



THE UNIVERSITY
OF THE
WEST INDIES



American Society
of International Law

Reparations under International Law for Enslavement of African Persons in the Americas and the Caribbean

Speaker Abstracts (in order of sessions / presentations)

Nora Wittmann: *Global Assessment of the Legality of Transatlantic Chattel Slavery*

This presentation will address the international illegality of transatlantic slavery and state responsibility for reparations. The presentation will touch on some key points showing that, contrary to the dominant opinion, the practices that were constitutive and systematic of transatlantic enslavement and slavery were considered illegal by the laws of African and European (and other) societies, and were by extension and furthermore illegal under international law. This assessment of the illegality of the sustained practice(s) by European states and state agents allows for the establishment of their international legal responsibility. Last but not least, the qualification of these practices as continued violations allows for the applicability of present-day international law mechanisms.

Mamadou Hébié: *Transatlantic Chattel Slavery 1415–1550*

The presentation aims at clarifying the prevailing legal views and conceptions that existed at the beginning of transatlantic slavery, between 1415–1550. It will first address the methodological question of how to establish the existence and content of international law during the relevant period. The presentation then analyses the different frameworks governing the institution of slavery at that time, distinguishing between the doctrine of slavery by nature and the institution of slavery under the just war doctrine. It concludes that none of these established doctrines of European medieval law could justify in a general manner chattel slavery that started timidly after 1520 and became subsequently a large business activity.

Parvathi Menon: *Transatlantic Slave Trade & Chattel Slavery 1500–1815*

The presentation focuses on the period between 1500 and 1815, when the transatlantic slave trade and chattel slavery found its most vigorous proponents, but also opponents. By tracing the arguments of various actors—from Kings and theologians to lawyers and judges—it becomes clear that slave trafficking was a result of unequal bargaining between West African Chiefs and (in favour of) the Europeans. While openly contested as an exploitative practice already in the 16th century by West African Chiefs and by Africans resisting enslavement, the slave trade gained legitimacy later owing to its widespread customary practice among European imperial powers, i.e., *ius gentium*. By demonstrating an array of oppositions to the trade, not merely on moral grounds, I argue that any claims in favour of the legality of the trade in the past must confront who created the law, whom the law served and who bore the costs in the process of such legality becoming the dominant ideology.

Michel Erpelding: *Transatlantic Chattel Slavery 1815–1888*

This presentation, based on a paper prepared for the Symposium, analyses the impact of the 1815 Vienna Declaration on the Abolition of the Slave Trade on the status of transatlantic chattel slavery. Using a positivist perspective based on a survey of Western state practice, Dr. Erpelding will examine the object and purpose of the Vienna Declaration, noting that its object was not the abolition of slavery itself, but the termination of the slave trade by all ‘civilised nations.’ This rationale, just as the one used in the hundreds of anti-slave trade treaties adopted by Western powers during the 19th century, was decidedly Eurocentric, as it linked the abolition of the transatlantic slave trade to the need to ‘civilise’ Africa, while remaining entirely oblivious to the legal status of slavery in African societies. He will identify the various slavery-related practices outlawed as a result of the Vienna Declaration, showing that these extended to both de jure and de facto forms of enslavement and international trade in people. Analysing the impact of this practice on the legal status of chattel slavery in the Americas, it notes that while Western states considered themselves under the obligation to effectively liberate the victims of internationally wrongful slave trading, they also refused to fight foreign slavery or slavery-related practices that they deemed to be of a purely domestic nature for most of the 19th century.

Patricia Viseur Sellers: *Sexualized Practices and Institutions of the Slave Trade and Slavery*

The presentation addresses two intertwined matters concerned with securing reparations for descendants of African enslaved persons in North and South America and in the Caribbean. Defining the harms that reparations should redress, entails understanding the Trans-Atlantic and the internal slave trade that ensnared and enslaved millions of victims. Moreover, embedded in slavery and the slave trades were gendered, sexualized practices. The reproductive labor of males and females, the subjugation to gynaecology experiments, "mercenary breastfeeding," rapes and total control of the bodily autonomy of the enslaved were integral features in acquiring, enslaving and maintaining slaves. Any adequate redress by reparations must plumb the broad scope of the physical and psychological sexual harms that found economic and societal normalization, if not legal codification, under slavery and the slave trade.

Claudio Grossman: *Remedies for Gross Breaches of International Law, with Particular Attention to Transatlantic Chattel Slavery*

The remarks will present the proposal adopted by the United Nations International Law Commission (ILC) In 2019, during its 71st session, on the topic of “Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law” into its long-term programme of work. The proposal, made by Professor Grossman in his capacity as a Member of the ILC, presents an opportunity for codification and progressive development of the legal rights to reparation for the individual and further develop international standards in this area, against the background of the traditional concepts and doctrines of reparation and the status of the individual in international law. The proposal analyzes all forms of reparation recognized in international law and the procedural aspects to the right to reparation. It includes considerable State practice on the topic of reparation, the emergence of norms through judicial and semi-judicial bodies, and the need for codification of these practices and norms

to provide guidance to the international community. The remarks will address the remedies for gross breaches of international law, with particular attention to trans-Atlantic chattel slavery.

E. Tendayi Achiume: *Reparations for Racial Discrimination Rooted in Colonialism and Slavery*

Based on reports she has issued in her capacity as UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Professor Achiume will discuss the need for States to recognise their obligations to provide reparations for racial discrimination rooted in slavery and colonialism. Reparations for slavery and colonialism concern not only justice and accountability for historic wrongs, but also the eradication of persisting structures of racial inequality and discrimination that have resulted from the failure to redress the racism of slavery and colonialism. Reparations implicate accountability for individual and collective wrongful acts, but, beyond that, the project of reparations is about reforming entire legal, economic, social and political structures that slavery and colonialism enabled and that, as the Durban Declaration notes, continue to sustain racial discrimination and inequality today.

Eric Miller: *The Claim for Reparations for the Tulsa Massacre of 1921*

In 2020, the Lawyers for Justice for Greenwood filed a lawsuit alleging that the City of Tulsa, the Chamber of Commerce and other defendants created a public nuisance beginning with a Race Massacre in Greenwood, Oklahoma in 1921, which nuisance continues to this day. The lawsuit seeks to abate the nuisance by taking steps to repair Greenwood and North Tulsa neighborhoods and communities. Professor Miller's presentation will discuss the theory of the lawsuit and the forms of compensation that can repair the injuries done to the plaintiffs and other descendants of those who were killed, injured, or lost property in the Massacre as well as current residents of the Greenwood and North Tulsa neighborhoods and communities. He will address how well (or badly) this sort of lawsuit can remedy the wrongs done to the Massacre victims and the diaspora of their descendants.

Philippe Sands: *Reparations for Contemporary Systemic Racism as a Legacy of Enslavement*

Systemic racism is a feature of contemporary life, at local, national and international levels, including in the functioning of the international legal order. In this lecture Professor Sands addresses the capacity of the international legal order to confront this fact, in connection with its relationship to historic acts of enslavement. He does so having regard to his own experiences, in Britain and in relation to a case in which he has been involved for the past decade, concerning the completion of the decolonisation of Mauritius (Chagos). The lecture will touch also on three elements: first, the causal link between historic enslavement and contemporary racism; second, the capacity of international law to give rise to an obligation to make reparation, regardless of whether the original act, enslavement, was internationally unlawful when it occurred; and third, the determination of to and from whom, and in what manner, reparations might fall to be paid. It is sometimes said that existing international legal principles are inadequate to deal with the challenges raised by these matters, and that international law is insufficiently decolonised, imaginative or robust. This may be true. Professor Sands believes, however, that international law can offer a path, in conjunction with political processes.

Judge Patrick Robinson: *The Ascertainment of a Rule of International Law Condemning Transatlantic Chattel Slavery*

Judge Robinson's presentation is a reaction to the statement in *Oppenheim's International Law, Volume 1: Peace* that at the beginning of the 19th century, customary international law did not condemn slavery and the slave trade. He argues that there is a distinction between servile labour that existed in Europe and in Africa on the one hand, and transatlantic chattel slavery on the other; he maintains that a determination of the question whether customary international law condemned transatlantic chattel slavery cannot be confined to an examination of state practice in Europe; there must also be an examination of state practice in the West African countries in which persons were captured and enslaved; he maintains that the substance of that practice is reflected in the resistance of African leaders and their peoples to transatlantic chattel slavery; this resistance contradicts the argument of African complicity, and when taken together with the practice in States other than Europe and its colonies, demonstrates that there was a rule of international law condemning transatlantic chattel slavery throughout the entire period of that conduct.