persons *non compos mentis* have not capacity to acquire a domicile.

The court further held that the inability of Native peoples to leave the United States could not be seen as slavery:

Whether Indians may encumber their lands or expatriate themselves are not determinable upon grounds of personal intelligence, but upon our national policy. That policy has always been not to permit the Indians to make any disposition of themselves or their property, except with the assent of the United States. Defendants' counsel appalls himself with the suggestion that this would be a species of slavery. I should rather incline to the opinion that it was one of the necessary elements of guardianship.

Indigenous peoples cannot be enslaved insofar as "enslavement" signifies forced work. For these legal categories, anything that they do or are forced to do cannot constitute work. Thus if anti-Blackness requires the disappearance of colonialism, Indigenous genocide requires the disappearance of Indigenous labor. This disappearance is necessary to secure the legal justification for land appropriation.

This disappearance of Indigenous labor then also helps to secure what Saidiya Hartman describes as Black fungibility. Building on the work of Frank Wilderson, Tiffany King notes in [her recent blog](#) that while Black labor has been used to build the settler state, anti-Blackness cannot be equated with labor exploitation. One of the reasons is that the work of Black peoples cannot constitute labor under settler colonialism. If we look at the rationales of *Johnson v. McIntosh* and *Lowe v. United States*, Black peoples pose a fundamental contradiction for the settler state. If colonialism is justified because settlers can work but Indigenous peoples cannot, then how can this colonialism remain justified when it is in fact Black peoples doing the work? Thus, the work of Black peoples cannot constitute labor under settler colonialism because only labor can create property. The work of Black peoples, who have been defined as property, cannot therefore create property for Black peoples. As King notes, it is Black fungibility that allows the work of Black peoples to settle space for settler/masters.

Thus, as Kiristina Gail Sailiata argues in her recent dissertation, *The Samoan Cause: Colonialism, Culture and the Rule of Law*, the common typology within settler colonial studies, that anti-Black racism is about stolen labor whereas Indigenous genocide is about stolen land and resources, is very problematic. She critiques Lorenzo Veracini's formulation that settler colonialism is about the demand to go away whereas other forms of racism are about the demand for labor: "As if the elimination of Native people's does not require labor – such as reproductive labor, and as if the demand for 'real' labor is not also accompanied by a demand to keep away – hence the creation of. . . 'separate but equal.'" Furthermore, the formulation of stolen labor versus stolen land obscures the fact that it is the disappearance of Indigenous labor that both justifies stealing Indigenous lands, as well as rendering the work of Black peoples as non-labor. Furthermore, this relationship between Black fungibility and the disappearance of Indigenous labor rests on the commodification of land as property that then prescribes the terms of anti-colonial struggle safely within the confines of nation-state governance. In other words, anti-colonial struggle, under these false terms, must only be about challenging who "owns" land and hence has the right to govern it, rather than challenging the idea that land should be property at all. As [Leanne Simpson](#) describes the necessary struggle to decolonize Indigenous homelands: "I am not a nation-state, nor do I strive to be one. Our politics and our nationalism are not based on enclosures defended with violence."

As Klee Benally notes, decolonization is often weaponized by settlers in order to justify anti-Blackness. But settler colonialism is fundamentally structured through anti-Blackness and vice versa. By exploring not just the distinctness of settler colonialism and anti-Blackness but also how these logics mutually support and reinforce each other, perhaps we can stop contesting settler colonialism through the terms set by settler colonialism.

Andrea Smith is busy working on the 18 year plan to end global oppression.