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**TWAILReview**

05

**Issue 5 / 2024**



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*TWAIL Review ~ Issue 5 (2024) 98-119*

### Nigeria's Settler-Colonial Present: Review Essay of Folúkẹ́ Adébíṣí's *Decolonisation and Legal Knowledge*

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#### Abstract

*In her 2023 text, *Decolonisation and Legal Knowledge: Reflections on Power and Possibility*, Folúkẹ́ Adébíṣí explores what it means to transcend colonial logics in the study, practice, and teaching of law. She implores legal academics to participate in the project of decolonization and decoloniality through careful examination of the concepts, theories, and categories that organize the discipline of Law. This review essay engages with the project of the text by exploring the colonial logics that inform the separating of colonial experiences into “settler” and “non-settler” categories. In particular, this paper argues that Nigeria, which is traditionally classed as a “non-settler” state, should be understood as operating within a settler-colonial logic, and that its Indigenous peoples should be understood as similarly situated to Indigenous peoples in traditional settler-states.*

#### Introduction

Since the global wave of flag independence from the mid to late 20<sup>th</sup> century, ‘decolonization’ has increasingly become the subject of scholarly consideration.<sup>1</sup> While

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there are arguments in favor of reading decoloniality as an extension of postcolonial studies (i.e. as a 'decolonial turn' within the broad landscape of postcolonial studies),<sup>2</sup> many scholars working within the traditions of decolonial studies generally understand themselves to be doing something different from extant traditions of postcolonial studies.<sup>3</sup> To be sure, decolonial theory is located within the critical mode of scholarly traditions and responds to the colonial phenomenon. It shares an ideological spirit with postcolonial studies: both are attuned to the strength of colonial power and are projects of resistance. Both also foreground—with the intention to dismantle—the ways that colonial structures, ideas, hegemonies, and hierarchies are retained and reified in our modern domestic and international institutions and societies. But decolonial theory is also uniquely concerned with 'coloniality,' especially colonialism's hold on knowledge and epistemic practices and systems of modern society.<sup>4</sup>

Decolonial theorists understand modernity and the type of civilization it embodies to be inherently colonial.<sup>5</sup> The concern is with the colonial logics that undergird systems, institutions, and relationships of our modern societies. The object of decolonial theory is not only to name and neuter such colonial logics but also to foster the resurgence of Indigenous logics and knowledge systems within contemporary society.<sup>6</sup> Decoloniality has been explained as a project of 'disobedience' that looks to 'delink' modernity from the 'matrix' of coloniality.<sup>7</sup> Decolonial theory, therefore, necessarily draws from and informs various aspects of critical scholarship both within and beyond postcolonial theory, including critical race theory, feminist theory, Black studies, and Indigenous studies.<sup>8</sup> Theorists working within decolonial studies articulate praxes and methods that can move society towards dismantling the colonial ideals that have shaped our world. It is against this background—and within

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<sup>1</sup> Eve Darian-Smith, 'Postcolonial Theories of Law' in Reza Banakar and Max Travers (eds.) *Law and Social Theory* (Hart Publishing, 2013) 247-264, at 249. See generally, Raymond F. Betts, (2012). 'Decolonization: A brief history of the word' in Els Bogaerts & Remco Raben (eds.), *Beyond Empire and Nation: The Decolonization of African and Asian societies, 1930s-1970s* (Brill, 2012) 23-38.

<sup>2</sup> Ming Dong Gu, 'Is Decoloniality a New Turn in Postcolonialism?' (2023) 1:1-2 *Culture as Text* 5-18, at 5-6.

<sup>3</sup> See generally: Walter D. Mignolo & Catherine E. Walsh, *On decoloniality: concepts, analytics, praxis*, On decoloniality (Durham: Duke University Press, 2018).

<sup>4</sup> Gu (2023) 6, 7

<sup>5</sup> Mignolo & Walsh (2018) 194.

<sup>6</sup> Ibid., 18-19.

<sup>7</sup> Ibid., 4. See Also: Gu (2023) 7.

<sup>8</sup> See generally: Mignolo & Walsh (2018) 3. See also: Shose Kessi, Zoe Marks & Elelwani Ramugondo, 'Decolonizing African Studies' (2020) 12:3 *Critical African Studies*, 271-282. Mignolo and Walsh write that 'decoloniality denotes ways of thinking, knowing, being, and doing that began with, but also precede, the colonial enterprise and invasion. It implies the recognition and undoing of the hierarchical structures of race, gender, heteropatriarchy, and class that continue to control life, knowledge, spirituality, and thought, structures that are clearly intertwined with and constitutive of global capitalism and Western modernity.' Mignolo & Walsh (2018) 17.

the traditions of decolonial theory—that Folúkẹ Adébíṣí writes *Decolonisation and Legal Knowledge: Reflections on Power and Possibility* (*Power and Possibility*).<sup>9</sup>

In this essay, I am principally interested in how naming one type of colonial experience as uniquely 'settler,' and thus regarding some others as 'non-settler,' privileges the European experience of colonialism at the expense of Indigenous peoples, culture, and society (in non-settler states.) This essay is divided into four parts. The first part is this introductory section that sets out the scholarly traditions this paper engages with and identifies Adébíṣí's text as the scaffold for the arguments I will present. In the second part, I engage with scholarly discourse around the separating of colonial experiences into 'settler colonialism' on one hand and 'non-settler colonialism,' which is sometimes simply called 'colonialism,' on the other. I hope to demonstrate that such separating perpetuates the centering of the European experience in the account of colonization. I also argue that this approach elides the nature of the postcolonial nation-state as a colonial construction, and such eliding frustrates the project of decoloniality. In the third part, I use the experience of Indigenous peoples in Nigeria to argue for the inclusion of the so-called non-settler states within settler-colonial discourse and strategy. And I conclude this essay in the fourth and final part.

It is important, at this point, to clarify some of the terms I use in this essay. I use 'settler-colonialism' (and 'settler-state') to refer to the colonial projects (and the nation-states which emerged from such projects) that employed settler migration and/or displacement of Indigenous peoples as part of the strategies of colonial conquest.<sup>10</sup> These projects and states constitute the primary subjects of settler-colonial studies and theorizing. Indigenous peoples in settler-states, some of whom understand themselves—and are sometimes recognized—as independent nations, have been described as constituting part of the 'Fourth World.'<sup>11</sup> Some often-cited examples of settler-states are the United States, Canada, New Zealand, and Australia. South Africa and Liberia have also been offered as examples of settler-projects on the African continent.<sup>12</sup> I use non-settler colonialism (and non-settler states) to refer to colonial

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<sup>9</sup> Folúkẹ Adébíṣí, *Decolonisation and legal knowledge: reflections on power and possibility* (Policy Press, 2023).

<sup>10</sup> See generally: Patrick Wolfe, 'Settler colonialism and the elimination of the native' (2006) 8:4 *Journal of Genocide Research* 387–409. It should be noted that plantation colonies were a unique strand of settler colonialism that weaponised the forced migration of enslaved labour and displacement of Indigenous populations. However, the nation-states that emerged from plantation colonies, such as countries on the Caribbean Island, have to be considered differently from traditional settler-states. This paper does not discuss plantation colonies.

<sup>11</sup> See generally: Amar Bhatia, 'The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World', 14 (2012) *ORIL*, at 131 as cited in Antony Anghie, 'Rethinking International Law: A TWAIL Retrospective' (2023) 34:1 *European Journal of International Law*, at 7–112.

<sup>12</sup> See generally: Chris Youé, 'Settler colonialism or colonies with settlers?' (2018) 52:1 *Canadian Journal of African Studies / Revue canadienne des études africaines* 69–85.

projects (and the nation-states which emerged from such projects) that were regarded as colonies of 'exploitation' or 'extraction,' or as 'franchise colonies' which did not contemplate the permanent settlement of colonial migrants.<sup>13</sup> These projects and states constitute the primary subject of inquisition under postcolonial studies. The colonial experience of many nation-states on the African continent are often provided as examples of franchise 'non-settler' colonialism, and Nigeria is a particularly recurring example in this regard.<sup>14</sup> Most postcolonial 'non-settler' states constitute part of the 'Third World,' but the two phrases are not synonymous. Contemporary use of the term 'Third World' suggests that it describes 'developing countries' regardless of colonial history.<sup>15</sup> Countries like Liberia, which experienced settler-colonialism, and Ethiopia, which was not colonized, are also considered 'Third World' countries.<sup>16</sup> For the rest of this introductory section, I discuss the themes that Adébísi explores in her text and how these themes reveal a scholarly inclination to separate colonial experiences into different categories.

*Power and Possibility* is interested in how the curriculum that organizes the education in most law schools around the world not only reproduces and reifies Euro-modern colonial logics, but also trivializes the capacity of Indigenous knowledge systems and laws to (co-)organize contemporary (legal) life.<sup>17</sup> So, the text opens by identifying the law school as a core location from which the colonial logics of Euro-modern law<sup>18</sup> are perpetuated.<sup>19</sup> The law school is also where we close, with recommendations on how we may evolve new transgressive approaches that can forge a different type of institutionalized learning that is 'necessary to take us towards pluriversal worlds.'<sup>20</sup> Here, Euro-modern law is on trial, charged as the vector through which colonial logics are carried through space-time. The law school and other participants in legal academe are co-conspirators in this regard. The goal is not merely

<sup>13</sup> See generally: Adelaja Odutola Odukoya, 'Settler and Non-settler Colonialism in Africa' in Samuel Ojo Oloruntoba & Toyin Falola, eds, *The Palgrave Handbook of African Politics, Governance and Development* (New York: Palgrave Macmillan US, 2018) 173.

<sup>14</sup> Jane Carey & Ben Silverstein, 'Thinking with and beyond settler colonial studies: new histories after the postcolonial' (2020) 23:1 *Postcolonial Studies* 1–20, at 11. See also: Odukoya (2018) 14.

<sup>15</sup> 'The Third World', (9 October 2024) <https://dictionary.cambridge.org/dictionary/english/third-world> (accessed 12 October 2024).

<sup>16</sup> 'Third World Countries 2024', <https://worldpopulationreview.com/country-rankings/third-world-countries> (accessed 14 October 2024).

<sup>17</sup> Adébísi (2023) 150-154.

<sup>18</sup> Adébísi draws on the postcolonial scholarship of Eve Darian Smith to explain Euro-modern law as 'law which began in Europe, but also arose out of colonial activities in the Americas, Africa, Asia, and Oceania. The ontology of Euro-modern law places Euro-America at the center of the world...' Ibid., 46

<sup>19</sup> Ibid. 2.

<sup>20</sup> Ibid. 137-145, 148-157.

to acknowledge the colonial foundations of Euro-modern law but also to work towards dismantling the hegemony that platforms this narrow tradition of law as the model for contemporary society.<sup>21</sup>

In six substantive chapters (as well as an Introduction and a Conclusion) which are grouped into three broad sections, the text explores how colonial logics have evolved and manifested through time into modernity and have become established as the barometer for civilized life. The first part of section one, which is also the text's introductory chapter, takes on the question of why the law school (and its curriculum) is an important site upon which decolonial praxes must be applied to move our worlds beyond coloniality.<sup>22</sup> As an 'incubator' to develop the minds that produce and practice in the systems of law, the law school influences the culture of our global and domestic societies and its institutions.<sup>23</sup> What students are taught as the vision of law in, and of, society shapes their vision of society. Thus, it is particularly problematic, as Adébísi demonstrates in chapter two, that the theoretical concepts which animate modern legal thought and systems are informed by the same arguments, ideals, and theories (logics) that enabled and undergirded colonization and colonialism. Applying decolonial praxes to legal education disrupts the cycle of uncritically (re)producing Euro-modern law as universal legal knowledge; it opens up space for Indigenous knowledge to co-create new ways of being for the future.

Chapter one, in which Adébísi examines existing theories of decolonization, is a pivotal chapter for the text and for this essay. This chapter draws from a vast and varied scholarly genealogy, including the works of Gandhi, Nkrumah, Veracini, Tuck and Yang, Maldonado-Torres, DuBois, and Crenshaw<sup>24</sup> to present five typologies of theories of decolonization. Her categories generally reflect different strands of scholarly discourse that explore colonialism, including its effects and legacies in our modern world. For example, *Decolonization I* which responds to the colonial experience in postcolonial states is interested in both the internal conditions as well as the international status of these states.<sup>25</sup> *Decolonization II*, on the other hand, responds to the colonial experience in settler-states and roots itself in Indigenous advocacy and the tradition of scholarship that has emerged from these sensibilities.<sup>26</sup> *Decolonization III* bears close fidelity to theories on decoloniality which emerged from Latin America

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<sup>21</sup> Ibid., 10-11.

<sup>22</sup> Ibid., 13.

<sup>23</sup> Ibid., 1-2.

<sup>24</sup> Ibid., 21-37.

<sup>25</sup> Ibid., 22-25.

<sup>26</sup> Ibid., 25-26.

and Caribbean scholarly traditions; it particularly reacts to 'coloniality'.<sup>27</sup> *Decolonization IV* contains the critiques of empire generated from the metropole<sup>28</sup> while *Decolonization X* curates a medley of decolonial theories that do not tidily fit into the previous categories.<sup>29</sup> Decolonial traditions which emerged from Critical Race Theory (CRT) and Black Radical Traditions (BRT), for example, are assigned to this final category. As with most attempts at curating typologies in academic scholarship, the boundaries of the categories are pliable. Decolonization I melts into II and also contains elements of CRT; Decolonization II 'overlaps' with III.<sup>30</sup>

While these classifications primarily function to present the mass of scholarship and theories produced on decolonization in an easily navigable format, a related consequence of such organizing is that theories around decolonization are revealed to closely track with theories around colonialism. In this sense, scholars contributing to the discourse on decolonization are consciously or unconsciously guided by principles, concepts, and theories that have evolved to organize colonial experiences. The categories of settler and non-settler colonialism are popular devices that have been used to differentiate among colonial experiences.

A recent essay exploring the historical emergence of settler colonial studies aptly notes that postcolonial studies which examines the colonial experience (including decolonization) in non-settler states cannot analyze the 'not-post-colonial' (i.e. the settler-colonial) reality.<sup>31</sup> Lorenzo Veracini captures a similar sentiment rather pithily when he writes that 'decolonization is not settler-decolonization.'<sup>32</sup> What this means is that settler and non-settler decolonization have to be understood differently. Where, for example, activism towards decolonization in a settler-state would protest the legitimacy of the very form of the nation-state, such advocacy in a non-settler state would be working to improve the standing of the nation-state within the (globalized) hierarchy of nation-states.<sup>33</sup> This is the difference between Adébisi's decolonization typologies I and II. Under this frame, where decolonization in non-settler states would demand 'an equal seat at the table,' decolonization in settler-states demands 'give us

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<sup>27</sup> Ibid., 26-29.

<sup>28</sup> Ibid., 29-30.

<sup>29</sup> Ibid., 30-32.

<sup>30</sup> Ibid., 26.

<sup>31</sup> Cyrus Schayegh, 'Settler colonial studies: a historical analysis' (2024) 0:0 *Settler Colonial Studies* 1-28, at 3.

<sup>32</sup> Lorenzo Veracini, 'Introducing: settler colonial studies' (2011) 1:1 *Settler Colonial Studies*. 5-7.

<sup>33</sup> L. Veracini, *The Settler Colonial Present* (London, UNITED KINGDOM: Palgrave Macmillan UK, 2015) 104. It is important to note that, as discussed below, TWAIL II scholars work within 'third world' traditions to also challenge the exercise of power by postcolonial nation-states

back our table!<sup>34</sup> The difference, therefore, appears to be that where settler-decolonization primarily protests continued colonial occupation by the settler state, non-settler decolonization primarily protests continued colonial imposition against the postcolonial state as in neo-colonialism and globalization.

It is also important to note that although Adébísi's typologies include theories beyond resistance to 'coloniality,' there is no doubt that the heart of the work is the question of how to interfere with the continued framing of European epistemes, knowledge, and praxes as the singular measure of civilization in modern society. In other words, the project of the text is to engage with decoloniality.<sup>35</sup> Consistent with Adébísi's project to investigate the colonial logics that undergird the concepts and theories that organize our contemporary knowledge systems, this review essay investigates the colonial logics at the center of the settler/non-settler binary. But it is worth engaging briefly, for the rest of this introductory section, with the rich account of the history and evolution of Euro-modern law and its effect on modern society presented in *Power and Possibility*.

In Chapter three, which opens the second section, the text foregrounds the Euro-colonial epistemologies of the theories, concepts, and principles that organize contemporary society. This chapter presents the reader with the colonial ontology of Euro-modern law and the systems that ripple from its authority. The goal is to provoke an appreciation of how colonial logics have iterated to ensure their continued reproduction through time into our current moment.<sup>36</sup> This iterative capacity of colonial logics is an important aspect of why the colonial continuum is sometimes perceived as 'colonial cleavages,' and it has ensured the reification of Euro-modern legal ideals as globalized and objective legal knowledge.<sup>37</sup> Chapters Four and Five retrace the operations of colonial logics that recharacterize Indigenous peoples as non-human, Indigenous law as non-law, and Indigenous society as uncivilized. Her arguments here are supported by a close reading of foundational European scholars such as John Locke and William Petty, whose works, she argued justified the transformation of life, land, and labor into property.<sup>38</sup> This transformation is presented as a process of commodification that sustains a colonial continuum from early days of enslavement to modernity's capitalism.

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<sup>34</sup> Adébísi (2023) 22-26.

<sup>35</sup> Ibid., 15.

<sup>36</sup> Ibid., 47-71.

<sup>37</sup> Ibid., 13.

<sup>38</sup> Ibid., 95-96



Chapters six and the conclusion make up the third and final section of the text and return us to the law school as a principal site to apply decolonial praxes against colonialism and coloniality. The task is to offer a new vision of the world that is deracinated from colonial logics. The text asks that we closely examine the foundational components of modern society to unearth the colonial systems and ideals that we regard as objective, natural, and even inevitable within contemporary society.<sup>39</sup> We must, she says, also resist the instinct to abide a spatial and temporal separation in how we understand empire.<sup>40</sup> If we reject spatial-temporal divisions between past and present, we can lay hold of a new vision for society that both honors the past in its resurgence of Indigenous traditions and improves the present and future by rejecting what has been described as 'grand narratives of Western reason.'<sup>41</sup>

*Power and Possibility* contributes to the growing body of scholarship which successfully establish connections among different historical, legal, social, and political themes to offer an account of epistemic evolution.<sup>42</sup> It traces the logics of modern-day capitalism to empire expansion through forced displacement, enslavement, and forced labor, and then to foundational European legal theories on labor, land, and ownership.<sup>43</sup> These colonial logics are both resilient and flexible, manipulating body, space, and time to obscure the influence they wield. Decolonization, if it will be successful, must aspire to interrupt this transformation, and thereafter dismantle the structures of Euro-modern colonialism.<sup>44</sup> As Adébí sí explains, 'we understand that to decolonize is not to change the players in a game, but to question and upturn the very rules upon, and reasons for which, the game is being played.'<sup>45</sup> And notwithstanding the culpability of law and legal knowledge in the preservation and perpetuation of colonial logics, they yet possess 'power and possibility' to realize or, at least, facilitate decolonization and decoloniality.<sup>46</sup>

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<sup>39</sup> Ibid., 42-43.

<sup>40</sup> Ibid. See also Ibid 32

<sup>41</sup> Gu (2023).16.

<sup>42</sup> See generally: Kessi, Marks & Ramugondo, 8. Michael E Odijie, 'Unintentional neo-colonialism? Three generations of trade and development relationship between EU and West Africa' (2022) 44:3 *Journal of European Integration* 347-363.

<sup>43</sup> Adébí sí (2023) 92-107

<sup>44</sup> Mignolo & Walsh (2018) 9-11.

<sup>45</sup> Adébí sí (2023) 133.

<sup>46</sup> Ibid. Adébí sí explains, 'yet we must accept that most of what we call decolonisation in the academy merely acknowledges colonialism but does little to dismantle it...we are still bound by colonial logics within the institutions and the world in which we work and exist...[yet] I want to make some proposals for specific departmental action around three broad areas of practice in legal knowledge...' 137. Also, see generally, Ibid 150-153.

In the remaining part of this essay, I turn to the scholarly differentiating among colonial experiences as evidencing a type of scholarly approach that privileges a Eurocentric framework in accounts of colonial experiences. This differentiating has resulted in distinct—even if related—scholarly traditions that are reproduced within academia, including in law schools.<sup>47</sup> *Power and Possibility*, with its concern for epistemic practices in academia thus emerges as a useful interlocutor for my arguments against discussing the European global colonial project in terms of 'settler' and 'non-settler' categories. Specifically, I argue that an approach to settler-colonial theorizing that does not admit 'non-settler' states like Nigeria as appropriate subjects of inquisition is an approach that centers the European experience of colonization. This highlights a point of brilliance for the book: it is a text on decolonization and decoloniality that offers useful ways to re-think the scope and applicability of settler-colonial scholarship. As I demonstrate in the following sections, a commitment to decoloniality which demands the decentering of European peoples and experiences in our investigations of colonialism must understand a country like Nigeria as operating in a continuing settler-colonial present.

I must acknowledge that scholars working within traditions of Indigenous studies, Black studies, and Native studies have critiqued the overwhelming Eurocentric center of settler-colonial studies.<sup>48</sup> But these critiques should not be understood as transcending the aspect of the settler/non-settler frame that this essay engages. As Kauanui, a Kanaka Maoli professor of American studies and Anthropology, notes, 'when scholars dismiss settler colonial studies based on an assertion that it recenters the settler, too often they are conflating that concern with who is producing the work—in most cases the accusation is levelled at non-Indigenous scholars—not the work itself.'<sup>49</sup> Alice Te Punga Somerville, a Māori scholar, also appreciates the utility of settler colonial studies but rejects the 'institutional and scholarly contexts in which this conversation happens.'<sup>50</sup> These critiques aim—and this is an important goal—to shift the conversation from a Eurocentric center towards Indigenous scholarship and experiences. But these critiques do not propose that non-settler states be recognized as settler-colonial formations, which is the project of this essay.

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<sup>47</sup> See generally: Odukoya (2018). Carey & Silverstein (2020).

<sup>48</sup> See generally: Tiffany King, 'New World Grammars: The 'Unthought' Black Discourses of Conquest', 19:4 *Theory & Event* 2016, as cited in Carey and Silverstein, *Ibid.*, 5-6, 16. See also: J Kēhaulani Kauanui, 'False dilemmas and settler colonial studies: response to Lorenzo Veracini: 'Is Settler Colonial Studies Even Useful?' (2021) 24:2 *Postcolonial Studies* 290–296. Alice Te Punga Somerville, 'OMG settler colonial studies: response to Lorenzo Veracini: 'Is Settler Colonial Studies Even Useful?' (2021) 24:2 *Postcolonial Studies* 278–282.

<sup>49</sup> Kauanui (2021) 292.

<sup>50</sup> Te Punga Somerville (2021), Kauanui (2021) 279.

In *On Home Ground: Settling Land and Domesticating Difference in the 'Non-Settler' Colonies of Burma and Cambodia*, Penny Edwards presents an account of colonial rule that transcends the settler/non-settler binary in a way that I propose is applicable in the Nigerian context.<sup>51</sup> Edwards discusses colonial settling in two societies that are traditionally regarded as 'non-settler,' pointing out the critical function that the colonial bureaucratic class played in ensuring the colonial continuum in these societies.<sup>52</sup> Crucially, she emphasizes that the colonial bureaucrats were foot soldiers who understood themselves to be settling the colony much in the same way that the pioneers in the settler colonies understood themselves to be settling the colony.<sup>53</sup> In fact Edwards, appropriately, describes the bifurcation between colonial experiences thus: 'settler colonialism and its hypothetical antithesis—the presumed conundrum of a colonialism without settlers—is a legacy of colonial mapping which still structures much contemporary thinking, both within and without academe.'<sup>54</sup> Unfortunately, as Edwards notes, not enough scholarship has been produced to compare colonialism across the settler/non-settler divide.<sup>55</sup>

To be sure—and Adébí sí reminds us of this fact—there is abundant scholarship that investigate the colonial continuum in postcolonial nation-states.<sup>56</sup> However, there yet remains an observable scholarly instinct to treat settler colonialism as meaningfully different from non-settler colonialism.<sup>57</sup> Patrick Wolfe and his theories on colonialism loom large, for good or bad, in the field of settler colonial studies.<sup>58</sup> Wolfe, whose work Adébí sí cites in *Power and Possibility*<sup>59</sup> hangs his theory of a distinct settler-colonial experience on the claim that settler-colonizers uniquely 'came to stay.'<sup>60</sup> For non-settler states, Wolfe imagines a meaningful—even if shallow—difference where 'at least the legislators change color'<sup>61</sup> in relation to flag independence in non-settler states. But when Wolfe says this, with an intent to suggest the settler and non-

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<sup>51</sup> Penny Edwards, 'On Home Ground: Settling Land and Domesticating Difference in the 'Non-Settler' Colonies of Burma and Cambodia' (2003) 4:3 *Journal of Colonialism and Colonial History*,

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Adébí sí (2023) 15.

<sup>57</sup> Carey & Silverstein (2020)10-11.

<sup>58</sup> Ibid. 2.

<sup>59</sup> Adébí sí (2023), 25-26.

<sup>60</sup> Patrick Wolfe, *Settler colonialism and the transformation of anthropology the politics and poetics of an ethnographic event*, Writing past colonialism series (London ; Cassell, 1999), 2.

<sup>61</sup> Wolfe writes about non-settler colonial states, 'In contrast, for all the hollow formality of decolonization, at least the legislators generally change colour.' Ibid.

settler colonial experiences should be considered separately, he is wrongly conflating colonially created citizenship with Indigeneity.

Indigenous peoples in 'non-settler' states, like Indigenous peoples in settler states, had and still have to negotiate their existence with the governments and agents of colonially created nation-states. As I demonstrate below, with the example of the Otodo Gbame people of Lagos state in Nigeria, imposition from the postcolonial nation-state often takes the form of violently displacing Indigenous peoples from ancestral land and moving in strangers to the community to take over control and occupation of these lands. Describing the postcolonial Nigerian state as 'non-settler' obscures the settler-colonial dynamics that are operative in such hostile relationships; it privileges colonial logics, and the colonial categories created to group distinct Indigenous peoples under a singular nation-state identity.

### **Colonial Logics, Concepts, and Categories: Settler and non-settler colonialism**

Coloniality—and its related term decoloniality—establishes itself in the systems of knowledge of modern society. It manifests in the ways we understand ourselves, the societies we live in, and how we came to live in these societies. Coloniality confers power on the class or group of people whose norms organize a society's systems of knowledge.<sup>62</sup> An important way that knowledge operates as power is through theories and concepts generated within the knowledge systems of the dominant group.<sup>63</sup> Powerful groups can impose their own ways of making sense of the world on less powerful communities, such that the experience of the latter becomes filtered through the theories of the former. Within the context of colonization, this manifests in a persistent accounting of the colonial experience through the frames and language provided by colonial power. Such reframing may eclipse the violence and transformative effects of colonization. So, Indigenous communities, like those in pre-colonial Nigeria that experienced the strangeness and violence of colonial domination, including the settling of colonial norms and the agents who administered these norms, can be placed into a category of 'non-settler' colonialism, distinguishable from settler-colonialism, where the colonizers 'came to stay.'

Chapter three of *Power and Possibility* discusses how concepts and categories can be used to invisibly operationalize colonial logics. Coloniality thrives on sustaining these categories by making them appear to be a natural way to think about our world; these logics become both prominent and invisible in their operations.<sup>64</sup> But these

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<sup>62</sup> Mignolo & Walsh (2018) 140-141.

<sup>63</sup> Ibid. 23.

<sup>64</sup> Adébisi (2023) 71.

categories are fabricated. It is easily observed that the categories of settler and non-settler have become heuristic devices to capture seemingly crucial differences in the colonial experience.<sup>65</sup> Nearly all nation-states (Liberia is an important exception) that are traditionally understood as existing in a contemporary settler-colonial situation are the result of *European* settling.<sup>66</sup> Other colonial formations, like Nigeria, that moved non-Europeans into Indigenous territory—and settled them there—are typically presented as 'non-settler' polities.<sup>67</sup> These boundaries that separate colonial experiences into settler and non-settler colonialism exemplify the type of strict but flawed definitional categories that Adébiśi cautions against.<sup>68</sup>

When we organize colonial experiences into separate categories, we assert that the group of states regarded as settler-colonial states share something in common as against other states who may be excluded from the category. Therefore, it is worth asking: what are we evaluating when we designate one type of colonial experience as 'settler' and others as 'non-settler?' The traditional logic to explain this separation is the land/labor divide, but enough scholars have shown that this binary is not exact.<sup>69</sup> It is now largely incontrovertible that settler states relied on both the labor and land of Indigenous peoples to establish the polity. It is also widely accepted that the governing class of traditional settler states emerged from the colonial political class such that post-independence 'self-rule' continued the same pattern of oppressive subjugation that existed under colonial rule. Roberta Sykes captures this reality in her influential poem, *Postcolonial Fictions*, when she asks, 'What postcolonialism? Have they left?'<sup>70</sup> So, when Indigenous peoples in settler-states insist that flag independence changed little or nothing of the operations of the colonially constructed state, we appreciate—and maybe even share in—the truth of the argument.

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<sup>65</sup> See Schayegh (2024) 14.

<sup>66</sup> Youé, (2018) 73. Other scholars have also identified Japan originated settler-colonial projects across the Asian continent. See generally: Edward Cavanagh & Lorenzo Veracini, *The Routledge handbook of the history of settler colonialism*, (Abingdon, Oxon ; Routledge, 2017). Part IV 'Asia' Caroline Elkins & Susan Pedersen, eds, *Settler Colonialism in the Twentieth Century: Projects, Practices, Legacies* (New York: Routledge, 2005). See also: Schayegh (2024) 8.

<sup>67</sup> In *White Man in Black Skin*, we get an account of the movement of the colonial bureaucratic class in Nigeria. Augustus Adebayo, *White man in black skin*, new edition. ed (Ibadan) (Nigeria: Spectrum Books, 1985). Chinua Achebe also captures this reality in the person of the protagonist of his short story, *The Sacrificial Egg*. Anchor Books ed (New York: Anchor Books, 1994). Chinua Achebe, 'The Sacrificial Egg, A Short Story by Chinua Achebe' *The Atlantic* (1 April 1959) <https://www.theatlantic.com/magazine/archive/1959/04/the-sacrificial-egg/306021> (accessed 23 October 2024).

<sup>68</sup> Adébiśi (2023).

<sup>69</sup> See: Robin Oakley, Lorenzo Veracini. *The Settler Colonial Present* (New York: Palgrave Macmillan, 2015), at 160. See also Caroline Elkins, (2005) 'Race, Citizenship, and Governance: Settler Tyranny and the End of Empire.' in Elkins and Pederson, *Settler Colonialism in the Twentieth Century*, (Routledge, 2005) 203–222 as cited in Youé, (2018) 82.

<sup>70</sup> Roberta Sykes, 'Postcolonial Fictions', (In memory of the Post-Colonial Fictions Conference, Perth, 1992), *Eclipse*, 1996 as cited in Carey & Silverstein, (2020) 1.

'Non-settler' states also experienced the continuum. The elites of the postcolonial nation-state who step into the shoes of colonial power were often already part of the administrative and political system during the period of active colonization.<sup>71</sup> They were the faces that Indigenous people associated with power under colonial rule; they were the district officers, the governors, the legislators, the judges, the bureaucrats appointed by and under colonial power to govern Indigenous peoples and societies.<sup>72</sup>

To be sure, postcolonial scholars do interrogate the conditions of Indigenous persons in these 'non-settler' polities, but the discourse generally takes on a different register than settler-colonial discourse.<sup>73</sup> Adébíṣí, for one, is alive to how the postcolonial 'non-settler' states operate on the same logics as the enslavement projects and dispossession projects in traditional settler-colonial states. In her discussion of Decolonization I typology, which is applicable to non-settler states, she acknowledges and cites the work of scholars like Cabral and Fanon who understand flag independence as the colonially created elite class continuing the same hostile relationship that characterized European colonial administration of Indigenous communities.<sup>74</sup> But she describes this class of elites as 'local' autocrats.<sup>75</sup> These elites were (are) certainly autocrats, but they are only local to the society that colonialism built. In a different, important sense, they also represent(ed) the strangeness and foreignness of the regime imposed on Indigenous society.

Mahmood Mamdani's work is particularly instructive here. He has contributed much to challenging the narrative that colonial rule on the African continent preserved or operated through Indigenous systems and society. In different texts he discusses how the indirect rule of colonial administration in non-settler projects on the African continent was not necessarily rule by Indigenous persons but rule by non-European agents.<sup>76</sup> The success of the colonial project depended on hostility to Indigenous peoples and society, often that hostility took the form of strangers moving into communities as part of the class of bureaucratic colonial agents. 'Indirect rule' was

<sup>71</sup> Senator L. C. Daldry, C.B.E., *Nigeria's Federal Parliament*. speech delivered to a joint meeting of the Royal African Society and the Royal Commonwealth Society on July 2, 1960 Senator L. C. Daldry, C.B.E., 296-97

<sup>72</sup> Ibid. See also: Adebayo (1985) 27-28.

<sup>73</sup> Eve Darian-Smith (2013) 248. See also: Mahmood Mamdani, 'Settler Colonialism: Then and Now' (2015) 41:3 *Critical Inquiry* 596-614. Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 2018). See also: Mahmood Mamdani, 'Beyond Settler and Native as Political Identities: Overcoming the Political Legacy of Colonialism'. (2001) 43:4 *Comparative Studies in Society and History*, at 651-664.

<sup>74</sup> Adébíṣí (2023) 23-24.

<sup>75</sup> Ibid. 23.

<sup>76</sup> Mamdani, (2001) 654, 656-7. See also: Mahmood Mamdani, *Neither Settler nor Native* (Harvard University Press, 2020), 198.

indirect only from the perspective of European power—Europeans did not have to do the heavy lifting. But from the perspective of Indigenous peoples and societies in so-called non-settler colonies, administration through non-European foot soldiers was a direct colonial imposition on the Indigenous pre-colonial society.<sup>77</sup> So, when such non-European colonial administrators emerge as the political ruling elite in the wake of flag independence, they have to be understood in the same context as their European counterparts in settler colonial states. They are citizens of a colonially created entity who have emerged as an elite (political) class by virtue of the machinations of colonial power, and they continue (and sometimes even exacerbate) the oppressive policies of the colonial regime.<sup>78</sup> When control of the postcolonial state is transferred to these citizens, the colonial project of hostility towards Indigenous peoples continues, not unlike hostility towards Indigenous peoples in settler-states.

Non-settler colonialism did not always happen along the color lines of race, and neither did settler-colonialism.<sup>79</sup> As Mamdani observes correctly, 'settler--colonialism requires no actual [European] settler, just a group defined as settler and another defined as native.'<sup>80</sup> Although the colonially created elite in non-settler states were sometimes of the same 'color' as the oppressed Indigenous peoples, in many respects they were more similar to the European colonial administrators than they were to the Indigenous communities they administered. They were certainly operating under the authority of the colonial administration when they moved into and settled in Indigenous communities.<sup>81</sup> And when they took over control of the nation-state after flag independence, they remained sympathetic to European ideals—and in many instances, European governments—while remaining hostile to Indigenous peoples. This point is delicate, but it is crucial to understanding why 'non-settler' states also have to be understood as settler polities.

Colonial legal categorizing subsumes distinct ethnicities into one national identity and presumes the national identity as an objective descriptor of the subjected ethnicities. Coloniality universalizes this colonial construct. Decolonial theory must therefore pay attention to these designs in the modern make-up of the nation-state. Thus, an important goal for decolonial praxes should be to draw out the connections

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<sup>77</sup> Obaro Ikime, 'Reconsidering Indirect Rule: The Nigerian Example' (1968) 4:3 *Journal of the Historical Society of Nigeria*, 421–438.

<sup>78</sup> Ronald J Horvath, 'A Definition of Colonialism' (1972) 13:1 *Current Anthropology*, 45–57, at 46. See also, Kēhaulani Kauanui, Patrick Wolfe, 'Settler Colonialism Then and Now. A Conversation between', 2/2012 *Politica & Società, Periodico di filosofia politica e studi sociali* 235–258, at 248.

<sup>79</sup> See the examples of Liberia as well as the Japanese settler-projects in parts of East Asia. Generally: Elkins & Pedersen, (2024).

<sup>80</sup> Mamdani (2001) 198.

<sup>81</sup> Adebayo, (1985) 67.

between Indigenous experiences across the settler/ non-settler divide. To truly 'upturn the table' is to locate Indigenous communities from non-settler states within the traditions of Decolonisation II and III.

In the following section, I make a case for why Nigeria, in particular, should be understood as a settler state.

### **Nigeria as a Settler-Colonial Project and Polity**

It has become natural-speak in scholarly discourse on colonialism to teach Nigeria as exemplifying what a non-settler colonial project looks like.<sup>82</sup> In *Settler and Non-Settler Colonialism* in Africa, Adelaja Odukoya, a Nigerian scholar in the political sciences, is attentive to how similar settler and non-settler projects were on the African continent. He writes that, 'despite the appearance of differences, the organization of the state under settler and non-settler colonialism was remarkably similar'<sup>83</sup> But Odukoya, like Mamdani,<sup>84</sup> continues to abide the separating among colonial experiences: 'while non-settler colonialism involved accommodative exploitation either through assimilation/association or indirect rule, settler colonialism entailed displacement and/or the liquidation of the Indigenous people and the institutionalization of a permanent foreign power.'<sup>85</sup> Unsurprisingly, he offers Nigeria as an example of a non-settler colonial state.<sup>86</sup>

The colonization of Nigeria is generally understood as a project of extraction where the British used Indigenous labour to extract resources from the land. The European account of British rule in Nigeria tells a story of indirect rule through Indigenous people and structures.<sup>87</sup> In this story, after the British left, they handed control back to Indigenous peoples. Settler-colonial theory buys into this (European) account by excluding Nigeria from its conception of settler-colonial societies. In fact, however, indirect rule relied on the use of strangers to the community—police officers, civil servants, administrators, and magistrates—who were often posted from one region to another as a deliberate policy to secure the successful administration of the

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<sup>82</sup> Odukoya, (2018) 180.

<sup>83</sup> Ibid., 182.

<sup>84</sup> Mamdani (2018) 41, 45, 53, 112.

<sup>85</sup> Odukoya, (2018) 180.

<sup>86</sup> Ibid.

<sup>87</sup> See generally: Michael Crowder, 'Indirect Rule—French and British Style' (1964) 34:3 *Africa* 197–205. Carl Müller-Crepon, 'Continuity or Change? (In)direct Rule in British and French Colonial Africa' (2020) 74:4 *Int Org* 707–741.



colony.<sup>88</sup> Referring to the non-European administrators of the colonial project as 'indigenous' to the community they administered requires the (false) belief that pre-colonial communities could not differentiate between kin and strangers because both groups had shared physical features—including race. In this accounting, strangers coming into a community on the authority of the colonial government to enforce colonial law are indistinguishable from members of the Indigenous community. Within this false belief, 'Nigerian' becomes an Indigenous identity, and to secure the colonial form of the modern nation-state, other pre-colonial Indigenous and ancestral identities are subordinated to the new colonial Indigenous.<sup>89</sup>

Colonial administration in Nigeria relied on the fabrication of a mono-identified Indigenous people amongst whom only minor differences existed.<sup>90</sup> Thus, citizens of the distinct and differentiated pre-colonial Ọ̀yó or Ilé-Ifẹ̀ kingdoms, for example, became broadly redefined as 'Yorùbá people' and substitutable for each other; Edo, Fulani, Hausa, Igbo, Ijaw and Yorùbá peoples became interchangeable as 'Nigerians'. With this colonial logic, it is not settler colonialism when 'Nigerians' are posted to 'Nigerian' communities to settle and administer the colonial project which includes dispossessing Indigenous peoples of land.<sup>91</sup> These administrators constituted

<sup>88</sup> Olaoluwa Folasade Oni, 'Understanding the Failure of Police Reform in Nigeria: A Case for Legal History Through Literature' (2022), 50-68. See also Femi Adegbulu, 'From Warrant Chiefs To Ezeship: A Distortion Of Traditional Institutions In Igboland?' (2011) 2:2 *Afro Asian J. Soc. Sci.*, 25. A E Afigbo, 'The Warrant Chief System In Eastern Nigeria: Direct Or Indirect Rule?' (1967) 3:4 *Journal Of The Historical Society Of Nigeria*, 683-700.

<sup>89</sup> In 2007, the Nigerian government published a statement explaining its hostility towards the UN Declaration on the Rights of Indigenous peoples. The government took the position that Indigenous rights to self-determination vested in 'Nigeria' itself and not the distinct Indigenous communities in the country. Thus, Indigenous peoples could not exercise such rights outside of 'Nigeria' because 'the 371 Indigenous tribes of Nigeria exercised their right of self-determination on Oct. 1, 1960 when the Federation of Nigeria was granted independence by the colonial power, Great Britain. The Declaration must be clear that no new rights for self-determination are envisaged.' See: 'UNPO: Ogoni: Nigeria Opposes Indigenous Rights Declaration', <https://unpo.org/article/6763> (accessed 23 October 2024).

<sup>90</sup> The mission of Bishop, Samuel Ajayi Crowther, a formerly enslaved West African man of Egba (now considered part of Yorùbáland) is especially instructive here. According to ship journal entries, Crowther accompanied, with the sanction of Her Majesty's government, the colonial mission to West Africa as a 'Native' who would be able to communicate the purpose of the colonial mission to the Indigenous population. Crowther, an Egba man, was not native to many of the communities, including Igbo pre-colonial communities, that he performed this service in. This colonial construing of 'Native' (or Indigenous) to mean any non-European drawn from the colony was a feature of the British indirect rule policy. See generally: James Frederick Schön et al, *Journals of the Rev. James Frederick Schön and Mr. Samuel Crowther: who, with the sanction of Her Majesty's government, accompanied the expedition up the Niger, in 1841, in behalf of the Church Missionary Society* (London: Hatchard and Son: Nisbet and Co.: Seeleys, 1842). See also: Achebe, (1959) 144-147. For comparative context on the African continent, see Elizabeth Tonkin, 'Settlers and their elites in Kenya and Liberia' in *Elite Cultures* (Routledge, 2002).

<sup>91</sup> As Adébişi observes, colonial powers especially relied on the use of treaties to alienate Indigenous populations from ancestral land and legitimize colonization Adébişi (2023) 58-59, 93 Within the context of colonialism in Nigeria, by operation of these treaties, such land became vested in the colonial government in perpetuity to be used by the agents of colonial administration to facilitate governance. And following 'flag independence' the colonially created political elite who stepped into the shoes of the Europeans maintained this colonial structure, vesting title to all land in the state on the governor of the state who has largely unfettered power to allocate such land for the benefit of the state, including to individual and political office holders. See Also: Section 1, Nigerian Land Use Act, 2004.

the colonial bureaucratic class and, later, the postcolonial political and social elites who inherited and benefitted from the colonial institutions, system, and structures. These colonial institutions, systems, and structures continue to organize the country till the present day.

Nigeria is a socio-political and geographic entity that continues the violent logics that birthed it. The nation-state was created from a targeted destruction of Indigenous society in service of the colonial state; it is neither natural nor inevitable. But the story of a 'non-settler' colonial experience in Nigeria blurs out the colonial machinations and logics that created the country. It also ignores the fact that colonialism depended on the making of new types of people, different from the Indigenous peoples of the pre-colonial society, who became the new, rights-holding citizens of the nation-state.<sup>92</sup> By deliberate colonial policy—such as formalized education in literacy and assimilation—these new types of Indigenous persons are more closely aligned with the values of the colonizing state than they are with the values of the pre-colonial Indigenous societies.<sup>93</sup>

*White Man in Black Skin*<sup>94</sup> is the memoir of Augustus Adebayo, an administrator who worked in both the colonial and postcolonial governments of Nigeria. As an agent of the colonial government, Adebayo explains that the Indigenous population regarded him as a White man. He writes that:

The simple folks made their complaints to me because they were firmly convinced that I was a white man in black skin. It was inconceivable to them that a black man could become a District Officer, unless he had first turned a white man...It was quite a frequent occurrence to hear members of the public describe me as 'Oyinbo alawo dudu' (the White man in Black skin.)<sup>95</sup>

It is worth noting that in his service to the colonial administration, Adebayo constituted part of the 'native' educated elite who were posted into Indigenous communities as administrators of the colonial mandate under the indirect rule policy. In another part of the text, Adebayo describes how, as a colonial agent, he considered the legacy of the White European administrators the standard to which he was to aspire.<sup>96</sup>

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<sup>92</sup> For further discussion on how colonialism created 'rights-holding citizens,' see generally: Mamdani, (2018).

<sup>93</sup> See generally: Ngũgĩ wa Thiong'o, *Decolonising the mind: the politics of language in African literature*, Studies in African literature (London, Nairobi, Portsmouth, N.H.: James Currey ; EAEP ; Heinemann, 1986). See also Frantz Fanon, *Black Skin, White Masks*, Get Political (London: Pluto Press, 2008).

<sup>94</sup> Adebayo, (1985) 67.

<sup>95</sup> Ibid., 27-28.

<sup>96</sup> Ibid., 8-9.

To uphold the categories of settler on the one hand and non-settler on the other, the systems, structures and peoples of the pre-colonial Indigenous communities are rendered secondary in the assessment of the colonial experience. These categories have European action, and not Indigenous experience at their center. They reify colonial constructions of indigeneity such that 'settler' becomes synonymous with European, and non-Europeans who come into and settle on Indigenous land under the auspices of the colonial government for the purposes of colonial administration are not understood as settlers. The category 'non-settler' colonialism obfuscates the fact that no colonial venture, especially a continuing colonialism as in modernity today, can succeed without the presence and settling of foot soldiers of the project to introduce, enforce, and maintain the colonial mandate.

Under 'non-settler' colonialism, non-European people are sent out into Indigenous communities to install and maintain colonial rule, including through settling in these communities.<sup>97</sup> Many of these colonial agents are disconnected from their pre-colonial Indigenous cultures and so extensively transformed that they have effectively become 'White [people] in Black skin.' These settlers were pivotal to the success of the colonial project. As the colonial project matured in Nigeria, they constituted the top—even if not the tip, which remained reserved for European British officers—of a new colonial hierarchy in which service to the colonial government secures a place in the elite class. Class identity in this regard becomes property, like 'Whiteness' in settler-states<sup>98</sup>, and this class status is reified across generations till the present time. Importantly, the reliance of the elite class on colonial hierarchy for economic, social, and political power naturally means that they are inclined to preserve the colonial structures of governance, state, and social organizing when they step into the shoes of the Europeans after flag independence. And thus, colonialism settled.

The work of scholars working within the traditions of Third World Approaches to International Law (TWAIL), especially those heuristically categorized as TWAIL II scholars,<sup>99</sup> is important here. TWAIL II scholars are critical of the very form of the postcolonial nation-state and opt instead to privilege the experiences of peoples who have to live under the (often oppressive) power of the governments of these states.<sup>100</sup> In other words, TWAIL II scholars reject the essentialization of the nation-state as the modern vehicle for political and social ordering. These scholars are also interested in how the governing elite of the postcolonial state reproduce colonial

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<sup>97</sup> Achebe (1959).

<sup>98</sup> Cheryl I Harris, 'Whiteness as Property' (1993) 106:8 *Harvard Law Review* 1707–1791.

<sup>99</sup> See generally: Anghie, (2023).

<sup>100</sup> Ibid. 24, 101.

social and political hierarchies internally.<sup>101</sup> In this regard, B.S Chimni's, articulation of a Transnational Capitalist Class (TCC) sheds light on how colonial class hierarchies, including within the postcolonial (or third-world) state, sustain colonial hegemonies.<sup>102</sup> The TCC, who are typically comprised of the elite class, are able to continue the subordination of Indigenous peoples and other subaltern groups within the nation-state by collaborating with international institutions to ensure the 'spread and growth of global capitalism.'<sup>103</sup> Accordingly, the postcolonial elite class, even though they share nation-state citizenship with Indigenous peoples, are more closely aligned, both ideologically and economically, with other TCCs globally, often at the expense of Indigenous peoples.<sup>104</sup>

The contemporary situation of Indigenous peoples in Nigeria offers important points for reflection on the current settler-colonial character of the nation. Otodo Gbame is a waterfront community in the Lekki area of Lagos state that has existed well before the colonial creation of 'Nigeria' by the British.<sup>105</sup> The community's long-held Indigenous claim as early pre-colonial settlers to the territory has mostly been left undisturbed and, as recently as the early 2010s, local chiefs within the community performed overt acts of ownership including negotiating contracts for easement rights and other construction projects with outside corporate actors on behalf of the community.<sup>106</sup> Then in 2017, the Lagos state government, in defiance of judicial orders, forcefully evicted the Otodo Gbame community from their ancestral land, citing amongst other things, public health and safety imperatives. On the land now stands Periwinkle Estate, a privately owned, 'super-modern residential mixed-use and commercial use estate' currently in development and marketed to the country's ultra-

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<sup>101</sup> Ibid. 52.

<sup>102</sup> B S Chimni, 'International Institutions Today: An Imperial Global State in the Making'. (2004) 15:1 *European Journal of International Law* 1-37.

<sup>103</sup> Ibid. 6, See also: Anghie, (2023) 34.

<sup>104</sup> Chimni (2004) 32.

<sup>105</sup> In its 2017 field report on forced evictions in Lagos state, Amnesty international reports that members of the community date the existence of Otodo Gbame to over a century and the oldest person interviewed for the report, at 79 years old, asserts that she was born in the community. 'Nigeria: The Human Cost Of A Megacity Forced Evictions Of The Urban Poor In Lagos, Nigeria' Amnesty International. Page 20. It is also popular knowledge that the Otodo Gbame community dates back to pre-colonial times in Nigeria. A different field report that relies on the oral history of residents notes, 'Otodo Gbame has a 200-year history, its roots stretching back to when residents' ancestors arrived from Badagary, a nearby region of Nigeria. They were the original settlers of the area, and they were drawn to it by its ample opportunity for fishing. The original settlement was built completely over the water, until companies began filling in the area with sand in the early 2000s, including parts of where its houses were located. Brianna Castro, 'Between A Rock and A Hard Place: Heterogeneous Governance, Claims Making and Forced Eviction in a Megacity' (2023) 47:1 *International Journal of Urban and Regional Research* 23-38, at 29.

<sup>106</sup> Ibid.

rich.<sup>107</sup> The story of the Otodo Gbame community is similar to other experiences of forced dispossession from ancestral land around the country, especially in petroleum-rich communities in the Niger Delta area.

One way to understand the plight of these people is that the Nigerian government (wrongly) displaced a Nigerian community through the mechanism of Nigerian law. But such an account obscures the operations of colonial logics that makes the Nigerian government authoritative over the community. A decolonial sensibility demands that we look beyond the shared (colonial) Nigerian identity of victims and oppressors. We have to, instead, understand these displaced peoples as Indigenous persons who have been removed from ancestral land to further the interest of powerful elites of the colonial nation-state.

Indigenous peoples are part of the Nigerian state by virtue of the exercise of colonial power that lumped distinct communities into one unit at the behest of the empire. The Nigerian government draws its existence—and derives its power—from this colonial act. To separate the Indigenous experience of dispossession in Nigeria from the Indigenous experience in traditional settler states is to overlook the fact that the Nigerian state is inherently colonial. The Nigerian state evidences the settling of colonial ideals, systems, and epistemes and continues to operate against the Indigenous peoples that are forced to exist as part of the polity. It harms Indigenous peoples and societies for the benefit of the political and social elite that occupy the governing class of a colonially created nation-state. A decolonial approach to understanding the global experience of colonization inevitably unveils the truth of a continuing settler-colonial present in Nigeria.

## Conclusion

When scholars abide the settler/non-settler divide, they buy into a type of colonial logic that construes Nigeria as an 'Indigenous' identity. If theories exclude societies like Nigeria from the settler-colonial agitations of 'give us back our table (or land)!'<sup>108</sup> they make little room for communities like the Otodo Gbame community or the Indigenous communities in the Niger Delta area of Nigeria who experience the Nigerian government as an occupying force dispossessing them of land; the Nigerian government only holds that power because of the colonial machinations that created the country. Colonialism lies at the very core of the idea of 'Nigerian' as an identity.

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<sup>107</sup>Report on Otodo Gbame Amnesty International, 'Nigeria: The Human Cost Of A Megacity Forced Evictions Of The Urban Poor In Lagos, Nigeria' *Amnesty International*, 36-37. The website of Periwinkle Estates shows a team of consisted of foreign expatriate and business moguls. 'Our Team', online: *Periwinkle Residences* <https://www.periwinkleresidences.com/our-team/> (accessed 23 October 2024).

<sup>108</sup> Adébisi, (2023) 25.

The Nigerian government has explicitly denied its Indigenous peoples their right to self-determination and even abstained from voting for the United Nations Declaration of the Rights of Indigenous Peoples.<sup>109</sup> These are rights that Indigenous peoples and scholars in traditional settler states have worked towards articulating both nationally and internationally. So, the same considerations (such as questions about Indigenous self-determination, reparations, restitution, and reconciliation) that organize Indigenous activism in traditional settler states are applicable within the context of Nigeria. An important decolonial objective, which flows from recognizing the settler-colonial character of Nigeria, must be to situate Indigenous peoples in Nigeria within Indigenous agitation in other settler states as these peoples work out strategies of resistance to their shared experience of colonial settling.

I have to be clear that my goal here is to describe problems that attend thinking of Nigeria as a non-settler colonial project: it obscures the reality of its Indigenous communities and excludes its Indigenous peoples from conversations on decolonization in the context of settler colonialism. Crucially, I am not prescribing that this description be used to justify the ugly xenophobic actions that are currently on the rise within the country and in other parts of the African continent. As Adébí sí notes, a desire for Indigenous reclamation in non-settler states 'has sometimes manifested as a distortion of decolonization that is evidenced by...violent exclusionary nationalism, and xenophobia.'<sup>110</sup> This caution notwithstanding, our desire to avoid fueling bigotry does not require that we look away from the reality of the divisions and deeply felt discomforts connected to state exercise of power against Indigenous peoples. These agitations are misdirected when they are turned against migrants and other vulnerable populations. But we must also acknowledge that they are rooted in historical experiences of displacement and oppression and should be seriously and rigorously engaged. A failure to so-acknowledge leaves room for oppressive governments to co-opt such agitations for nefarious purposes as happened during the 2023 elections in Nigeria where candidates stoked ethnic bigotry to achieve personal and political ends.

*Power and Possibility* closes with a call to action. Recognizing that 'most of what we call decolonization in the academy merely acknowledges colonialism but does little to dismantle it,'<sup>111</sup> Adébí sí calls on colleagues and other stakeholders in legal academy to contribute something 'personal, practical, and provable' to efforts at interrupting and ultimately dismantling our global continuing colonial present.<sup>112</sup> This essay is my

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<sup>109</sup> note 89.

<sup>110</sup> Adébí sí (2023) 23.

<sup>111</sup> Ibid., 137.

<sup>112</sup> Ibid., 36

response to that call. It represents a small slice of my work to 'decenter Europe in our understanding of the law'<sup>113</sup> and contemporary society. My larger and ongoing PhD project hopes to offer an institutional theory of colonial settling that takes its starting point from the perspective of Indigenous peoples who experienced colonial incursions into, and transformation of, their society. The goal of this larger project is also to articulate the experience of colonial settling across the settler/non-settler divide.

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<sup>113</sup> Ibid., 11.



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*TWAIL Review* Issue 5

Published October 2024

Windsor, Canada ~ Bogotá, Colombia

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RICHARD FALK

JAMES GATHII

CARMEN GONZALEZ

ARDI IMSEIS

BEVERLY JACOBS

KARIN MICKELSON

VASUKI NESIAH

LILIANA OBREGON

OBIORA OKAFOR

ANNE ORFORD

SUNDHYA PAHUJA

VIJAY PRASHAD

BALAKRISHNAN RAJAGOPAL

NATSU SAITO

MUTHUCUMARASWAMY SORNARAJAH