


ARTICLE

‘So, what’s wrong with colonialism?’ – Understanding colonialism’s political, territorial and epistemic injustice

Raza Saeed 

Warwick Law School, University of Warwick, Coventry, UK
Email: Raza.Saeed@warwick.ac.uk

(Received 13 February 2023; revised 30 April 2024; accepted 28 May 2024)

Abstract

An (ongoing) interrogation of colonial wrongdoing is important for debates on decolonisation, restorative justice, racial and gender equality and global political and socio-economic equality. This article presents a theoretical study of colonialism’s legal-political injustices and aims to (re)turn the discussion on colonialism to the field’s most powerful insight, i.e. that of epistemic violence and injustice. This article also suggests that the reach of this historical injustice went much further than the politics of autonomy, usurpation of territorial rights, political disenfranchisement and resource appropriation. To address the question of colonialism’s distinctiveness as a political mission, which has been discussed in recent debates within analytic philosophy, it argues that colonialism’s epistemic injustice, which denied the very existence and the traditions of the colonised, is the foundational and distinctive feature of colonialism as a political system and which drives its continued impact to this day.

Keywords: colonialism; international law; epistemic justice; self-determination; terra nullius

1 Introduction

The recent socio-political events around the world have reignited the need to study colonialism in more depth and with more urgency. Gender and racial equality protests in many parts of the world (Delanty 2021), demonstrations over statues and historic symbols (Gerbaudo 2020), debates on the freedom of expression and the claims of culture wars (Norris, 2023), the unequal impact of the pandemic and the continuing disparity of resources and healthcare within and amongst societies (Bambra et al 2021) have all brought social and global inequalities to light. More importantly, the evident geographical, socio-economic and racial disparities within these inequalities have also shown colonialism’s continuing legacy in their creation and perpetuation. Yet to interrogate these injustices and to ask, ‘What is wrong with colonialism?’ is a deceptively difficult task. Even if not readily construed as an attempt to dismiss colonial wrongs – something that occurs far too often within the legal-political discourse – the complexity lies in the fact that any endeavour to answer this question betrays the assumptions already inherent within our perspectives.

There are at least three different approaches to interpret the question of the wrong(ness) of colonialism, rooted in utilitarian, anti-/post-colonial and analytic traditions. The first interpretation, echoing a utilitarian approach, uses this question as a cue to offer a cost-benefit analysis. There are several legal-political accounts that list, quantify or measure the supposed advantages of colonialism (to the colonial metropolises and even, purportedly, to the colonies) in contrast to its injustices and perpetrated wrongs (see De Juan and Pierskalla 2017; Manning, 1974). From this lens, colonialism’s injustices and violence are generally understood to

be externalities of colonial experiments, which are either regarded as unintended or justified as necessary. This is where the calls for ‘balancing the discourse on colonialism’ come from, which are mostly from the former metropolises or the local elite in post-colonial societies that were the beneficiaries of the colonial enterprise. But regardless of where the balance of calculation tips in the end, this very exercise is based on unjustified comparators and a troubling ethic. It should not be difficult to acknowledge that no miles of train tracks laid, tons of tea sold or acres of land cultivated could justify the servitude and enslavement of populations, the murder of millions, the destruction of cultures and the impoverishment of generations.

The anti-/de-colonial interpretation, prominent within the study of law and (post)colonialism, differs from the above and takes this at best as a rhetorical question and at worst as an insidious question. For those of us working in these areas, discussing *whether* colonialism was wrong has increasingly become a moot point, as details of colonialism’s horrors surface in detailed historical and archival studies (see, for instance, Hochschild 2012; Marchal 2017). But the *why* and the *how* of colonial wrongs still invite analyses from a diverse array of perspectives. This view informs a multitude of calls for decolonisation by scholars and by activists, ranging from demands to interrogate institutional setups to revise curricula (Bhambra et al 2018), to tear down colonial symbols and statues (Chantiluke et al 2018), and to examine colonial assumptions within disciplines including governance (Carter 2019), history (Alvares 1991), gender (Lugones 2008), finance and economics (Alami 2019), natural sciences (Chakrabarti 2010) and law (Adébişi 2023; Dhanda and Parashar 2009; Pahuja 2011). One corollary of this, however, is that as calls for decolonisation become more visible within wider public discourses, the calls for conceptual clarity of these categories grow as well, which leads us to the third interpretation of the wrongs of colonialism.

This more recent perspective comes from analytic philosophy which, in the spirit of calling for the clarity of concepts, has presented the crucial challenge of identifying the specific and distinct wrongs of colonialism. This challenge is premised on the notion that if we deem it sufficient to critique colonialism solely as an example of a rapacious, violent and unjust political system, then colonialism is not necessarily rendered as a distinct historical and political phenomenon. Colonial regimes across various continents were admittedly associated with slavery; economic exploitation; genocide and extermination of native populations (Las Casas 1992), the capture of land and disruption of livelihoods; mass relocation of populations (Ali 1988; Talbot 2007); murder, rape and torture of dissidents (Hochschild 2012); as well as denigration and destruction of various cultures and knowledges (Mignolo 2009). Within the traditional approach in the broad field of law and colonialism, the sum of these wrongs, or even the presence of some of these wrongs, is taken as reason enough to indict the colonial enterprise, and rightly so. But the question of a distinct wrong that is raised by analytic moral and political philosophy suggests that because the harms listed above are wrong in themselves, regardless of the political system that perpetrates them, the distinctive wrong of colonialism – which is wrong in and of itself and which would render colonialism a distinct social-political-legal system – is to be found beyond the ‘systematic perpetration’ of these other harms and injustices (Renzo 2019, 348).

An (ongoing) interrogation of the harms and injustices of colonialism, therefore, is important for debates on decolonisation, historical injustice and restorative justice, racial and gender equality and global political and socio-economic justice. This article presents a theoretical study of colonialism’s legal-political injustices and aims to (re)turn the discussion on colonialism and decolonisation to the field’s most powerful insight; i.e. that of epistemic violence and injustice. To address analytic philosophy’s question on ‘What is wrong with colonialism?’, this approach argues that colonialism’s epistemic injustice, which denied the very being and ways of being of the colonised, is the foundational and distinctive feature of colonialism as a political system and drives its continued impact to this day. This article suggests that the reach of this historical injustice went much further than the politics of autonomy, usurpation of territorial rights, political disenfranchisement and resource appropriation, even though these facets certainly remain important to understand colonial violations and cannot be separated from their epistemic wrongs.

The link between epistemic violence and colonialism is not new, but this article outlines what ‘epistemic injustice’ refers to in the context of colonialism and positions it within the wider scheme of political and territorial injustices.

This article will proceed in three stages: the first section will develop the question further and discuss the importance and parameters of this inquiry. The subsequent sections will then look at the accounts that characterise colonialism mainly as territorial usurpation and those accounts that condemn colonialism’s political wrong, which is associated with the creation of non-reciprocal institutions. This article will engage with these perspectives in detail and will discuss how they end up taking a political view on colonialism and, because of this, completely disassociate its ‘distinct wrong’ from its other injustices. In the final section, this article will present its perspective on the notion of the epistemic wrong of colonialism and discuss how the assumed inequality of certain human beings was at the foundation of the colonial enterprise. It will be argued that this distinct wrong was also foundational in nature, as it contributed to the political and territorial harms perpetrated through colonialism.

2 Searching for colonialism’s distinct wrong

Scrutinising the ‘wrong of colonialism’ is not a completely novel enquiry, even if the recent phrasing of this problem reflects a specific disciplinary lineage. While discussions on colonialism have progressed within the scholarship on international law (Anghie 2005; Craven 2007; Pahuja 2011), human rights (Baxi 2002; Douzinas 2000), legal theory (Dhanda and Parashar 2009; Santos 2002) and especially global south-oriented political theory (Escobar 2004; Mignolo 2009; Quijano 2007), analytic legal and political philosophy has not engaged with this question in a sustained manner (Renzo 2019, 347). The societal impact of colonialism, how it structured the colonies and the metropolises in a socio-economic system, colonialism’s formulation of political institutions through its particular logic, the (in)efficacy of political decolonisation and post-colonial continuities – all these questions have been widely discussed by de-colonial thinkers and scholars from the global south. Many of these accounts point towards, even if implicitly, central injustices of colonialism from different vantage points. The question of identification of colonial wrongs is also never distant from discussions on anti-racism, civil and political rights, reparative justice, and redress for the descendants of colonised and enslaved people. Even the connection between epistemically violent nature of colonialism – marking the categorisation and subordination of peoples, cultures and knowledges – is increasingly well-acknowledged (Santos 2018; Fitzpatrick 1992; Mignolo 2009; Quijano 2007). But the recent framing of the question in philosophy requires identification of what makes colonialism ‘wrong as such’; that is, ‘over and above [the] familiar outrages’ (Ypi 2013, 161–162) which build on the intuitive understanding that not only is there something distinct about colonialism as a socio-legal, political and historical occurrence but that there is also something distinctly wrong at its core. A key aim of this article, therefore, is to draw a link between this question and insights from the field of law and colonialism.

This challenge does not automatically validate the claims and assumptions within the analytic philosophy’s debate on colonialism. The suggestion that colonialism, like any other historical or conceptual entity, can be continuously stripped of its non-essential properties to the point where we are able to reach its central and singular essence, is a problematic one. This attempt at understanding or deconstructing the link between a particular entity and its attributes, rooted in the philosophical discourse on individuation (see Bailey 2012; Swinburne 1995), is not an issue in its own right. The difficulty arises when this essence – the core attribute, or the injustice of colonialism, in this case – is considered not only distinct but also disconnected from all other properties of the particular instance. The claim, then, seems to suggest that there is ultimately one central wrong that makes colonialism a distinct socio-legal and political phenomenon and that

this wrong can not only be divested from all other colonial injustices but is also, in itself, sufficient to indict colonialism's injustice. This could possibly downplay wider colonial injustices – its violence, dispossession and dislocation – which is why this article interprets the question differently: it holds that the distinct injustice at the heart of colonialism can never be completely disconnected from all the other harms perpetrated by colonial regimes. The distinct wrong, therefore, is not a sufficient condition of colonialism but is its foundational condition that enabled, actualised and aggravated colonialism's genocidal and rapacious tendencies.

In this regard, the idea of a distinct injustice of colonialism should be able to address three concerns: first, it would distinguish colonialism as a socio-political phenomenon; second, it would potentially explain the interplay between the foundational wrong and other colonial injustices if the latter are not to be taken as merely incidental; and third, it would allow us to understand the distinct injustice's place within the heterogeneity of colonialism(s). This distinct wrong of colonialism should not be confused with its *cause*. Mercantilist expansion, the desire for wealth, the growing need for markets and resources, capitalist extraction, the greed for slave labour and the desire for political domination – any and all of these could reasonably be considered important factors behind colonialism. All of these tendencies were, in fact, integral to the colonial project, and they remain present in varying degrees in post-colonial societies today, although none of these reasons could be taken as colonialism's sufficient cause, especially given colonialism's genocidal and rapacious turn. It was these reasons' curious interplay with epistemic injustice that ultimately resulted in the colonialism that is recognisable and indicted today in the former colonies.

This distinct and foundational wrong, this article argues, is colonialism's epistemic injustice. It not only instantiated the worst of the colonial tendencies but is also the reason any of its supposed advances for the colonies pale in comparison to the inhumanity that it created and sustained. Colonialism, and particularly European colonialism, was an epistemically unjust project that was premised on and perpetuated the assumed inequality of human beings and that had a legal, political, territorial, socio-economic and cultural manifestation. This (in)human inequality fed other wrongs of colonialism – without this foundational injustice, territorial usurpation, forced relocation, massacres of groups, mutilation of bodies, kidnapping of children and destruction of communities would not have taken place, at least not so readily. It is this framework of systemic exploitation and often legalised violence animated by an epistemic wrong that makes colonialism distinct from other unjust political setups and from other exercises of territorial usurpation and resource appropriation. This does not mean that epistemic injustice is not found in other guises within other socio-political systems but that without this epistemic injustice, colonialism would not have been what we recognise it as today.

Finally, there is nothing homogenous about colonialism as a historical and political phenomenon, even if we examine the European colonial regimes that are widely grouped under this category. There certainly were other hegemonic, conquering and, arguably, colonial regimes in different parts of the world at different times. Even within European colonialism there was a diverse array of approaches, and even the capture of many colonies differed from one another (Bhambra 2022). More generally, commentators differentiate between settler colonies and political colonialism, between direct and indirect rule, between colonialism for commercial exploitation and colonialism rooted in the civilising mission, between extractive colonialism and colonialism that employed slavery and genocide, and so on. The spectrum of colonialism(s) ranges from the colonisation of the uninhabited Bermuda to the capture of African and American continents and the horrors of the Transatlantic Slave Trade. Colonialism, therefore, should be taken as a plural category within itself. But although it may not be useful to essentialise all that is colonial into one neat classification, it is important to recognise that there are nonetheless some underlying trends present in the European colonial enterprise, one of which is being identified and problematised here. The notion of a distinctive wrong should be able to account, at least partially, for a thread that runs through wider colonial practices.

There are two main groups in which the dominant accounts of the identification of colonial wrong can be categorised: first, the perspectives focussing on territorial rights and resource appropriation and, second, arguments that categorise colonialism purely as a politically unjust system, the latter of which is also linked to the idea of self-determination. These accounts are not standalone propositions but, rather, umbrella terms encompassing a range of different positions within them. The following sections will examine the two concepts of territorial and political wrongs of colonialism in turn and will then highlight how each view of colonialism's historical injustice leaves out an important dimension that serves as a key focus for de-colonial thinking.

3 Understanding colonialism as a distinct territorial injustice

Territorial usurpation has generally been a prominent lens through which colonialism is critiqued, de-colonisation struggles are interpreted, and reparative justice measures are conceptualised. This is premised on the understanding that the influx of colonisers – whether as settlers or as conquerors, as merchants or as priests, as slave-drivers or as so-called civilisers – primarily violated the indigenous or native people's claim to land. 'The actual geographical possession of land is what empire in the final analysis is all about,' Edward Said noted (Said 1993, 78). This is undoubtedly rooted in how colonialism was largely manifested: land was the site for the colonial project; it provided the theatre in which the colonial encounter played out and where its materiality was created and experienced. At the height of its power in the early twentieth century, the British Empire is said to have controlled almost a quarter of the world's territory, most of it taken away from native and indigenous populations. Colonisation, settlement, depopulation and the cultural contest, 'all of this occurs on, about, or because of land' (Said 1993, 78).

Even the critique of colonialism as a system aimed at appropriation of natural resources flows directly from this approach. The Preamble of the 1960 UN Declaration on Decolonisation, for instance, held that 'all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory' and that 'peoples may, for their own ends, freely dispose of their natural wealth and resources...' (United Nations General Assembly [UNGA] 1960). This idea is then repeated in clause 2 of the Common Article 1 of the International Covenant on Civil and Political Rights (ICCPR 1976) and the International Covenant on Economic, Social and Cultural Rights (ICESCR 1976), with the further addition of a prohibition on depriving people from their 'own means of subsistence'. The varied calls for reparations and restorative justice for colonial wrongdoing also reflect this notion in many cases (Klein and Fouksman 2022). 'For a colonised people the most essential value, because the most concrete' Fanon wrote, 'is first and foremost the land: the land which will bring them bread and, above all, dignity' (Fanon 2001, 34).

Clearly, usurpation of indigenous and colonised people's land was and remains a grave injustice. We may go even further to assert that colonialism as we know it may not be recognised as such without an extra-territorial application of epistemic and political injustices. This is why some scholars claim that it is impossible to understand the injustices of colonialism without first understanding the wrongs of settler colonialism (Moore 2016). But if the distinct wrong of colonialism was to lie solely in the taking of territory from indigenous people, this wrong would require us to pay attention to two aspects that were discussed previously: its interplay with the other colonial wrongs and its ability to render colonialism as a distinct socio-political system. This is why despite the injustices of dispossession and dislocation and their continued impact on the lives of the dispossessed, the distinctiveness of the colonial-territorial wrong is not easily established. Colonialism involved territorial usurpation, but not all territorial usurpation that occurred in the last few hundred years would be labelled as colonialism. However, this is perhaps not a very sophisticated challenge – as discussed previously, it is not disputed that the distinct (territorial) wrong as an attribute could not be present in any other socio-political phenomenon.

Instead, the task is to recognise the wrong as a foundational injustice and that even in the absence of violence or other injustices, the distinct wrong would make the colonial enterprise wrong-as-such and distinct from other socio-political systems.

Historically, territorial rights have proven difficult to conceptualise, which is one of the reasons the discussion on this topic oscillates between rights to property – premised on ownership and/or possession of land – and rights to or from territory (Moore 2015, 16). The right to territory, generally associated with modern State sovereignty and claims of other collective political agents, is a group of different rights clustered together. These include: (1) the right to jurisdiction (which includes the legitimate authority to formulate and enforce laws in the territory and the authority to implement normative and behavioural codes); (2) the right to resources (which includes the control, extraction, use or sale of any resources present on the territory and the right to the resources produced on or within the territory, as well as to the resources produced by those who live on the land, such as income tax); and (3) the right to manage borders (which includes the rights to erect and control borders, allow or disallow easements, permit movement of goods and people into and out of the territory and also, importantly, the right to exclude others from entering, occupying or making use of the territory in question) (Miller 2012, 253; Simmons 2001, 306). Property rights, in turn, are the rights associated with the use, possession and/or (legal) ownership of a piece of land that allow the individual or collective rights holders to make use of, possess or exclude others from the property. In terms of ownership, the normative underpinnings of land as property are based on the right to territory, which conceptually precedes the right to property (Moore 2015, 16).

A detailed evaluation of the conceptions of territorial and property rights is not our central aim here, but there are some important issues that must be considered in order for territorial usurpation to be considered colonialism's distinct and foundational injustice. The wrong of colonialism could lie in violation of native people's right to territory, in the manner in which land was usurped, or in the exclusion of indigenous and native people from the territory once it has been taken over. The distinct territorial injustice of colonialism could relate to any or all of these wrongs. If this distinct wrong were to be solely the usurpation of territory, it would assume a pre-existing right to permanently and absolutely exclude all newcomers to a territory. An absolutist normative position that the territorial rights of inhabitants – whether indigenous people of colonised lands or natives of any territory in the present day – could permanently exclude the claims of outsiders is a difficult one to argue for, especially in light of its implications as a moral-universal principle applicable to our current challenges. In fact, anti-immigration political parties and far-right groups across Europe, Australia and the US employ similar arguments to justify their positions against migration – for instance, the closed-borders narrative emerging in response to the perceived 'refugee crisis' in Europe (Davitti 2019). Regardless of the contradictions posed by the histories of the US and Europe themselves, this approach should be evaluated carefully by those concerned with equitable rights for people seeking refuge due to climate change, calamities or conflicts. However, even if we take the right to exclude as a limited rather than an absolute right, we should still critique the manner in which land was usurped: through violence, for example, or through the exclusion of native populations from their inhabited land (which would be a conflict of normative orders).

With regard to the exclusion of the native population, Moore indicates that the concept of 'fairness' could be considered a justification for 'land egalitarianism' or distribution of resources to all, including newcomers (even colonial settlers) beyond the 'sufficiency constraint', i.e. what is not needed to live beyond 'minimally decent lives' can be shared (Moore 2019, 100–102). Paradoxically, this logic was used by many theorists to justify colonialism and conquest. John Locke's argument about the labour theory of land value, for instance, justified the taking over of 'waste land' from the natives to make it productive (Arneil 1996, 138–144). Notwithstanding the problems of treating indigenous territories as so-called waste land, this idea treats land as property and as purely an economic resource. But people's connection to land is not just a means to

securing food or resources; they also have history, traditions, memories and ways of living that are attached to land. People, place and land exist in a symbiotic relationship (Black 2016, 165), and land was the 'cosmic' setting for the bond amongst the living, the dead and the unborn, a setting that was disrupted by colonialism (Black 2011, 15–16). Land has a normative importance for people, which makes it an essential background necessity for our lives. In this perspective, land usurpation is a violation of 'legitimate expectations' of natives' or indigenous people's claim to territory – usurpation thus not only curtails their use of land and its resources but also limits what they can 'legitimately expect' as users, occupiers and possessors of the land (Moore 2019, 92). The appropriation of land by colonial regimes and colonial settlers was problematic, both for denying the natives access to land as a morally significant category and for appropriating what went beyond colonisers' needs.

Nevertheless, the heterogeneity of colonial practices poses a key challenge here. While colonialism's territorial wrong explains the core injustice of settler colonialism, it cannot be used to critique other forms and wrongs of colonialism. There is, for example, the case of the colonisation of Bermuda by the English, which allegedly had no native inhabitants at the time (Moore 2015, 1). Mauritius, a colony established by the French primarily as a sugar plantation and populated by convicts and enslaved people from other French territories, presents a similar difficulty (Anderson 2000, 1–10). Equally problematic is the challenge presented by slavery, or of trade by colonial merchant corporations, which presented diverse forms of colonialism(s) before the mass-scale capture of land in India from the mid-eighteenth century onwards or the Scramble for Africa in the late nineteenth century. The English East India Company conducted trade between Britain and Asia for almost 150 years before becoming a colonial administration after the Battle of Plassey, which granted Britain immense landholdings in India as well as the rights associated with sovereignty (Robins 2006, 75). Mass-scale territorial usurpation in Africa came largely in the nineteenth century, almost four centuries after the horrific enslavement and commodification of African people had begun. Then there is the case of the establishment of colonies such as New England, some of which were established by people who were fleeing religious and sectarian persecution in England and elsewhere in Europe. Although there is now increasing evidence that these early colonists' religious reasons were never very distant from their economic reasons in terms of their importance (Arneil 1996, 111; Warren 2016), neither reason fits neatly into the discourse on land conquest as the harm that defines colonialism. This therefore becomes a key issue: if some early colonial settlers were merchantmen or even migrants out to gain commercial advantage or plunder wealth in the earlier decades of the colonial pursuit, how do we reconcile this type of colonialism with the wider paradigm? It would be simplistic to assert that colonialism began or was wrong only after the capture of land began, as that assertion would exclude many other injustices of colonialism.

Violence, both direct and structural, exhibited by the colonisers as part of the colonial endeavor, poses another difficulty and remains its most horrific legacy. The usurpation of land was itself an act of violence, but the gratuitous violence that marked the colonial project throughout its history went beyond it. Adam Hochschild's masterful study of Leopold II's reign of Congo Free State shows how the population of the region is likely to have decreased by half (approximately ten million people) due to starvation, exhaustion, declining birth rates and state-sanctioned murders and punishments during Belgian colonial rein (Hochschild 2012, 223). More than 7,500 Congolese natives lost their lives just during the widening of railways in Belgian Congo in the 1920s (Marchal 2017, xix). It was not only the taking of land from these groups that was the problem but also the brutality that generally accompanied the 'discovery' and capture of land and its people. Bartolomé de Las Casas's account of 1542 on the colonisation of the Indies by Spanish colonialists noted that 'they have the healthiest lands in the world, where lived more than five hundred thousand souls; they are now deserted, inhabited not by a single living creature [as all] the people were slain or died after being taken into captivity [as slaves]' (Zinn and Arno 2004, 37). He also observed how the conquistadors took 'infants from their mothers' breasts, snatching

them by the arms and threw them into the rivers, roaring with laughter and saying as the babies fell into the water, “Boil there, you offspring of the devil!” (Zinn and Arnove 2004, 39).

The chain of violence set in motion by the colonial empire(s) continued long after the political reins were taken over by other actors. In 1838, thousands of Cherokee people died when they were forcibly removed from their lands and made to ‘march one thousand miles westward’ at the height of the so-called Jacksonian Democracy in the United States. For the cruelty that marked this journey and the lives of indigenous people lost in this passage, it came to be known as ‘The Trail of Tears’ or ‘The Trail Where They Cried’ (Zinn and Arnove 2004, 142). This wanton violence, which accompanied land usurpation but also went beyond it, indicts colonialism as an epistemic injustice. Settler colonialism was possible only because the native community’s humanity was not acknowledged but consequently destroyed when territory was taken from natives under legal claims such as *terra nullius* – ‘a territory belonging to no one’ (Mabo 1992). *Terra nullius* had been a key conceptual and legal instrument in the justification of colonialism in several parts of the world: if international law permitted the legal occupation of empty land and if it could be said that the colonised land was ‘empty’, then occupations were validated. It was only in 1992, through the landmark *Mabo* case, that courts in Australia recognised the native title to land and for the first time dismissed the idea that indigenous territory had been *terra nullius* before colonisation.

What deserves more attention here is that declaring an occupied land as empty required a prior act of negation of the very existence of the colonised and the enslaved. The ‘discovery’ itself was an act of giving a ‘name and meaning upon a place encapsulated’; its underlying premise was to inscribe ‘nothingness upon the being of the discovered’ (Nayar 2022). The land was not empty but rendered as such, either by executions, enslavements and forced relocations or by denying the humanity of the indigenous people and the cultural-normative frameworks through which First Nations inhabited that land. Land was the site on which racial differentiation, property rights and (biopolitical) power met and acted upon the bodies of the colonised and the enslaved. Bhandar aptly notes that private property and racial subjectivity are ‘articulated conjointly’ within settler colonialism (Bhandar 2018, 9). All this was premised on the denial of the equal humanity of the colonised, with their norms too improper to be legitimate laws and their lives too subhuman to be of consequence. It is this acknowledgement that moves us towards epistemic injustice as the foundational wrong behind land usurpation, as will be discussed later in this article.

Some accounts and even apologies of colonial land usurpation acknowledge the cultural divergence and differences in how indigenous groups and the colonial settlers viewed their engagement with land. The clash between these ways of living, for instance, between pastoralism and intensive agriculture, between sustainable living and resource extraction – between land as property and land as cosmos (Black 2011) – meant that natives were not able to ‘exercise collective agency over their lives’, which made colonialism more problematic (Moore 2019, 97). But regarding the differences in cultural norms and in engaging with land, there are two ways to approach this issue: either by suggesting that these differences meant that colonialism curtailed the natives’ exercise of collective agency and autonomy or by claiming that there were irreconcilable, epistemic differences and diversity amongst native inhabitants that colonialism at best ignored and at worst used as an instrument of colonial appropriation. While the latter view takes our appraisal towards the epistemic injustice of colonialism, the former brings into play the importance of political institutions regarding collective agency and enfranchisement, to which this article now turns.

4 Colonialism as a distinct political wrong

Political domination, disenfranchisement of the native population and authoritarian modes of control have become synonymous with colonial wrongdoing. Self-determination as political decolonisation remains inherently tied to this understanding and became the main goal of many

national liberation struggles. Colonialism was perpetrated through a host of legal, political, economic and social institutions – corporations, colonialists and states alike. At the heart of the political critique of colonialism is the emphasis on unjust political structures and institutions – be it the coercion associated with the creation of these structures, the lack of accountability and responsiveness towards the people they governed or the people's disenfranchisement in shaping, maintaining and legitimising the political institutions. This is the line of reasoning that eventually leads us towards more recognisable ideas of decolonisation – democratisation, home rule and *swaraj* (national or local rule in India) (Gandhi 2009, 25–28) – and the right to self-determination (Stilz 2015), sometimes in the guise of nationalism.

Political independence featured prominently in statements on decolonisation struggles, which is why mentions of 'decolonisation' are generally taken to mean political decolonisation (see, for instance, Bernstorff and Dann 2019). In a statement carrying the same tones as the 1779 French Declaration of the Rights of Man and Citizen, the Indian National Congress's 1930 Independence Day Resolution demanded, '*Purna swaraj* or complete independence' on the basis that the 'British Government in India has not only deprived the Indian people of their freedom but has based itself on the exploitation of the masses, and has ruined India economically, politically, culturally, and spiritually' (Indian National Congress 1930). This understanding is also reflected in the way colonialism is conventionally understood in international law. The common article 1 of ICCPR and ICESCR states that 'all peoples have a right to self-determination' and that they can 'freely determine their political status and freely pursue their economic, social and cultural development' by virtue of this right (ICCPR 1976; ICESCR 1976). The UN Declaration on Decolonisation mentions people's right to self-determination and states that 'alien subjugation, domination and exploitation constitutes a denial of fundamental human rights' (UNGA 1960). Moreover, Article 22 of The Covenant of the League of Nations 1919, which established the system of Mandate Lands as a trust to be managed by 'advanced nations', stated that 'to those colonies and territories . . . *inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world*, there should be applied the principle that the well-being and development of such peoples form a *sacred trust of civilisation*' (League of Nations 1919; emphasis added). This 'responsibility' of governance was passed on to the United Nations Trusteeship Council when the UN replaced the League of Nations, and the Council continued its operations until the 1994 Independence of Palau.

The significant injustice of political disenfranchisement granted, its distinctiveness remains to be established. There are two ways in which a political system can be considered unequal or one-sided: one way is that the political structure does not give due regard to the voices and concerns of the members of (or subjects in) a society. This inequality does not refer to the experience of a minority that loses out in a public vote but to the complete disregard of the choices and welfare of (some) members or groups within the society. The other way that the system can be non-reciprocal is when the foundational rules that underpin the society's political structures are themselves unrepresentative and exclusionary. Based on this description and on taking lead from Kantian cosmopolitanism, Ypi suggests that an 'ideal political system' depicts or exhibits equality and reciprocity through two separate but related conditions. The first condition deals with the 'creation of associative norms' – mainly the process of forming an association amongst individuals or amongst the collectives that these individuals are members of (Ypi 2013, 178). It is self-evident that an association formed through coercion or compulsion would lack legitimacy and deny participants their political agency and autonomy. But equality and reciprocity flow directly from the process of association, which requires that the substantive principles around which the association is structured are also equal and reciprocal, which then becomes the second important condition. A political system that is established through consent, but which implements discriminatory or substantively unjust policies against one or a few specific members falls short of this equality condition.

The denial of reciprocity and equality in the colonial political system is not limited to individuals but also holds true for collective agents and includes the negation of both expressed will and implied consent. There is hardly a political realm in the world that could realistically claim to have, from the entirety of its population, the consent to govern. The far-from-universal participation in elections around the world or even the general lack of involvement of people in the workings of government institutions, even in a long-running democracies, indicate the same. But the denial of consent in a colonial regime takes this situation to an extreme, where it ceases to be about absence of consent and more about ‘forced association’ (Renzo 2019, 349). This would suggest that colonialism’s distinct injustice is that it is a system established through coercion (‘forced association’) or whose rules are based on unequal representation. Valentini takes this further by arguing that the wrong of colonialism lies in either ‘the subjection of individual members of colonised collectives to alien powers or the subjection of the collective itself’ (Valentini 2015, 316).

Insightful as they are, these accounts of colonialism’s distinct political injustice raise two complications: first, like the perspectives on territorial injustice, these accounts are unable to explain the heterogeneity of colonialism(s) and its interplay with other colonial injustices. Political disenfranchisement remains a grave wrong of colonialism, but it does not necessarily explain colonialism’s other injustices, particularly its gratuitous violence, which these accounts would treat as incidental. It would be a stretch to include colonialism’s violent forms, such as slavery, forced relocation, murders, mass punishments and even territorial usurpation, within this category as birth pangs of an unequal society. As previously discussed, a system based on commodification of people or complete negation of their existence is more horrific than any society based on unequal associative norms. Second, these propositions are unable to distinguish between colonialism and forced annexation and could therefore be considered ‘overinclusive’ (Renzo 2019, 350). Annexation pertains to conquest and subsumption of foreign territories, whether independent or part of (or seceding from) other countries, based on either a historical claim to land or an affiliation with the population inhabiting that territory. It is an act of force and, thus, certainly violates the condition of consensual association and perhaps even that of equal representation. But while annexation has been a question for international law in relation to political decolonisation and self-determination, it is important to understand that international law is typically unable to differentiate between annexation and colonialism. As far as the conventional legal understanding is concerned, there is ‘no *general* significance in the distinction between decolonisation, dismemberment, secession, and annexation’ (Crawford and Brownlie 2012; emphasis in the original). International law, therefore, views decolonisation mainly as the correction of an extra-territorial political wrong, rather than as violent and epistemic injustice, which is why such legal-political perspectives are unable to grasp the core of colonialism as a legal-political system.

There is another way to consider this: political communities have a claim to govern themselves and to actualise their political will (within reason), but they also ‘determine themselves’ through the enactment of their own political agency (Renzo 2019, 351–352; Stilz 2015, 3–9). There is then a mutual relationship between individuals’ exercise of their individual agency and the collective agency that they exercise through political institutions. By participating in ‘institutionalised political cooperation’, individuals act simultaneously as group agents as well as individual ones (Renzo 2019, 356). Stilz considers the interests of such participants as ‘maker interests’ (Stilz 2015, 3–9) that help us shape our lives and identities as individuals and as members of a political collective. But for these interests to be actualised, there are two further conditions that need to be fulfilled: that a person is able to act as an agent (‘the agency condition’) and that a person is regarded as the author of their conduct (‘the authorship condition’) (Renzo 2019, 356). Renzo argues that in this view, the distinct wrong of colonialism lies in the idea that the colonised exist as individual political agents even within the colonial polity and that even if they participate (with or without their will) in the political institutions in the colony, they are not regarded as the authors of their own conduct. Thus, while the existence of the colonised may fulfil the agency condition, their

acts are not of their own volition within the structural setting of colonialism. In this situation, forced annexation differs from colonialism in that after annexation, the annexed subject is subsumed into the polity, whereas the colonial subject is not. More importantly, the implication here is that while colonialism curtails my authorship (because I am no longer the author of my own acts), annexation violates both the authorship and the agency conditions: now I am neither an independent agent nor the author of my own acts because I am subsumed within the new and dominant political entity.

This creates a crucial problem: a corollary of this argument is that annexation is actually worse than colonialism, as the former denies both authorship and agency while the latter denies only authorship. But this value judgment does not really advance our understanding of either view of this argument. What requires more reflection is that if the colonised territories and people were subsumed within the colonial metropolis, would this allow us to label this situation as annexation rather than as colonialism? If we could do so, colonialism would then become an intermediate step towards annexation, which, it is argued here, would miss the wider and more significant point of the relationship between the coloniser and the colonised. Doing so would also completely omit instances such as the colonial annexation of Algeria by the French. Political disenfranchisement was reprehensible without a doubt, but what was more problematic was that there was never a 'legal outlet (naturalisation) or a religious outlet (conversion)' available to the colonised to ever become equal political members of their 'new' (although not chosen) society (Memmi 2021). The difference between a colonial subject and a citizen of a metropolis does not exist just at the political level but also at a more essential level. This is why we can see differences between the cases of the annexation of the Crimea by Russia and that of Algeria by the French: in the former case, the territory was annexed for the inclusion of the population while in the latter case, the population was essentially excluded by virtue of colonial inclusion and of the appropriation of their homeland.

5 The epistemic injustice of Colonialism

Land usurpation and exclusionary political institutions remain grave injustices and the most apparent manifestations of colonialism. Political domination emphasises the problems associated with direct colonial rule and disenfranchisement of the colonised, although this domination does not fully account for the wrongs of settler colonialism and land usurpation (Moore 2016, 450). On the other hand, territorial injustice critiques settler colonialism but is unable to reconcile it with other colonial wrongs. More importantly, divesting the search for a specific and distinct wrong from the search for other colonial wrongs, especially its gratuitous violence, leads to sanitised accounts of colonial wrongdoing. The 'contingency' and lack of theorisation of violence within some critical accounts of colonialism undermines our theoretical analysis and does a disservice to the cause of reparative justice (Bufacchi 2017, 198). Moreover, these accounts consider colonialism to be a problem of territorial or political rights and focus on the political exchange between the coloniser and the colonised. In this way, they presuppose the colonised subjects' position as *political beings* within the colonial project, whose loss of territorial rights or political will can be identified as the primary injustice that results from colonialism. But the injustices of colonialism are far more problematic than the loss of political agency, self-determination or territorial rights. The Kantian 'duty to associate' that Ypi bases the society's reciprocal principles on does not even become possible within the colonial exchange because of the absolute 'reluctance to recognise' the colonised subject (Fanon 2021, 95).

Colonialism at its core was an epistemically unjust project – with associated sociocultural, economic and legal-political manifestations – that perpetuated and was premised on the assumption of human inequality. This, it is maintained here, is the foundational as well as the

distinct wrong of colonialism: it underpins colonialism's violence, territorial usurpation and political exclusion, and it also shapes colonialism into a distinct socio-political enterprise. Mass deportations, executions, appropriations of land and resources, rape and violence associated with colonialism would not have occurred if the epistemic hierarchies of inequality had not already been created and accepted. Prior to all these injustices and central to the colonial project was a denial of the humanity of the colonised. This is why, as mentioned previously, Fanon considers land as a pathway towards attaining 'dignity' (Fanon 2001, 34). This is where the idea of epistemic injustice becomes important and why it is necessary to discuss it in-depth.

Broadly, the idea of epistemic injustice concerns the partial or complete exclusion of certain groups from the category of *knowers*. Miranda Fricker argues that prejudice and identities can be linked to structural power within a society and can lead to a dismissal (a credibility deficit) or an overestimation (a credibility excess) of the speaker's testimony, which leads to two levels of epistemic injustice (Fricker 2007). On one level, the person I am perceived to be as per my identity would diminish my credibility as a knower/speaker due to the prejudice and stereotypes that the society holds about me (Fricker 2007, 9–29). This *testimonial injustice* has obvious connotations in relation to courtroom testimonies and ad hominem attacks, among others. But for the purposes of this article, the main focus is on personal characteristics – colour, caste, creed, gender, lineage, religion, class background or just another's perception of me – i.e. all that can be grouped within a *structural identity power* and that is independent of my expertise on any given matter. Testimonial injustice suggests that my identity-related characteristics limit the weight and believability of my ideas and testimony. This also resonates with Dotson's notion of *testimonial smothering*, which comes from Black feminist studies. Speaking about women's testimonies and linking her idea of epistemic injustice directly to Spivak (Spivak 2010), Dotson indicates that it is not just a matter of belief in what I say but that, given the societal and environmental conditions that I inhabit, I may even stop myself from saying it at all, especially when I want to speaking up about the injustices that I face (Dotson 2011, 242).

But Fricker suggests that there is another, prior level to epistemic justice that pertains to the collective interpretive resources in a society. This *hermeneutical injustice* occurs when 'some significant area of one's social experience [is] obscured from collective understanding' because of structural identity and its association with power and institutions (Fricker 2007, 155). This wrong is therefore about the marginalisation of certain individuals or groups by using one particular vantage point that denies their ways of perceiving or engaging with the world. While testimonial injustice is the exclusion of the knowledge of a speaker because of the hearer's prejudice, the wrong of hermeneutical injustice is the 'exclusion from the pooling of knowledge owing to structural identity prejudice in the collective hermeneutical resource' (Fricker 2007, 162). It is evident that many communities within contemporary societies face epistemic injustices either through direct discrimination or through a denial of their individual and collective practices. People outside gender binaries, religious and ethnic minorities within certain countries, differently abled individuals, and migrants and refugees all face epistemic wrongs of various kinds. Assaults on women in peacetime as well as during conflicts (MacKinnon 1994), the marginalisation of their stories due to preconceived societal notions (Merry 2006) and the wielding of labels of 'insanity' and 'madness' against individuals point in a similar direction. It is not just about the societal collection of interpretive resources but also about 'the very construction (constitutive and/or causal) of selfhood' (Fricker 2007, 168). Therefore, hermeneutical injustice is not a homogenous idea, and the injustices can differ according to their source, dynamics, depth and breadth (Medina 2017, 45–47).

The epistemic wrong of colonialism, however, goes beyond Fricker's categorisation. While hermeneutical injustice offers us a start, it needs to go further still to encapsulate colonial injustices. It is one thing to deny an individual or a group's experience from the totality of societal resources; it is far more problematic to base societal foundations on the very denial of the existence

or the knowledge of a group. This is a subtle but crucial difference. In the former case, epistemic injustice is an aberration within the system, a wrong that is recognised and could be addressed; in the latter case, epistemic injustice is a foundational value that affects the sociocultural and the legal-political systems. This difference becomes evident when we cast an eye around the world at the moments after decolonisation: wherever decolonisation was used solely as a correction of political and territorial wrongs, it left behind a remainder. The case of Apartheid South Africa provides us the most prominent example: it was a system based on racial prejudice that manifested in legal, cultural, political, economic and social spheres, as well as an injustice that was visible in its direct and structural violence, which was legitimised by the very operations of the state. The Segregation in the US was not much different. Although the US had overthrown the ‘colonial regime’ in 1779, the subjugation of the native population and that of generations of enslaved people continued (legally in most cases), at least until the Civil Rights Movement. This is also what we see in the treatment of minorities in much of the post-colonial world, where, despite political decolonisation and the mitigation of some territorial and political wrongs, epistemic differences remain or are projected onto other marginalised groups.

The writings of the colonial era give us a further indication of the prejudice that was part of legal-political principles and consequently impacted the reality of the colonised. John Locke, for instance, drew parallels amongst the mental capacities of children, the mentally differently abled and ‘savages’ (both the enslaved and the colonised), none of whom were considered to have enough ‘reason’ to govern their own political affairs and were therefore to be kept apart from civil(ised) society (Arneil 2012). Writing about Locke’s categorisation of the ‘savage’, of children and of the ‘mentally disabled’, Arneil says that Locke argued that there is a crucial difference between the former groups and the rest of society: the colonised are ‘subject [only] to the life/death power of the masters’ while the latter could be dealt with using Christian principles of charity (Arneil 2012, 501). Francisco de Vitoria, similarly, wrote of the Native Americans that “‘although not totally mad”, [they] could be considered “so close to being mad that they are unsuited to setting up or administering a commonwealth both legitimate and ordered in human and civil terms”’ (quoted in Ypi 2013, 168). This epistemic wrong of presumed human inequality consequently laid the foundations of the institutions established during the colonial periods: it was present in the claiming of Indian territories after 1757 by the East India Company and in the selling of opium to China (which took place across the barrel of a gun) by the same merchant corporation; it guided the voyages of ‘discovery’ by the Spanish conquistadors in the fifteenth century and the Scramble for Africa in the nineteenth century; it also dictated the executions and capture of populations in the Belgian Congo and was the impetus behind the Transatlantic Slave Trade across centuries.

It is therefore important to understand what the idea of colonialism’s epistemic injustice further represents. *Episteme* (*Épistémè*) allows the creation of a subset of acceptability and credibility within the wider set of possibilities in a discursive environment – it is the “‘apparatus” which makes possible the separation, not of the true from the false, but of what may or may not be characterised as scientific’ and therefore acceptable (Foucault et al 1980). It is a discursive organisational scheme that facilitates the separation of ‘among all the statements which are possible those that will be acceptable within’ the scheme on the basis of some alleged rules of ‘scientificity’ (Foucault et al 1980, 197). Colonialism’s epistemic wrong involved the establishment of a world in which the socially constructed epistemic hierarchies were naturalised and reified. In this image of the world, both the coloniser and the colonised were and still are convinced of the differences between the *civilised* and the *barbarian*, between the human and the sub/non-human. It is a world in which power disparities are normalised and even declared to be natural categories; they are cloaked within a stated scientificity and essentialised (on the normalisation of power, see Foucault 2009). The prejudice associated with these classifications of knowledges and racial hierarchies undermines not just the belief in what the speaker/knower utters, but limits the very possibilities of communication and knowledge.

Writing about a marginalised group within another marginalised group – specifically, about women living within colonised societies who must battle against both patriarchy and colonialism – Spivak highlighted the impossibility of the conditions within which any meaningful communication (both as acts of speaking and hearing) could even exist (Spivak 2010, 65). Calling this *epistemic violence*, Spivak suggests that the subordinate classes have access neither to the dominant discourse nor to the revisionist and critical narratives: like ‘trace-phenomena’, they appear only as markers of others’ existence and vanish before they themselves can be seen or heard. It should be noted that Spivak’s *subaltern classes*, a term she borrows from Antonio Gramsci, does not refer to all colonised people, even though its insight captures the wider colonial practice. Also, although ‘injustice’ and ‘violence’ may not be interchangeable terms, they are similar in how they affect their victims: both induce a sense of ‘humiliation, vulnerability and powerlessness’ (Bufacchi 2007, 141). When epistemic injustice reaches the point where there is complete annihilation of the conditions of communication (as Spivak warns us), there exists the condition of ‘hermeneutical death’. Under these conditions, there is a complete disengagement between the colonised and the meaning-making practices of the wider society (Medina 2017, 50). In this situation – of hermeneutical death or of subalternity (per Spivak) – the speaker ceases to be recognised (or even exist) as a knower. This is not just about silencing or disbelieving the voices of the marginalised, but as if the voices of the colonised never even existed. This is a system marked by a ‘monoculture of knowledge’ (Santos 2007, 76), by coloniality of power and knowledge (Mignolo 2007; Quijano 2000), or by a ‘positional superiority of western knowledge’ (Tuhiwai Smith 2021, 67), which was the hallmark of European colonialism.

Colonialism being an epistemic injustice does not mean that it was merely a nonmaterial wrong or a psychological construct without a physical manifestation. The creation of cultural and racial divisions and embedding them within socio-political and socio-legal structures imbues them with actual consequences. This actuality is evident for all who wish to see, as the horrors of enslavement, genocide, dispossession and subjugation cannot be removed from this epistemic construct (on the horrors of rubber production in Belgium-controlled Congo, see Hochschild 2012, 150–166). Reflecting on Orientalism – the sociological and theoretical construction of the pre-/post-colonial East in a particular image to justify its subjugation – Said noted that it is not a mere ‘structure of lies and myths, which, were the truth about them to be told, would simply blow away’ (Said 2003, 6). Orientalism, which was in a sense the visible spectrum of the colonial epistemic construct within the literary discourse, was always situated within a range of political, social, economic and cultural institutions ‘that retain a vested socioeconomic interest in preserving the validity and relevance of the placement of “the East” or “the Orient” as the Other to “the West”’ (Pitts 2017, 152). The epistemic wrong of colonialism is therefore inevitably socio-legal, cultural, political and material in nature. It is not just the belief in one’s superiority that is based on some idea of group membership when it comes to ethnicity, history, heritage, knowledge, etc., that is an epistemic wrong – it is the continuation of this very logic to ultimately the denial of the colonised as *knowers*.

This meant that the contact between the coloniser and the colonised/enslaved was not a political exchange but a relation of only subjugation and domination. Césaire’s damning definition of this phenomenon accurately described it several decades ago: ‘Colonialism = Thingification’ (Césaire 2000, 42). It is important to understand that this conversion of people into things (and instruments of production) was not done randomly; rather, the dividing line fell where the markers of appearances, cultures and knowledges were turned into racial, pseudo-scientific and civilisational schisms, where and through which colonial power then manifested itself. This is the reason Fanon suggested that Marxist analysis of exploitation needed to be expanded to account for this basic tenet of colonialism (Fanon 2001, 31). It is also significant to understand that these epistemic constructs – through the action of the socio-political and structural power present in the colonised societies – were internalised by the colonised, which further blurred the boundaries amongst the operations of these epistemic injustices. Bhargava notes that the epistemic injustice of colonialism not only

included the ‘inferiorisation of indigenous cultures’ but also marginalised and transformed the epistemic frameworks of indigenous people through intentional actions and structural configurations (Bhargava 2013, 415). Fanon, a trained psychiatrist who recorded testimonies of people suffering from psychological disorders due to colonial encounters and liberation struggles, wrote about the ‘psycho-pathology’ of the colonised (see ‘Colonial Wars and Mental Disorders’ in Fanon 2001). With the colonised envisioning themselves as part of the European civilisation yet always excluded from it – being unable to step out of their identity, which became synonymous with barbarity and wretchedness – the colonised subjects were split within themselves (Fanon 2021, 167–170). W. E. B. du Bois had termed this the ‘double consciousness’ of the colonised, who always look at themselves from the gaze of the coloniser, unable to become the master yet never quite able to escape the epistemic constructs around their enslavement (Hinchey 2018, 9).

With epistemic positions created as such, the mercantile and corporate politics of colonialism became that much easier to manage. A rejection of the political, social and cultural existence of the colonised made it possible and easier to turn them into an ‘instrument of production’ as labourers, plantation workers or peasants, or even to enslave them as a commodity. ‘Between the coloniser and the colonised’, Césaire noted, ‘there is room only for forced labour, intimidation, pressure, the police, taxation, theft, rape, compulsory crops, contempt, mistrust, arrogance, self-complacency, swinishness, brainless elites, degraded masses’ (Césaire 2000, 42). The colonised were included in the fold only as instruments of production or as slaves and servants – as things. There was no political or societal existence for them outside of this relation of injustice. Their life began in a situation of ‘hermeneutical death’ and fixity (Fanon 2021, 95; Medina 2017, 50). Even if all other wrongs of colonialism are momentarily ignored, this denial of their humanity and the conversion of the colonial subject into an object would still remain the gravest injustice of colonialism. The colonised and the enslaved had no independent reality or ‘ontological resistance’ in the eyes of the coloniser, for they existed only in relation to the coloniser (Fanon 2021, 90).

The various scholars mentioned in this article have approached the problem of colonialism through the diversity of their opinions and scholarly traditions. This discussion has not sought to simplify or homogenise their arguments but to highlight that the one common thread that runs through these arguments: the insight about epistemic wrong and the violence that it manifests. The epistemic wrong of colonialism lies in its denial of equal claims to humanity and equal claims to produce knowledge and decide on political self-rule, among its other differences. This epistemic wrong had a territorial manifestation (in the usurpation of foreign territories as *terra nullius*), a political manifestation (in the coercive establishment of political communities, disenfranchisement and systems of unequal citizenship), a cultural manifestation (in racial hierarchies and a rejection of equal claim to knowledge), a legal manifestation (using legality and legitimacy for disenfranchisement and refusal of equal rights) and a manifestation with regard to human dignity. This wrong was neither incidental nor peripheral to the colonial enterprise but emerged prior to and fed the colonial project, and, therefore, it is important to recognise how this epistemic injustice rendered colonialism as a distinct political system.

6 Concluding remarks

This article took human dignity as its starting point. Equality and equity acknowledge differences amongst individuals and do not require sameness, but they also demand a recognition of everyone’s basic and inherent human dignity and worth, which are violated by racialised hierarchies, monocultures of knowledge and any claims of inherent group superiority. A difference of opinion in this regard cannot simply be resolved by an academic treatise on the subject but is more suited to public discourses and political struggles, which this article would not be able to do justice to. Taking this equality as a given, there are three main things that this article has discussed: first, it highlighted the need to search for colonialism’s distinct wrong,

suggesting that this search is an important step in bolstering the conceptual foundations of the field as well as furthering the possibilities of redress from this historical injustice. Second, it argued that although territorial usurpation and political disenfranchisement were grave colonial wrongdoings, they are not its distinctive injustices, due to the heterogeneity of colonialism as well as the centrality of violence within the colonial project. Thirdly, the paper discussed how colonialism was at its core an epistemically unjust system that violated the knowledge and meaning-making practices of the colonised and undermined any possibilities of communication, political existence and equality for the colonised and the enslaved.

At the end of this article, it is important to dwell for a moment on what recognising colonialism's epistemic injustice means for the field of law and colonialism at large, and for the various calls for decolonisation. The way in which most national liberation movements were framed and how wider post-colonial politics panned out has shaped our understanding of how we perceive colonialism. Political agency and self-determination are recognised as central to decolonisation mainly because they are more easily translatable and understandable within the discourses at the metropolises and because they fit our legal-political frames. A diminished understanding of the epistemic logic of colonialism is an indictment of the deficiencies of our conventional theoretical framings and political languages. A turn to decolonisation could be achieved only if colonisation itself were understood and challenged as being more than the sum of its various manifestations.

Reparations and corrections for colonial wrongdoing that focus primarily on monetary compensation or even the return of land will never be sufficient, although they will certainly be a start. They are important avenues to redress some harms of colonialism, but they should not be the end goal of decolonisation. Similarly, enfranchisement – inclusion in voting and representation – is a significant measure, but it cannot substitute the need of socio-political systems that could dismantle the foundations of racial, socio-cultural and epistemic injustices. This means that dealing with racism, xenophobia, institutional or societal discrimination and discourses that perpetuate human inequality at local and global scales is not only important in and of itself, but is also a key facet for corrective justice. If colonialism was epistemically unjust, then decolonisation has to involve more than inclusion, diversity and restitution. The tokenistic presence of the voices of the very people who shaped and benefited from colonialism can only further the logic – the 'scientificity' – of the episteme that undermined the truth-value and credibility of southern epistemologies. Epistemic justice requires, at the very least, a new set of significant questions that are asked from the various vantage points of the colonised, the enslaved and the dispossessed; it requires questions, the answers to which are yet to be thought.

Acknowledgements. Although I have been researching these issues for more than a decade, this current article took initial shape during my 2019–2020 Visiting Fellowship at the Cardiff Centre of Law and Society (CLS). While my progress was subsequently affected by the global pandemic, as it was for many others, the pandemic also laid bare the necessity to continue with this line of questioning. I am grateful to the CLS, the Cardiff Law and Global Justice Centre and the Cardiff School of Law and Politics for giving me the opportunity to engage with their dynamic faculty and the diverse PGR community. I am particularly thankful to Professors Jiri Priban, John Harrington, Ambreena Manji and Urfan Khaliq and to Dr Huw Williams at Cardiff for their questions and comments. Various colleagues at Warwick Law School and elsewhere have helped me frame and explore these questions in greater depth, and I owe special gratitude to Dr Jayan Nayar, Dr Stephen Connelly, Prof Victor Tadros, Prof Andrew Williams, Prof Abdul Paliwala, Prof Sharifah Sekalala, Dr Arjumand Kazmi (Oslo) and Dr Bahar Kazmi (Aston). Finally, I would like to acknowledge the many participants of the SLSA 'Empire, Colonialism and Law' stream for their solidarity and insights over the years.

Competing Interests: None

Cases

Mabo and others v The State of Queensland (No. 2) (1992) 175 CLR 1

International Treaties

League of Nations. *The Covenant of the League of Nations*, Including Amendments in Force, 1 February 1938. 28 April 1919.

Available at <<https://www.refworld.org/docid/3dd8b9854.html>>.

UN General Assembly (UNGA). *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960, A/RES/1514(XV).

International Covenant on Civil and Political Rights (ICCPR). (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

International Covenant on Economic, Social and Cultural Rights (ICESCR). (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR)

References

- Adébişi F** (2023) *Decolonisation and Legal Knowledge: Reflections on Power and Possibility*. Bristol: Bristol University Press.
- Alami I** (2019) *Money Power and Financial Capital in Emerging Markets: Facing the Liquidity Tsunami*. Abingdon, Oxfordshire: Routledge.
- Ali I** (1988) *The Punjab Under Imperialism, 1885–1947*. New Delhi: Oxford University Press.
- Alvares C** (1991) *Decolonizing History: Technology and Culture in India, China and the West 1492 to the present day*. Goa, India: Other India Press.
- Anderson C** (2000) *Convicts in the Indian Ocean: Transportation from South Asia to Mauritius, 1815–53*. London: Palgrave Macmillan.
- Anghie A** (2005) *Imperialism, Sovereignty, and the Making of International Law*. Cambridge: Cambridge University Press.
- Arneil B** (1996) *John Locke and America: The Defence of English Colonialism*. Oxford: Oxford University Press.
- Arneil B** (2012) Liberal colonialism, domestic colonies and citizenship. *History of Political Thought* 33(3), 491–523.
- Bailey AM** (2012) No bare particulars. *Philosophical Studies* 158(1), 31–41.
- Bambra C, Lynch J and Smith KE** (2021) Pale rider: pandemic inequalities. In Bambra C, Lynch J and Smith KE (eds), *The Unequal Pandemic: Covid-19 and Health Inequalities*. Bristol: Bristol University Press, 13–34.
- Baxi U** (2002) Two Notions of Human Rights: 'Modern' and 'Contemporary'. *The Future of Human Rights*. New Delhi: Oxford University Press, 24–41.
- Bernstorff Jv and Dann P** (2019) The Battle for International Law: An Introduction. In Bernstorff Jv and Dann P (eds), *The Battle for International Law: South-North Perspectives on the Decolonization Era*. Oxford: Oxford University Press, 496.
- Bhambra GK** (2022) A decolonial project for Europe. *JCMS: Journal of Common Market Studies* 60(2), 229–244.
- Bhambra GK, Gebrial D and Nişancioğlu K** (2018) *Decolonising the University*. London: Pluto Press.
- Bhandar B** (2018) *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership*. Durham, NC: Duke University Press.
- Bhargava R** (2013) Overcoming the epistemic injustice of colonialism. *Global Policy* 4(4), 413–417.
- Black CF** (2011) *The Land Is the Source of the Law: A Dialogic Encounter with an Indigenous Jurisprudence*. London: Routledge.
- Black CF** (2016) On lives lived with law: Land as healer. *Law Text Culture* 20, 165–188.
- Bufacchi V** (2007) *Violence and Social Justice*. London: Palgrave Macmillan UK.
- Bufacchi V** (2017) Colonialism, injustice, and arbitrariness. *Journal of Social Philosophy* 48(2), 197–211.
- Carter P** (2019) *Decolonising Governance: Archipelagic Thinking*. London: Routledge.
- Césaire A** (2000) *Discourse on Colonialism*. New York: Monthly Review Press.
- Chakrabarti P** (2010) *Materials and Medicine: Trade, Conquest and Therapeutics in the Eighteenth Century*. Manchester, England: Manchester University Press.
- Chantiluke R, Kwoba B and Nkopo A** (2018) *Rhodes Must Fall: The Struggle to Decolonise the Racist Heart of Empire*. London: Zed Books.
- Craven MCR** (2007) *The Decolonization of International Law: State Succession and the Law of Treaties*. Oxford: Oxford University Press.
- Crawford J and Brownlie I** (2012) *Brownlie's Principles of Public International Law*. Oxford: Oxford University Press.
- Davitti D** (2019) Biopolitical Borders and the State of Exception in the European Migration 'Crisis'. *European Journal of International Law* 29(4), 1173–1196.
- De Juan A and Pierskalla JH** (2017) The comparative politics of colonialism and its legacies: An introduction. *Politics & Society* 45(2), 159–172.
- Delanty G** (2021) Introduction: The pandemic in historical and global context. In Delanty G (ed), *Pandemics, Politics, and Society: Critical Perspectives on the Covid-19 Crisis*. Berlin: De Gruyter.
- Dhanda A and Parashar A** (2009) Decolonisation of legal knowledge: Whose responsibility? In Dhanda A and Parashar A (eds), *Decolonisation of Legal Knowledge*. Abingdon, Oxfordshire: Routledge.
- Dotson K** (2011) Tracking epistemic violence, tracking practices of silencing. *Hypatia* 26(2), 236–257.

- Douzinas C** (2000) *The End of Human Rights*. Oxford: Hart Publishing.
- Escobar A** (2004) Beyond the Third World: Imperial globality, global coloniality and anti-globalisation social movements. *Third World Quarterly* 25(1), 207–230.
- Fanon F** (2001) *The Wretched of the Earth*. London: Penguin Books.
- Fanon F** (2021) *Black Skin, White Masks*. Dublin: Penguin Random House.
- Fitzpatrick P** (1992) *The Mythology of Modern Law*. London: Routledge.
- Foucault M** (2009) 25 January 1978. In Senellart M (ed), *Security, Territory, Population: Lectures at the College de France 1977–78*. Basingstoke, England: Palgrave Macmillan.
- Foucault M, Grosrichard A, Wajeman G** et al (1980) The Confession of the Flesh. In Gordon C (ed), *Power/knowledge: Selected Interviews and Other Writings, 1972–1977 by Michel Foucault*. New York: Pantheon Books.
- Fricker M** (2007) *Epistemic Injustice: Power and the Ethics of Knowing*. Oxford: Oxford University Press.
- Gandhi MK** (2009) What Is Swaraj? In Parel AJ (ed), *Gandhi: 'Hind Swaraj' and Other Writings*, 2 edn. Cambridge: Cambridge University Press, 25–28.
- Gerbaudo P** (2020) The pandemic crowd: Protest in the time of Covid-19. *Journal of International Affairs* 73(2), 61–76.
- Hinchey PH** (2018) *The Souls of Black Folk* by W. E. B. du Bois: With a Critical Introduction by Patricia H. Hinchey. Gorham, ME: Myers Education Press.
- Hochschild A** (2012) *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa*. London: Pan Books.
- Indian National Congress** (1930) Extracts from the Independence Day Resolution passed by the Indian National Congress in 1930. <<https://www.nationalarchives.gov.uk/education/empire/g3/cs3/g3cs3s2a.htm>>.
- Klein E and Fouksman E** (2022) Reparations as a rightful share: From universalism to redress in distributive justice. *Development and Change* 53(1), 31–57.
- Las Casas B** (1992) *A Short Account of the Destruction of the Indies* (Edited and Translated by Nigel Griffin). London: Penguin Books.
- Lugones M** (2008) The coloniality of gender. *Worlds & Knowledges Otherwise* 2, 1–17.
- MacKinnon CA** (1994) Rape, genocide, and women's human rights. *Harvard Women's Law Journal* 17, 5–16.
- Manning P** (1974) Analyzing the costs and benefits of colonialism. *African Economic History Review* 1(2), 15–22.
- Marchal J** (2017) *Lord Leverhulme's Ghosts: Colonial Exploitation in the Congo*. London: Verso.
- Medina J** (2017) Varieties of hermeneutical injustice. In Kidd IJ, Medina J and Pohlhaus G (eds), *The Routledge Handbook of Epistemic Injustice*. London: Routledge.
- Memmi A** (2021) *The Coloniser and the Colonised*. London: Profile Books.
- Merry SE** (2006) Human rights and transnational culture: Regulating gender violence through global law. *Osgoode Hall Law Journal* 44(1), 53–75.
- Mignolo WD** (2007) Delinking: The Rhetoric of modernity, the logic of coloniality and the grammar of de-coloniality. *Cultural Studies* 21(2), 449–514.
- Mignolo WD** (2009) Coloniality: The darker side of modernity. In Breitwieser S, Klinger C and Mignolo WD (eds), *Modernologies: Modern Artists Researching Modernity and Modernism*. Barcelona, Spain: Museu d'Art Contemporani de Barcelona.
- Miller D** (2012) Territorial rights: Concept and justification. *Political Studies* 60(2), 252–268.
- Moore M** (2015) *A Political Theory of Territory*. Oxford: Oxford University Press.
- Moore M** (2016) Justice and colonialism. *Philosophy Compass* 11(8), 447–461.
- Moore M** (2019) The taking of territory and the wrongs of colonialism. *Journal of Political Philosophy* 27(1), 87–106.
- Nayar J** (2022) Returning the anti-colonial to philosophy. In Adelman S and Paliwala A (eds), *Beyond Law and Development: Resistance, Empowerment and Social Injustice*. London: Routledge.
- Norris P** (2023) Cancel culture: Myth or reality? *Political Studies* 71(1), 145–174.
- Pahuja S** (2011) *Decolonising International Law: Development, Economic Growth and the Politics of Universality*. Cambridge: Cambridge University Press.
- Pitts AJ** (2017) Decolonial praxis and epistemic injustice. In Kidd IJ, Medina J and Pohlhaus G (eds), *The Routledge Handbook of Epistemic Injustice*. London: Routledge.
- Quijano A** (2000) Coloniality of power, Eurocentrism, and Latin America. *Nepentla: Views from South* 1(3), 533–580.
- Quijano A** (2007) Coloniality and modernity/rationality. *Cultural Studies* 21(2–3), 168–178.
- Renzo M** (2019) Why colonialism is wrong. *Current Legal Problems* 72(1), 347–373.
- Robins N** (2006) *The Corporation that Changed the World: How the East India Company Shaped the Modern Multinational*. London: Pluto Press.
- Said EW** (1993) *Culture and Imperialism*. New York: Vintage Books-Random House.
- Said EW** (2003) *Orientalism*. London: Penguin Books.
- Santos BS** (2002) *Toward a New Legal Common Sense: Law, Globalization and Emancipation*. London: Butterworths LexisNexis.
- Santos BS** (2007) Beyond abyssal thinking: From global lines to ecologies of knowledges. *Review (Fernand Braudel Center)* 30(1), 45–89.

- Santos BS** (2018) *The End of the Cognitive Empire: The Coming of Age of the Epistemologies of the South*. Durham, NC: Duke University Press.
- Simmons AJ** (2001) On the territorial rights of states. *Philosophical Issues* **11**(1), 300–326.
- Spivak GC** (2010) Can the subaltern speak? In Morris R (ed), *Can the Subaltern Speak? : Reflections on the History of an Idea*. New York: Columbia University Press.
- Stilz A** (2015) Decolonization and self-determination. *Social Philosophy and Policy* **32**(1), 1–24.
- Swinburne R** (1995) Thisness. *Australasian Journal of Philosophy* **73**(3), 389–400.
- Talbot I** (2007) The Punjab under colonialism: Order and transformation in British India. *Journal of Punjab Studies* **14**(1), 3.
- Tuhiwai Smith L** (2021) Colonizing knowledges. *Decolonizing Methodologies: Research and Indigenous Peoples*, 1st edn. London: Zed Books, 67–90.
- Valentini L** (2015) On the distinctive procedural wrong of colonialism. *Philosophy & Public Affairs* **43**(4), 312–331.
- Warren W** (2016) *New England Bound: Slavery and Colonisation in Early America*. New York: Liveright Publishing Corporation.
- Ypi L** (2013) What's wrong with colonialism. *Philosophy & Public Affairs* **41**(2), 158–191.
- Zinn H and Arnove A** (2004) *Voices of a People's History of the United States*. New York: Seven Stories.