

Crowd-Sourcing Decolonization

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Tendaye Achiume, [Migration As Decolonization](#), 71 *Stan. L. Rev.* 1509 (2019).

At last—an article that squarely confronts the unquestioned authority of nation states to exclude economic migrants, and that moves the discussion beyond the red cape of open borders. [Tendayi Achiume](#) deconstructs the stone foundations of sovereignty in her ambitious and thought-provoking article, *Migration as Decolonization*.

Above the fever pitch of international debate surrounding global migration, one truth seems unassailable: that it is the prerogative of the sovereign state to exclude economic migrants. Faced with this unbreachable barrier, the battle around immigration moves elsewhere, pitched instead around how broadly to define the categories of those privileged to cross international borders—which citizens, residents, workers, humanitarian refugee-seekers, among others. Separated from the sound and fury of this debate is a silence around when purely economic migrants—“those who enter the territory of a foreign state in order to pursue better life outcomes”—have any legal claim to cross borders.

Achiume’s thesis is that the process of decolonization, which is ensnared in inequitable neocolonial relationships, must continue through the right of individual self-determination through economic migration. This right has boundaries. It belongs to individuals from nations subjected to the inequity-producing rules and institutions of colonization, who seek to better themselves within nations that hold “colonial advantage” over the country from which the individual originates. The journey to this conclusion takes three moves.

The first move is to reconceptualize traditional notions about sovereignty. Exclusion of economic migrants has long been sanctified as a sovereign power. Sovereign power to exclude makes sense when those excluded are political strangers. In the absence of some higher humanitarian reason to admit the stranger, there is no obligation under domestic or international law for a nation state to open the door. This framework narrows arguments for new legal pathways to admission for the political stranger other than expansion of established but exceptional criteria for admission, such as refugee status.

The article invites us to view the relationship between the nation state and the self-determining individual in a different framework, one that calls into question these accepted notions of the independent sovereign and the power to exclude. It turns to the history of colonization to shed light on the perseverance of legal and political institutions that maintain longstanding interconnections among colonized and colonizing nations and peoples.

This history highlights two related aspects of colonization. First, both law and migration were necessary elements in establishing what Achiume calls “colonial advantage,” defined as “the economic and political dominance of colonial powers at the expense of colonies” during colonization. (Pp. 1535-36.) Achiume posits that “reaping the full benefits of colonial expansion required specific transnational arrangements and distribution of labor and managerial personnel.” (P. 1538.)

The article describes how law served as the chassis for colonial advantage, based on layers of international and bilateral law among European nations, and agreements involving European private corporations legitimized by colonial law. Colonial migration was the means of exerting colonial power, riding on this legal and contractual chassis. This was no small stream of migrants. Between the 19th century and the first half of the 20th, the European colonial project

enabled the emigration of approximately 62 million Europeans to colonies across the world. Achiume posits that these Europeans were the original economic migrants, that colonial migration was in fact a fundamental technology for the success of the enterprise. When Europeans “travelled out to the non-European world they traversed it and appropriated it relying on justifications that First World states now use to militarize their borders against today’s economic migrants.” (P. 1537.)

The result of the European colonial project, through law and migration, was to bring European and colonial peoples together as a transnational political community in a form that benefited Europeans politically and economically at the expense of the colonized subjects. These political communities did not evaporate upon independence. They continue to shape relationships between colonizing and formerly colonized communities. They are “politically interconnected in messy, complex ways determined significantly by historical imperial projects and their legacies.” (P. 1533.)

The shift to independence of colonized communities opened the way for former colonizing nations to exclude economic migrants from former colonies based on the justification that the two nations were now independent sovereigns. Social contract theory “locates the formation of political community in the putative mutual consent of individuals to live under common subjection to a shared government.” (P. 1547.) This meant that once those governments parted ways, the former colonial subjects were formally excluded from the political community and had no claim to physical inclusion.

Achiume contests this theory, outlining instead a de facto political community arising from the subjugation of colonized peoples:

[T]he posited political community (neocolonial empire), distinctively encompasses members whose induction into the community was decidedly coerced. This recalls the particular harm of colonialism...which is that it forged former colonizing and colonized peoples into a political association or community in which the latter were subordinate to the former, notwithstanding the full and equal personhood of Third World individuals. The failure of formal decolonization maintains the political association between Third and First World in a de facto political community of de facto co-sovereigns mutually instrumental to the prosperity of neocolonial empire, and mutually subjugated by the effective collective sovereigns of neocolonial empire: First World nation-states. (P. 1547.)

Decolonization did not erase colonial relationships founded on subjugation, as illustrated by the continuance after independence of property ownership established during colonial rule. International instruments and organizations affirmed the international and domestic legal structures that maintained those rules, creating quasi-sovereignty. As Achiume explains, “Modern international law—including the UN Charter itself—preserved colonial advantage for colonizing powers even as it professed the formal political independence of former colonies and the equality of all sovereign states, including these former colonies.” (P. 1543.) Legal doctrines that preserved this advantage included international rules that prevented and continue to prevent reparation or remediation of systems that sustained colonial-era exploitation of national resources in colonized nations, including “protecting the property rights of colonial minorities who had secured these rights through the colonial subordination and massacre of Africans.” (P. 1545.)

The sovereignty doctrine itself, the article posits, is chief among these sustaining neocolonial international legal doctrines. The result is quasi-sovereignty, pairing “Third World formal national political independence with Third World structural political and economic subordination to First World nation-states and the post-World War I international economic and financial institutions dominated by the latter.” This is an informal empire, one in which formerly colonized nations remain subordinate to First World nations.

Having redefined sovereignty, the article’s second move is to propose a way to continue the process of decolonization by stepping down from the level of nation states to examine the individual’s role. The article proposes that when nation states are interconnected in ways that create quasi-colonial relationships, law should recognize legitimate avenues for individuals to migrate from the quasi-colonized to the quasi-colonizing nation. Seen in the light of inequitable global

interconnection arising from colonization, the goal of decolonization becomes—not independence—but more equitable interconnection.

The First World nation-state, by virtue of its beneficiary status within neocolonial empire and the effectiveness of its sovereignty (secured in part through Third World subordination), has no more right to exclude Third World persons from its institutions of equal political membership than it has over its de jure citizens, where the goods of neocolonial empire are at stake. (P. 1547.)

There are lots of places this argument could go, including questions about what forms inclusion in the political membership of First World nations might take. The focus of the article, however, remains on migration as one of the main strategies that enabled colonization in the first place. If political equality is the goal of nation-state decolonization, that goal may have to be pursued through individual approaches when purely structural approaches have failed. “Whereas decolonization is typically considered a practice of political collectives—the nation-state in particular—this Article proposes that in light of how badly this arrangement continues to fail Third World peoples, individuals among them can take actions that we should understand as de-colonial.” (P. 1552.) When economic migration enhances individual self-determination within neocolonial empire, where it is responsive to the conditions of neocolonial subordination, it should be understood as attempted decolonization on the individual level.

This is migration as decolonization. The article reframes economic migration as acts of opposition by individuals in subordinate positions within neocolonial relationships, understanding them as acts that are responsive to historically rooted political inequality. This personal pursuit is therefore also a pursuit of political equality, and a matter of corrective distributive justice.

Migration as Decolonization begins geographically and historically with European colonization, but it ends with the application of its thesis to First World nations like the United States, itself a former colony. This is the article’s third move, and it divides the issue into three categories. The first, following directly from the nature of colonization, is that First World nations like Britain have no right to exclude citizens of their own former colonies when subjugating relationships persevere. Second, the move from postcolonial independence to neocolonial empire and interconnection opens the way to a much more expansive conception of who “can make the political equality demands that obviate right to exclude claims.” (P. 1561.) Thus, “Britain should be seen as neocolonially connected to, and in a relationship of domination over, Third World citizens of nation-states formerly colonized by its European counterparts, in ways that produce co-sovereign relations even among peoples the British did not formally colonize.” (P. 1561.) This is not limited to Britain; it applies to all former colonial powers.

This vision of co-sovereignty that extends beyond formal colonization leads to the third category, which addresses the prerogative to exclude claimed by First World nations like the United States with a far more mixed history of formal colonization, but that benefit from the creation and maintenance of a neocolonial empire. That neocolonial structure takes the form of a multilateral, joint enterprise among First World nation-states, and provides structural advantage to First World nations states collectively. The article argues that the creation and domination of these multilateral institutions and inequitable interconnections between nations require the same openness to inclusion of Third World quasi-citizens.

What I like (lots) about this piece, aside from its elegant prose, is that it wrenches into view a reality of inequality that has seemed so settled that we walk by it without glancing up. Achiume takes on the question of economic migration and stares it in the face. She loops her fingers through the lapels of international law and turns it—and us—to face the legacy of colonialism and its modern embodiment in the law of sovereignty. Standing on the shoulders of international legal scholars who have traced the outlines of neocolonialism, she proposes turning to individual self-determination to move the project forward. Some may disagree with the article’s proposal; good scholarship is not a popularity contest. Big ideas, though, lead to bigger conversations. This is a conversation worth having.

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