International Journal of Law in Context (2025), 1–19
doi:10.1017/S1744552325100074

§

SPECIAL ISSUE ARTICLE

Against temporal abstractions: the battle for colonial and climate reparations in international law

Eliana Cusato

Faculty of Law, University of Amsterdam, Amsterdam, The Netherlands
Email: e.t.cusato@uva.nl*

Abstract

This article brings together different strands of literature to explore how time operates in international law as a technique of inclusion and exclusion. The question of reparations for enduring colonial and ecological injustices provides a useful entry point to examine, at a more granular level, the temporal foundations of the field and their distributive outcomes. Concepts of restitution, compensation, satisfaction as well as the doctrine of causation in the law of state responsibility, encode a specific understanding of time. This understanding, I argue, is embedded in a modernist worldview characterised by linear, abstract and universal notions of time. Calls for reparatory justice for colonial and climate wrongs attempt to defy and interrupt law's forward motion by binding together interconnected (though unequal) pasts, presents and futures. In examining how international law reacts to those claims, and manages the conflict between law's temporal abstractions and the concrete tempos of those seeking redress, this article reinvigorates the conversation on the politics of time in international law.

Keywords: temporality; reparations; linear time; colonialism; climate change

Emancipate yourself from mental slavery;
None but ourselves can free our minds.
Have no fear for atomic energy,
Cause none of them can stop the time.[1]

1 Introduction

Law and global governance are intimately entangled with time (Gordon 2019). Both in its spectacular and mundane operation, law uses temporal notions and orientations to define, construct and regulate distinct transnational relationships (Mawani 2014; Greenhouse 1989). Therefore, a critical investigation of the 'Global', and the role of the legal imagination in its construction (Koskenniemi 2021), cannot avoid engaging with its temporal dimensions – how time is produced, contested and disputed. While often assumed rather than problematised, the

*This article has had a long genesis and benefitted from the insightful comments of the reviewers and the participants at the Workshop 'What is "the Global"? Reassembling International Authority in Space and Time'. I am particularly grateful to Nikolas Rajkovic for conceiving the Workshop and curating this Special Issue. I wish to thank also Daniel Bertram, Julia Dehm, Lucas Lixinski, Marie Petersmann, and Valeria Vazquez Guevara for their generous engagement with different versions of this piece. The usual disclaimer applies.

[1]Bob Marley and The Wailers, 'Redemption Song'.

interaction of law and time has received increased academic attention in recent years, thanks to a prolific debate in socio-legal studies (Chua 2021; Ranchordás and Roznai 2020; Beynon-Jones and Grabham 2019; Grabham 2016; Valverde 2015; Sullivan 2014). Building upon a rich intellectual tradition, this literature has shown how the conceptualisation of time as a linear and measurable entity emerged in a specific historical moment in Europe, under the pressure of modern capitalist and imperialist forces (Thompson 1967; Hassan 2009; Hom 2010; Adam 2002). Critiques of 'White time' (Mills 2014) have become essential tools for interrogating the social and legal practices that maintain oppressive structures or frame particular configurations of gender and race as 'timeless' or 'modern' (Beynon-Jones and Grabham 2019, p. 5). In addition to macro-level analyses, studies at the intersection of law, anthropology and sociology have illuminated how time operates in distinct legal fields – for instance, migration and criminal law – as a technique of inclusion and exclusion (Stonks 2022; Chowdhury 2017).

In challenging the view of time as something external to the legal field, and showing how legal norms, procedures and discourses are involved in reinforcing distinct temporal imaginaries, recent socio-legal analyses invite us to consider the relationship between law and time as contingent, subject to contestation and redefinition. This, in turn, compels legal scholars to reflect not only on the (well-established) role of law in the perpetuation of social, economic and ecological exclusions, but also to explore the possibilities of legal transformation through thinking about time. If, as this article suggests, time is part of the structural features of the international legal imagination that have shaped our 'global' reality in such a way that may restrain present and future endeavours (Saunders 2022, p. 476; Koskenniemi 2021, p. 956), foregrounding time within legal arguments may assist us in thinking about how to transform law into a discipline capable of relating differently to the world.

These insights have, until now, found little resonance in international law. When it comes to international law, the notion of time as an abstract, measurable and linear entity dominates the professional imagination, as well as the practice and interpretation of many subfields of international law – one of the best examples being international human rights law (McNeilly and Warwick 2022). Over the past few years, the politics of time (or *chronopolitics*) (Wallis 1970; Innerarity 2012) has gathered increased interest in international legal scholarship, and important contributions have been made to the debate (Johns 2016; Gordon 2021; D'Aspremont 2022; Staggs-Kelsall 2022). However, existing analyses tend to focus on distinct regimes (Lixinski 2019; Dehm 2022; McNeilly and Warwick 2022) or pay little attention to the distributive outcomes of the relationship between legality and time (Polackova-Van der Ploeg, Pasquet and Castellanos-Jankiewicz 2022). Whereas the broader teleological orientation of the discipline and the associated civilising narrative have been exposed by post-colonial, feminist, queer and Marxist legal scholars (Tzouvala 2020; Parfitt 2019; Kapur 2018; Skouteris 2010; Anghie 2005), the way distinct legal doctrines and procedures are infused with temporal assumptions and operate, at a more granular level, to legitimise certain forms of authority and distributive consequences still remains unexplored.

In reaction to these gaps, this article brings together diverse strands of literature to advance current understandings of the political, economic and ecological stakes involved in the relationship between international legality and time. It does so by focusing on the temporalities of reparations as encoded in the law of state responsibility.[2] Why reparations? To begin with, time is

[2]This article employs the terms time and temporality (mostly in its plural form, i.e. temporalities), although it recognises that they have distinct meanings. Time is commonly used in the academic literature to refer to universal time, clock time or measurable time. In contrast, temporality is time that manifests itself in human existence – for example, 'lived time'. Because human experiences of time are multiple and diverse, the plural form 'temporalities' is more accurate. Further, clock/calendar time is a time that moves forwards – that is, linear time. Temporality has no direction, terms like past, present and future depend on the person or groups that refer to these temporal markers and do not have a general linear trajectory. See, generally, Couzen Hoy (2012). This article also uses the terms reparations, reparative justice and redress interchangeably, although it is important to acknowledge that there are distinctions underpinning these concepts. The author thanks the reviewer for drawing attention to this important aspect.

https://doi.org/10.1017/S1744552325100074 Published online by Cambridge University Press

central to the theory and practice of reparations. Legal notions of restitution, compensation, satisfaction as well as the doctrine of causation all draw their meaning from a specific (i.e. Western, linear, measurable) conceptualisation of time. As I will argue, this has implications for how the relationship between past, present and future is legally construed, and consequently for whose lives are considered valuable (Butler 2010). But there is more to it.

In order to explore the possibilities of unsettling international law's temporal imaginaries, I situate my intervention within recent scholarly debates on reparatory justice for the evils of colonialism and the slave trade (van Arnoud 2023; Schwarz 2022; Stefanelli and Lovall 2021; Bhabha, Matache and Elkins 2021; Forrester 2019), and invocations of climate reparations for today's unequal precarities linked to historical emissions of the Global North (Riley-Case 2023; Táíwò 2022; Meyer and Pranay 2017). The past decade has seen increased political mobilisation, both at the domestic and international levels, around questions of reparative justice for the persistent harms caused by colonialism and its extractive logic (Special Rapporteur Tendayi Achiume 2019; Ta-Nehisi Coates 2014).[3] Temporal strategies and arguments pervade the reparations debate. Claims for colonial reparations articulate a counter-hegemonic narrative of self and community and, on that basis, demand redress for historical injustices that continue to uphold White privilege in the present day in the form of social, ecological and economic unequal exchanges (Westley 2005, p. 82). According to these visions, past, present and future are not different timescales – they are inextricably entangled. Implicit is a recognition of how histories of colonialism and racial capitalism are windows to the past but also constitutive of the present and the future (Nesiah 2022; Mutua 2021). Advocates for reparatory justice point out how traces of colonial injustices persist in present-day legal, political, economic and ecological arrangements, including the systems for transmission of property, wealth, status, authority and power (Táíwò 2022).

Arguments for climate and colonial reparations raise the question of how international legal norms and discourses deal with 'Other' modes of relating to time that challenge the linearity and unidirectionality of 'White' time. The concept of *chronocenosis* proposed by Edelstein, Geroulanos and Wheatley is particularly helpful to theorise not simply the multiplicity but also the conflict of temporalities operating within a regime (2020, p. 4). Drawing upon the current debate around reparations, I suggest reconceptualising international law as the *medium* through which multiple temporalities intersect, and often clash, but that also allows for particular temporalities to become dominant in specific contexts. Yet, as Renisa Mawani has pointed out, 'the presumed timelessness of law masks a heterogeneity of lived temporalities that law aspires to assimilate and obfuscate but which also *actively challenge* and *refuse* law's temporal claims' (Mawani 2014, p. 93). Supposedly homogenous temporal orders, like international law, are potentially fragile, as they hide a multiplicity of dissonant stories (Beynon-Jones and Grabham 2019, p. 21). What happens when these stories are uttered?

The thread of arguments I want to pull together tells a story of international law's creation of exclusions, on the one hand, and of alternative visions and resistance on the other (Agathangelou and Killian 2017). What concepts of time help us trace international law's global ordering? What is the significance of time to projects of climate and colonial justice? What can we learn about the nature of international law from alternative ways of narrating the temporalities of colonial and ecological injustices that resist the linearity of 'White time'? Or, to follow up on this Symposium's invitation and intuition, what becomes visible – and therefore relevant – when we open the 'circumferential logic' of international law (Burke 1969) to 'other' temporal accounts? These are undoubtedly complex questions that I can only begin to untangle in this piece.

In the first section, I set out the relationship between international law, specific ideas of time and universality by engaging with the work of legal and non-legal scholars who call attention to

[3]See, for example, the following initiatives: CARICOM Secretariat, '*Reparations for native genocide and slavery*'; Movement for Black Lives, '*Invest-Divest*'; Movement for Black Lives, '*Economic Justice*'.

https://doi.org/10.1017/S1744552325100074 Published online by Cambridge University Press

the violence resulting from the imposition (and occasional acceptance) of Western temporal frames and epistemologies as the 'standard', including the neglect of 'Other' histories and perspectives (Spivak 1988; Chakrabarty 2000; Rao 2020). Still, the universal promise of international law is based on the assumption that it is possible to include within its atemporal, future-oriented narrative of modernity and progress those who were previously excluded. Foregrounding time, I propose, sheds new light on the old debate on the double-sided quality of international law – its exclusionary logics as well as the emancipatory potential it seems to hold (Gathii 2021). In the second section, I examine the reparations regime as codified in the International Law Commission's (ILC) Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA). I argue that the rules on reparations represent a form of temporal ordering that reinforces a linear notion of time, which has fundamental normative and material implications for how international law deals with the enduring legacies of colonial abuses.[4] I show, in particular, how the temporal dimensions of the doctrine of causation work to exclude harms that are temporally 'too remote' to qualify as legally relevant. The third section builds upon ongoing debates on climate and colonial reparations to illuminate the *conflict* between international law's temporal abstractions and the embodied temporalities of communities seeking redress for intersecting socio-ecological injustices. These counter-hegemonic initiatives to reconfigure reparations pose key challenges to the conventional spatiotemporal coordinates of the 'Global'. Yet, understanding temporal linearity as part of the field's broader commitment to stability and predictability, I argue that the legal doctrine of reparations runs counter to the idea of continuity between pasts and presents, and to the fluid relationship between different temporal markers that are advanced by radical demands for colonial and climate repair. This warns against international law's capacity to meaningfully account for the manifold afterlives of colonialism and slavery in the racial capitalist present (Gevers 2023).

A clarification is needed. In exposing the field's dominant temporal orientations, my purpose is not to suggest that international law should simply incorporate different temporal concepts, representations and practices. This is not a call for inclusion and recognition within the existing structures of international law (Miller 2021; Young 2022). Rather, it is a call to acknowledge the tension in 'our turn to universality' (Lindgren 2023; Pahuja 2011; Otto 1997). If time is collective and contested (Beynon-Jones and Grabham 2019), and if new political configurations require new temporal foundations (Edelstein, Geroulanos and Wheatley 2020, p. 3), the overarching question raised in this article is how legal times, and their underlying epistemological and ontological assumptions, could be reconfigured. In grappling with this question – but without offering a definite answer to it (the reader is warned) – the article ultimately acknowledges the importance of temporal ruptures, modes of resistance and struggles over conflicting temporal experiences. These acts of defiance, against the law, by means of law and through law to redefine the temporality of a legal order (Chua 2019, p. 280) may expand the legal imagination and contribute to the enactment of more just presents and futures.

2 Time in international law: linearity, colonial authority and temporal 'Othering'

Time is often cast as international law's background or as the setting for international legal relations and practices (Johns 2016, p. 42). International law – as a discipline, practice and normative order – presents itself as atemporal or temporally neutral (Polackova Van der Ploeg and Pasquet 2022, p. 1). Yet, as observed by Fleur Johns, 'international law is [also] a shaper of time and a connector and divider of times' (Johns 2016, p. 43). International law has a productive function vis-à-vis time: it sequences time and distributes humans and other beings within those

[4]On the problematic usages of the term *legacy* see Enright (2018, p. 49), arguing that 'legacy is both something transmitted or inherited, perhaps unexpectedly, from the past and something to be bequeathed to live on in the future. Legacies do not only signify death or ending, but the task of carrying on and working through'.

https://doi.org/10.1017/S1744552325100074 Published online by Cambridge University Press

sequences, on the basis of narratives of progress, modernity and development (Parfitt 2017). In construing temporalities that are primarily (though not exclusively) oriented towards the future, international law is deeply rooted in the Western political imaginary, of which Western time is a crucial component (Vanhullebusch 2022).

In a fascinating sociohistorical exploration of the emergence in Europe – and subsequent global dominance – of linear conceptions of time, Carol Greenhouse shows how Christian theology and secular institutions (the monarchy, common law and juries) popularised linear time, making it the 'domain of the everyday' (Greenhouse 1989, p. 1650). The concept of linear time, understood as the segment between creation and Judgment Day, was initially a theological concern and became laicised in a long process, which included institutional and social changes in public life and thought, as well as the invention of the mechanical clock in 1354. Common law, which was developed during that period, reflected the logic of linear time through its invocation of precedents, the commitment to reforms and the recognition of individual rights, thus playing a crucial role in the institutionalisation of linear time (Greenhouse 1989, p. 1640; Beynon-Jones and Grabham 2019, p. 19).

In parallel to the colonisation of space, the imposition of Western temporal routines upon indigenous and non-European peoples unfolded over the centuries, supported by advances in technology and developments in physics (Mawani 2014, p. 74; Ogle 2015). Non-linear temporalities prevalent in Hindu, Australian Aboriginal and Indigenous American cultures were perceived as incompatible with the colonisers' attitude towards work, order and productivity (Nanni 2012). The creation of the myth of the lazy native was part of the stigmatisation of non-European working and temporal habits (Donaldson 1996) – and we see echoes of that in contemporary narratives about Southern peoples. The project of 'civilising' colonised people relied on the suppression of competing temporal rituals in order to impose Western temporal practices, such as the seven-day week and the twenty-four-hour day (Nanni 2012, p. 3). Even within Europe, until the eighteenth century, there were different 'social times', which disappeared as national time standards supplanted local practices and Britain established herself as the global hegemon (Birth 2018, p. 198). At the International Meridian Conference in 1884, two important resolutions were passed: one establishing a prime meridian running through Greenwich, England, and one deciding that the universal day would start at midnight at Greenwich's meridian (Birth 2018, p. 202). The governance of time thus became the ultimate expression of rationality, imperial authority and supremacy, enabling the centre to rule over the peripheries from afar (Mawani 2014, p. 75).

Although the imposition of Western time was often contested and rejected by colonised and Indigenous peoples, as observed by Dipesh Chakrabarty among others, the authority of universal Western time has been essential to supporting global histories of capitalism as well as prevailing conceptions of the modern political subject (Chakrabarty 2000; Mbembe 2001). To be modern, one had to embrace the Western approach to time (Mitchell 2000). Therefore, it was not only ruthlessly prescribed as the norm for colonial subjects but also self-imposed by a number of societies that saw it as a precondition to becoming industrial, civilised and modern nations; towards the end of the nineteenth century, for example, Japan and Russia proceeded to 'Westernise' their social relations of time (Adam 2002, pp. 16–17). From their sacred origins to their secular dimensions, linear conceptions of time became associated with ideas of redemption, modernity and progress. These notions are at the core of the existing unequal normative order and continue to shape legal imaginaries and disciplinary debates in several fields (Cusato 2024).

International law was central to the institutionalisation of Western notions of time. Geoff Gordon has, notably, traced how global standardised time was encoded in and by the law in nineteenth century to advance particular political-economic interests – namely, the ends of trade, liberalisation and commodification (Gordon 2019, p. 1197). Gordon argues that the relationship between transnational law and time is one of mutual co-constitution: while transnational law has contributed to the construction of global standardised time, the inverse is also true; law and time

https://doi.org/10.1017/S1744552325100074 Published online by Cambridge University Press

work together as a 'technology' to advance a specific economic project and worldview. More specifically, Gordon suggests that, in international law, the establishment of a global standardised time was instrumental in ensuring the stability of contracts and the protection of private property.

A globally standardised time also served to affirm the ideology of progress that sustained the colonial project of international law. Drawing on Antony Anghie's *dynamic of difference* (Anghie 2005) and Sundhya Pahuja's *circular self-constitution* of the West and the other (Pahuja 2005), Gordon contends that the civilising mission was mobilised to justify the legal imposition of a universal time upon colonised peoples – though not without resistance. While international law encodes, and is encoded with, a particular temporal framework, the adoption of global standardised time is an example of international law's 'universalising effect in everyday life', establishing a common temporal standard across the globe (Gordon 2018, p. 395).

Yet, as anthropologists have shown, such universality is fictive, and imperialism has operated to erase competing, non-Western conceptions of time (Rifkin 2017; Fabian 2014). The adoption of Western time as the global standard has institutionalised a 'temporalisation of difference', which is the creation of a 'temporal Otherness' (Hunfeld 2022, p. 104). Through the construction of the 'Other' – as archaic, backward and lazy – the West was able to define itself as modern, progressive and productive. The 'Other', otherwise put, is what the West rejects, lacks and is not. However, in making Western temporal routines universal, the 'Other' cannot just be placed 'outside' of time, they also need to be inside of it. That is where international law comes in. As Pahuja has observed, in claiming for itself the character of the 'universal', the West needs to include what is excluded in the very act of self-constitution (Pahuja 2005; Said 1995). If the (temporal) values of the West are to be regarded as universal, the 'Other' has to be made part of the progress story and the promise of modernity associated with international law. The putative universality of international law, and of its temporal foundations, is based upon what Pahuja calls 'a cut' between self and Other, a cut that is subsequently erased as if it never happened.

These arguments have implications for how we think about projects aimed at achieving a presumed genuine universality by including 'Other' temporal conceptions within present legal structures. They also reinvigorate the discussion on the double-sided quality of international law and why the vernacular of international law continues to be used (and, often, intentionally misused) by grass-roots movements and the Global South to demand repair for colonial abuses and climate vulnerabilities – a point that I will address in the following sections. Further, in emphasising the violence that comes with the temporalisation of difference (van Marle 2003, p. 242), these debates draw attention to the distributive dimensions of the temporalities encoded in the law – an aspect that remains underexplored in international legal scholarship. As put by legal anthropologist Keebet von Benda-Beckmann:

> '[t]emporalities within law affect the specific way in which rights, obligations, and prohibitions entailed in legal relationships, institutions and procedures are positioned in time, and the differential ways in which these temporalities affect the outcome of legal procedures and decisions.' (2014, p. 4)

Whereas the literature canvassed above helps us trace the general temporal orientations of the field and their colonial roots, to advance the conversation, the next section moves towards a more fine-grained analysis of how distinct notions of time are embedded in legal doctrines – in this case, the rules of reparations as codified in the law of state responsibility. This will enable reflection on what is at stake when a linear, abstract, apolitical imaginary of time becomes the reference for dealing with the afterlives of colonial rule, including its ecological impacts on marginalised communities. This analysis will show that thinking through time allows us to problematise not only the epistemic and ontological premises of international law, but also its material outcomes. By so doing, it becomes possible to open spaces for alternative ways of narrating and experiencing temporality that resist the coloniality of 'White time', in Charles Mill's words (Mills 2014, 2020).

https://doi.org/10.1017/S1744552325100074 Published online by Cambridge University Press

In his critique of Rawlsian theories of justice, Mills argues that the 'Whiteness' of the temporality underlying dominant political theory is concealed by the 'putative atemporality' and alleged 'postraciality' of academic discourses (2014, p. 32). At the core of 'White time' lies precisely this presumed timelessness and racelessness, making it a temporality in which Whiteness functions as an abstract, universal ideal that is never explicitly acknowledged nor problematised. In construing Western temporality as a neutral medium and measure (Hutchings 2008, p. 6), temporal narratives of progress and linearity continue to be invoked today as the foundations of global justice debates (Mignolo 2011). If Western temporal notions are so entrenched in liberal justice theories, how can they be challenged – and possibly moved beyond?

3 The chronopolitics of reparations in the law of state responsibility

Speaking at the 2019 annual lecture of the *London Review of International Law*, Susan Marks provocatively claimed that 'in international law the subject of reparations is fraught with irony and disaster'.[5] She referred to the well-known passage in the *Factory at Chorzów* case, in which the Permanent Court of International Justice held that '[i]t is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form'.[6] She continued by noting that the German-owned factory at Chorzów, which the Court said was unlawfully expropriated by Poland, was a nitrogen factory – it produced environmentally destructive agricultural fertilisers. During World War I, it was a centre for the manufacture of munitions and explosives, while during World War II, the chemical process it pioneered was used in the development of Zyklon B gas (notoriously employed in Nazi concentration camps). Similarly, Antony Anghie has recently stressed that the entity claiming reparations in this case was a corporation whose property was expropriated by the state (Poland). Anghie draws attention to the economic interests at the origins of the 'Western law of reparations', as he calls it, which further demonstrate the deeply rooted, colonial foundations of the field (Anghie 2023).

In opposing the widely cited legal principle to the facts underpinning the court's decision, Marks and Anghie's arguments invite us to move beyond international law's abstractions and consider law as a 'material project [. . .] a practice that "creates" and "takes place" through the very materiality of the world' (Eslava and Pahuja 2012, p. 203). In a similar vein, the temporal choices underpinning legal norms shape people's position vis-à-vis the legal order by determining, for instance, who is a legal subject, whose injuries are recognised, and what possibilities for redress exist. Thinking in those terms about law and time enables us to appreciate the asymmetrical and distributive effects of temporal abstractions performed by and through international law in pushing those at the 'wrong end of history' (Humphreys 2014, p. 134) – their suffering and experiences – out of the legal frame.

In recent years, reparations have become a topical subject in international law and an increasingly important entry point for discussions on the legacies of colonialism and slavery (Nesiah 2019; Mutua 2021; Schwarz 2022). Whereas the declared aim of reparations is to mitigate – if not eradicate – the detrimental consequences of an internationally wrongful act, conventional readings recognise that they may serve other purposes, notably reinforcing the authority of the norm breached, acknowledging the injury and recognising the status of 'victim' (Gonzalez-Salzberg 2022). Even when the harm is irreparable, reparations are presented in terms of rebuilding trust in the rule of law, or as a way to provide closure on histories of violence (Nesiah 2022, p. 157). Reparations thus tend to be part of a universal account of 'reparative justice', which surfaced in liberal philosophy in the 1990s with the human rights movement and international transitional justice initiatives (Forrester 2019, p. 24). As Vasuki Nesiah observes, reparations are

[5]The video of the lecture is available online at https://www.youtube.com/watch?v=LXNJK9JUEu8.

[6]*Case Concerning the Factory at Chorzów (Germany v. Poland)*, Judgment (Jurisdiction), Permanent Court of International Justice, 26 July 1927.

https://doi.org/10.1017/S1744552325100074 Published online by Cambridge University Press

framed in liberal legal discourses as instruments of international human rights' promise for progress (Nesiah 2022). As such, they are part of a broader temporal narrative that envisages people moving away from rights-infringing pasts towards rights-respecting futures (Johns 2016; O'Connell 2022; McNeilly 2019).

Through a reading of the legal provisions on reparations, this section illustrates how 'Western' notions of linear and measurable time operate at a more granular level and are encoded in foundational legal doctrines, before considering their implications for reparative claims for colonial and climate injustices.[7] The focus is on the ILC's ARSIWA, which serves as the general framework, even though reparations are codified in other legal instruments – notably, the Basic Principles and Guidelines on the Right to a Remedy and Reparation.[8] While the latter are often discussed in the context of reparation for colonial harms, there is value in examining the generally applicable regime, given that many claims for colonial reparations have an inter-state dimension – for instance, the CARICOM Ten Point Plan for Reparatory Justice – and most considerations are applicable to both frameworks.

Article 31 of ARSIWA defines the obligation to make 'full reparation' in relation to the 'injury caused by the internationally wrongful act' (Paparinskis 2020). The concept of 'injury' is defined by the ILC as including 'any damage, whether material or moral, caused by the internationally wrongful act of a State'.[9] Legal scholars have examined the requirements, under Article 31(2), of a causal nexus between the internationally wrongful act and the damage (Plakokefalos 2015; Lanovoy 2022; Nollkaemper 2024). Irrespective of all other functions of state responsibility, reparation serves a clear remedial function, which gives causation a prominent role in the system (Plakokefalos 2015, p. 475).[10] ARSIWA Commentary emphasises that 'the subject matter of reparation is, globally, the injury resulting from and ascribable to the wrongful act, *rather than any and all consequences flowing from an internationally wrongful act*' (International Law Commission 2001, p. 92). The purpose of the doctrine of causation is therefore to restrict the extent of reparation.[11] As put by Hart and Honoré, whose theorisation on causation has informed the ILC's approach, the potential endless consequences of a wrongdoing are '*an embarras de choix* of literally cosmic proportions', to which the law must apply limiting principles to distinguish between reparable and irreparable injuries (1985, p. 110).

The position of the ILC on this point is that the injury should not be too 'indirect', 'remote' or 'consequential' to be the subject of reparation (International Law Commission 2001, pp. 92–93; Crawford 2005, pp. 204–205), although it is recognised that the 'requirement of a causal link is not necessarily the same in relation to every breach of an international obligation'.[12] Different

[7]While this article focuses on claims for colonial and climate reparations, existing doctrines are equally problematic in addressing other ecological harms that often unfold in non-linear and discontinuous ways, and that are spatially and temporally dispersed. See, for example, Adam (1998), Nixon (2011) and Cusato (2021).

[8]Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Res 60/147, 60th sess, UN Doc A/Res/60/147 (21 March 2006).

[9]See Article 31(2) of ARSIWA. The Commentary to Article 31, para 5, clarifies that the scope of this provision is to exclude from the scope of injury 'merely abstract concerns or general interests of a State which is individually unaffected by the breach'.

[10]It must be observed that causation plays a role not only in the assessment of reparation but also at earlier stages of the state responsibility analysis: it may impact the determination of the existence of a breach of an international obligation whenever the primary rule so requires, the allocation of responsibility between different actors involved in an internationally wrongful act, as well as the application of certain circumstances precluding wrongfulness.

[11]It is useful to recall the distinction between causation in fact and causation in law. Causation in fact entails judgments as to the necessity and/or sufficiency of the action in bringing about the relevant consequences; causation in law concerns the rules and principles that distinguish between the consequences that the wrongdoer ought to bear the burden of and those that they should not.

[12]ARSIWA, Commentary to Article 31.

https://doi.org/10.1017/S1744552325100074 Published online by Cambridge University Press

standards for the causal inquiry have been elaborated in the literature and caselaw, the most used being 'directness',[13] 'proximity' (Brownlie 1983, pp. 225–27; Hart and Honoré 1985) and 'foreseeability'.[14] The standard of a direct causal link presupposes a rather basic construction of causation; and while it substantially simplifies the adjudicator's task, limiting the scope of their inquiry, it is likely to result in an unjustified limitation of reparation to only those consequences that are an *immediate result* of the wrongful act, thus ignoring the pervasive effect of the violation on the injured party (Lanovoy 2022, p. 53). The proximity standard requires proof of a 'sufficiently close spatial and *temporal relationship*' between the injury and the internationally wrongful act for the reparation to be awarded (Lanovoy 2022, p. 57). Foreseeability considers whether the harmful outcome was foreseeable by the wrongdoer in the circumstances of an internationally wrongful act. It places greater emphasis on whether the wrongdoer could or should have reasonably expected certain consequences to *flow from* that breach (Lanovoy 2022, p. 58). Ultimately, while acknowledging that the question of remoteness of damage is not something that can be easily solved by the law, the ILC concludes that 'the notion of a sufficient causal link which is *not too remote* is embodied in the general requirement in Article 31 that the injury should be in consequence of the wrongful act, but without the addition of any particular qualifying phrase' (International Law Commission 2001, p. 93).[15]

Further, reparation has to 'wipe out all the consequences of the illegal act'[16] or to make the injured party 'whole'.[17] The fundamental aim of reparations is to restore, as far as possible, the *status quo ante* – that is, 're-establish the situation which would, in all probability, have existed if that act had not been committed'.[18] To do so, reparation takes distinct forms in a sort of *decrescendo*: restitution, compensation and satisfaction. Under Article 34 ARSIWA, these measures can be ordered 'either singly or in combination'. When restitution is 'materially impossible, or would 'involve a burden out of all proportion to the benefit deriving from restitution', the responsible party shall provide compensation.[19] Article 36(2) stipulates that the responsible state is 'under an obligation to compensate for the damage *caused*'. Compensation covers any 'financially assessable damage' and requires calculation and monetarisation of the injury.[20] Satisfaction operates as a last resort, if the injury 'cannot be made good by restitution or compensation', and is the more open-ended form of reparation; it 'may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality'.[21] Yet, Article 37 makes clear that 'satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State'.

In sum, reparations, as currently codified in international law, focus on injuries that are *causally linked to* an internationally wrongful act and that are *not too remote*, temporally and

[13]UN Security Council Resolution 687 (1991), para. 16. See also, International Court of Justice, *Bosnia Genocide (Merits)* [462]; International Court of Justice, *Armed Activities in the Territory of the Congo* (Democratic Republic of the Congo vs. Uganda) (Judgment on Reparation), 9 February 2022, para. 93 finding that '[i]n accordance with the jurisprudence of the Court, compensation can be awarded only if there is 'a sufficiently *direct and certain causal nexus* between the wrongful act [. . .] and the injury suffered by the Applicant, consisting of all damage of any type, material or moral'.

[14]See, for example, Portuguese Colonies Case (Portugal vs. Germany), RIAA Vol. II (Sales No. 1949.V.1), 1928, 1031; and Lighthouses Arbitration (Greece vs. France) (1956) 12 RIAA 155, 218.

[15]Of course, in interpreting the causation requirement, courts often take into consideration the substantive obligation breached by the state. See Nollkaemper (2024, p. 16). As observed by Brownlie, 'the principles governing remoteness of damage are not constants and must be related to the substantive principles of law which have generated responsibility in the first place' (Brownlie (1983, pp. 226–27).

[16]*Case Concerning the Factory at Chorzow (Germany v. Poland)*, 13 September 1928, PCIJ, Merits, p. 47.

[17]Opinion in the Lusitania Cases, decision of 1 November 1923, VII Reports of International Arbitral Awards 32, 39: '[t]he remedy should be commensurate with the loss, so that the injured party may be made whole'.

[18]*Factory at Chorzów*, Merits, p. 47.

[19]ARSIWA, Article 35.

[20]ARSIWA, Article 36.

[21]ARSIWA, Article 37.

https://doi.org/10.1017/S1744552325100074 Published online by Cambridge University Press

spatially. In addition, remedies are aimed at restoring the situation that existed before the violation or, at least, mitigating the harmful consequences ensuing from that violation. On the one hand, the doctrine of causation in the law of state responsibility is future-oriented, assuming a temporal succession of events;[22] on the other hand, reparations turn to the past to achieve their remedial function vis-à-vis the injured party. The situation that existed *before* the commission of the internationally wrongful act is thus the baseline to determine what can be restored and compensated. The past is relevant to establish the cause of the injury, as well as the scope and form of reparation awarded in the present. The international law of reparations thus appears both forward- and backward-looking, while incorporating a linear progression of time – meaning a time that moves from the material breach of international law to the remedial outcome, which follows from the imposition of state responsibility.[23] Yet, there is a difference in the weight given to each of the two temporal orientations. As I will further argue below, in this conceptualisation, it is the present that gives meaning to the past, and not the other way around.[24]

How do the legal provisions on reparations construct the relationship between past(s), present(s) and future(s)? What are the political and distributive implications of perceiving the passage of time primarily in those terms? How do the field's temporal orientations shape what is and what is not possible in terms of colonial and climate repair?

Before turning to these questions, a few clarifications are beneficial. Law connects the present with the past and future, either implicitly or explicitly in an array of ways – for instance, through basic legal concepts (e.g. the doctrine of precedent), procedural rules (e.g. on evidence production and evaluation in criminal and civil trials) and specific regulations (e.g. social security and property regulations) (von Benda-Beckmann 2014, p. 5). Further, while incorporating temporalities that are primarily (though not exclusively) oriented towards the future, the passage of time can have different consequences for the legality or illegality of acts. For instance, one may think of the notion of 'continuing acts', where the conduct in question commenced before the existence of the norm allegedly violated, but continued after it came into effect; or the statute of limitations, which bars claims after a certain period of time has passed since the injury (Johns 2016, p. 44; Morss 2014, pp. 53–54).

While the past is not entirely discarded in international law (for instance, through the doctrine of continuing violations), in the dominant imaginary, the present is the temporal anchor from which the relation to some broader temporal narrative can be made sense of Hunfeld (2022, p. 106). According to this view, the future holds the promise of human progress, whereas the past has a mere 'documentary value' (de Sousa Santos 2014, p. 74). The Western, linear notion of time makes the past an object of study that is 'experienced and conceptualised as not inhabiting the present' (Nuti 2019, p. 21). As observed in the previous section, the delinking between the past and the present in dominant discourses and knowledge practices is contingent and was imposed by Western powers upon Indigenous and colonised people, whose different experiencing of the past was interpreted as a 'complete unawareness of time', hence epistemically inferior (Hunfeld 2022, p. 106). As a result, the modern (Western) concept of a linear, pointillistic time as a 'collective singular' hinders our ability to think about the 'presence' or 'persistence' of the past (Bevernage 2008, p. 149; Bevernage 2012).

[22]A definition of causation in the Encyclopaedia Britannica describes it as the 'relation that holds between two temporally simultaneous or successive events when the first event (the cause) brings about the other (the effect)'. Available online at https://www.britannica.com/topic/causation.

[23]This argument holds true even when one considers the other consequences ensuing from the commission of an internationally wrongful act, including the obligations of cessation, guarantees and assurances of non-repetition (whenever appropriate), as well as the duties of cooperation, non-recognition and non-assistance in cases of serious breaches of peremptory norms.

[24]While writing in a different context, Anne Orford notes that '[i]nternational legal scholarship is necessarily anachronic because the operation of modern law is not governed solely by a chronological sense of time in which events and texts are confined to their proper place in a historical and linear progression from then to now. [. . .] The past, far from being gone, is constantly being retrieved as a source or rationalisation of present obligation' (Orford 2013, p. 171).

https://doi.org/10.1017/S1744552325100074 Published online by Cambridge University Press

When it comes to the international law of reparations, one effect of delinking the past and the present concerns the selection of the injuries to be redressed. The doctrine of causation in the law of state responsibility – and the standards of 'proximity', 'directness' and 'foreseeability' discussed above – reinforce the idea that only later links in the chain of injustices are a suitable focus for reparative demands. The same, to be fair, can be said of the doctrine of causation at the domestic level (Matsuda 1987). By excluding injuries that are too 'remote' or 'consequential', the international law of reparations reinforces a linear narrative of time, where past and present are neatly divided, disconnected frames. In relegating certain conduct to a distant past that is legally irrelevant to the present, legal time operates as a technique of exclusion. As such, the very question of causation in law and in reparation claims becomes vested with political and distributive implications (Chowdhury 2017; Matsuda 1987).

This bears consequences for understanding the relationship between international law and time in the context of the colonial and climate reparations debates. The production of temporal distance and the subordination of the past to the present are not objective facts to be assessed; they are legally constituted and, therefore, open to contestation. Whereas key doctrines – notably causation – reflect the historical, political and temporal assumptions that shape the international legal regime, they have also become an important point of contention and a strategic site of transnational legal mobilisation to loosen the link between individuated perpetrators and victims of climate harms (Petersmann 2025).

The next section turns to 'Other' ways of conceptualising the passage of time in relation to the socio-ecological afterlife of colonialism that challenge the legal reproduction of a temporal distance between past, present and future. These arguments allow us to explore the disruptive potential of claims for colonial and climate reparations – their capacity to interrupt law's forward motion and reopen the debate on how to deal with historical injustices that continue to uphold White privilege today in the form of social, ecological and economic uneven exchanges. Yet, they also raise hard questions about the possible political costs of resolving the legacies of colonial violence through international law.

4 Contesting time's forward motion through reparation claims and international law's double movement

Time is central to projects of climate justice. Climate change is about future prospects as much as it is about vulnerabilities inherited from the past. Since at least the 1990s, Small Island Developing States and communities disproportionately impacted by climate change have been advocating for structural changes to prevent further climate change and for redress for the harms already caused by it (Dehm 2020; Burkett 2009). Claims for climate reparations are often grounded in the understanding that today's ecological precarities cannot be separated from colonial relationships of racial domination and capitalist exploitation (Special Rapporteur Tendayi Achiume 2019). As such, they highlight continuities with the imperial past while articulating an emancipatory vision of the future based on radical social transformations. The Chair of the CARICOM Reparations Commission, Professor Hilary Beckles, explains that calls for reparations in the Caribbean respond to overlapping concerns: 'The injustices of the past now collide with the climate crisis of today. The Black community seeking to overcome the legacy of slavery [is] now suffering the effects of climate change. [. . .]. Reparatory justice [is] therefore the common demand'.[25] This understanding is also at the core of a speech delivered during the 2022 climate negotiations by Barbados Prime Minister, Mia Mottley. Rather than seeing reparations only in retrospective terms, she pointed out the systemic changes that are needed to alleviate climate injustices: drastically reducing emissions, subverting economic hegemony,

[25]Report of the Working Group of Experts on People of African Descent, Environmental Justice, the Climate Crisis and People of African Descent, UN Doc. A/HRC/48/78 (2021), para. 42.

https://doi.org/10.1017/S1744552325100074 Published online by Cambridge University Press

taxing fossil fuel companies and redressing multiple harms.[26] These measures emphasise the interconnectedness of enduring racial, colonial and ecological injustices (Riley-Case 2023, p. 54). They also raise the question of whether reparations could be an instrument to envision more liveable futures (Táíwò 2022).

Contemporary claims for reparatory justice for the legacies of colonialism, slavery and the climate catastrophe, notably the CARICOM Ten Point Plan and the 'Bridgetown Initiative',[27] seek to challenge dominant assumptions about modernity and backwardness, linear time and the vocabulary of progress that permeate the liberal debate. In highlighting the oppressive consequences of imposing a single Western temporality, arguments for climate and colonial reparations underscore that justice must account for multiple temporalities which bind together interconnected pasts, presents and futures – or multiple *durées* (Mbembe 2001, p. 14) – in emphasising the 'regularities of colonial violence' throughout a long history (Rifkin 2017, p. 19).

These claims resonate with debates in socio-legal, decolonial and queer studies that similarly point out that the past matters when thinking about reparative justice for colonial abuses, as it can very much remain in the present (Rao 2020; Mills 2014; Rifkin 2017; Freeman 2010). Saidiya Hartman's fundamental work on the 'time of slavery' is crucial to appreciating the interwovenness of the past and present (Hartman 2002). Hartman powerfully argues that the time of slavery 'negates the common-sense intuition of time as continuity or progression, then and now coexist, we are coeval with the dead' (p. 759). The 'haunting legacy of slavery' points to a horizon of loss, the enormity of which exposes all the limits of Western temporal narratives. The dismissal of slavery's enduring legacy is, on the contrary, framed in the language of progress and, in so doing, confirms the remoteness and irrelevance of the past (p. 771). Hartman suggests turning to the 'interminable grief engendered by slavery and its aftermath' to challenge the division between *then* and *now* (p. 758). Grief is described as opening the possibility for an emancipatory temporality that makes space for the 'intractable and enduring legacy of slavery'; tears create 'an opening for counter-history, a story written against the narrative of progress' (p. 769).

While demands for colonial and climate reparations highlight temporal multiplicities and continuities, as observed above, a different temporality is at play in international law and the doctrine of reparation, which poses problems when confronting the unequal legacies of colonial violence. Writing in relation to the Ovaherero and Nama colonial genocide, Zoé Samudzi argues that '[t]ime as a variable in the reparations equation pertains to the timescale created by Indigenous historiographies and memory, as well as the disparity between Indigenous time and colonial time: between Indigenous phenomenologies and the German preclusion of Indigenous peoples from modernity' (Samudzi 2020). Given the linearity of Western time, in their view, Germany is incapable of embracing a 'multidirectional memory', meaning one memory that 'accounts for and moves between past wrongdoings, present materiality and future world-makings'. The reasons of Germany's incapability are not only political, but fundamentally legal (Swart 2022).

Time in international law can only move forwards from the adoption of the relevant provisions, in this case the Genocide Convention in 1948, as the principle of intertemporal law limits state responsibility to those acts that were internationally wrongful at the time they were committed.[28] The contours and applicability of the principle remain controversial, and attempts have been

[26]Prime Minister of Barbados, World Leaders Summit, 27th Conference of the Parties to the UNFCCC (7 November 2022).

[27]See the 2022 'Bridgetown Initiative', available online at https://pmo.gov.bb/wp-content/uploads/2022/10/The-2022-Bridgetown-Initiative.pdf.

[28]Article 13 of the ARSIWA provides as follows: '[a]n act of a state does not constitute a breach of an international obligation unless the state is bound by the obligation in question at the time the act occurs'. The Commentary to Article 13 clarifies that, even in cases of violation of a peremptory norm, it is 'appropriate to apply the intertemporal principle to all international obligations, and Article 13 is general in its application'. But see *Aloeboetoe et al. v. Suriname*, Inter-Am. Ct. H.R. (ser. C) No. 15, para. 57 (1993), where the Inter-American Court of Human Rights decided that, as an exception to the rule of prohibition of retroactive application of peremptory norms to treaties, no treaty that contained provisions on slavery and thus today 'contradicts the norms of *ius cogens superveniens* [. . .] may be invoked before an international human rights tribunal'.

https://doi.org/10.1017/S1744552325100074 Published online by Cambridge University Press

made at 'reinterpreting' the rules on intertemporality on the basis of 'ethical considerations' (von Arnauld 2021; Special Rapporteur Tendayi Achiume 2019, p. 48–50). Further, scholars have pointed out that it is at least debatable whether Germany's extermination campaign in what was known as South West Africa was in line with the legal standards of the time (Goldmann 2024; Theurer 2023; Tzouvala 2023). Adding to those interventions, I suggest understanding intertemporality as part of international law's commitment to chronological linearity. Foregrounding time in legal debates around colonial reparations enables us to appreciate both the structural constraints that claims may face and the contingent nature of legal times, including the prohibition against retroactive law. Indeed, as noted by Makau Mutua, despite the prohibition against retroactive law, the international community could rewrite existing rules – or at least waive this legal formality – to reach backwards and punish past wrongs, as the Allied powers did with the Nuremberg trials, where they applied the novel offences of crimes against peace and crimes against humanity retroactively (pp. 23–24).

While this argument gestures towards the openness of international law, there is a tension – possibly a conflict – between Hartman's 'time of slavery' and the legally sanctioned temporal order which makes seeking a final resolution of such evils, if not impossible, perhaps undesirable. As put by Hartman herself, the afterlives of slavery demand something more ambitious than reparations: the remaking of society (Hartman 2008, p. 170). The enormity of loss, in other words, runs against attempts at 'closure' through legal processes and initiatives. In analysing recent debates in the UK to mark the bicentenary of the abolition of the slave trade in the British empire, Raul Rao similarly notes that 'the duration of the institution of slavery cannot adequately be described with reference to the temporal markers of abolition and emancipation' (Rao 2020, p. 123). Together with feminist and Black scholarship, Rao points out the need to trace the continuities between the plantation slavery and contemporary institutions, notably the prison-industrial complex (Rao 2020, p. 123; Davis, Dent, Meinders and Ritchie 2022). In so doing, Rao problematises the view, dominant among the British elite, that slavery is too temporally remote to be deserving redress in the present day. At the same time, considering the constitutive nature of the initial loss and the many afterlives of slavery, the question becomes whether a transfer of financial resources could account for the enormous debt owed, or rather sacrifice structural transformations for short-term gains (Rao 2020, p. 126). Zinaida Miller, in a similar vein, contends that reconsidering temporal governance in accordance with decolonial approaches requires a reconstruction of the past in a way that engages its continuity in the present rather than closes it off as repaired (Miller 2021, p. 874). In other words, what is emphasised in these approaches is that the trauma of the past is very much a problem for the present; thus, any particular moment of closure (for instance, through the offer of apologies, adjudication or monetary compensation) would produce traces or remainders for opening elsewhere (Knop and Riles 2017, p. 901).

There is a further aspect to consider. In the same way that the law is limited when it comes to recognise a past and imagining a future that challenge its structure, when confronted with disruptive claims (such as reparative claims), law reverts to generalisation and universal temporal concepts. By incorporating a forward-moving temporality, the provisions on reparation examined above have the capacity both to exclude and attempt to reconcile 'Other' temporalities within the field's dominant, teleological narrative of time. Through this double movement, international law eventually silences the *chronocenosis* – the collision between different temporalities – and reverts to abstractions. The international rules on reparations, similarly, seek to pacify the temporal conflict and enable the (responsible) state to reassert its compliance with international law. This is what Stephen Young calls the 'temporal trap' of human rights: as he notes with regard to the assertion of Indigenous peoples' rights, the international legal language enables the state to reconcile 'Other' temporalities into its discourse about modernity, progress and linear time (Young 2019, p. 84). A focus on time offers a useful entry point to reckon with the ambivalent character of international law – its endless promises and the constant deferral of material emancipation (Gordon 2021). It warns international lawyers to exercise caution in desiring to

https://doi.org/10.1017/S1744552325100074 Published online by Cambridge University Press

reach a quick (re)solution to enduring colonial and ecological violence through existing legal structures.

But what modes of apprehension of the past might produce more just presents and futures – beyond efforts at quick closure and to keep things always open (Knop and Riles 2017, p. 913)? Vasuki Nesiah offers some helpful guidance for thinking about the afterlives of slavery and alternative ways of engaging with legal temporalities (Nesiah 2023). Conscious of international law's limitations in dealing with structural forms of violence, Nesiah invites legal advocates to purposefully 'misuse' the doctrine of reparations and 'to subvert the ends' for which the concept was developed (Nesiah 2022). Similarly, Mari Matsuda argues that the legal norms on reparation could benefit from the method of 'looking to the bottom' (i.e. to the experiences of peoples of colour and victims of racial oppression) to overcome the trap of liberal legalism and develop a more radical theory of reparations (Matsuda 1987, pp. 362–97). While the established purpose of reparations is to repair and restore the situation that existed before the violation, the objective here becomes to denaturalise the *status quo ante* (Táíwò 2022, pp. 127–28). Reparations are concerned with redistribution more than remedy.

CARICOM's call for reparatory justice is one example of efforts to invoke international law, but also to contest its linear narrative of progress by illuminating the continuity of the past in the present. By working with and against the law (or by being both inside and outside it), and pushing the boundaries of foundational legal concepts, CARICOM reparations claim contributes to what Nesiah calls a 'politics of refusal' (Nesiah 2021, p. 186). Claims for reparations emanating from the Caribbean region may be understood as anti-imperial, because they refuse the practices of Global North states and financial institutions through calls for debt cancellation (Riley-Case 2023, p. 54). In illuminating the entanglement of racial, economic and ecological harms throughout time, these claims displace the unilinear notion of temporality embedded in the law, and call for reparative interventions that can never undo but help healing forms of 'evil beyond repair' (Scott 2018; Petersmann 2025).

The stakes involved in contemporary claims for climate and colonial reparations emanating from marginalised communities invite us to take seriously the temporal dimensions of legal doctrines and techniques. By encoding a linear understanding of time, the doctrine of causation in the law of state responsibility reinforces international law's commitment to stability and predictability (Polackova-Van der Ploeg 2022, p. 325) – a commitment that runs against the idea of continuity between pasts and presents. Restoration, compensation and satisfaction, construed as universal and atemporal legal concepts, incorporate a progressive narrative which narrows our understanding of the enduring, slow violence of colonialism and its extractivist logic (Nixon 2011). The imperial time scale embedded in the field, reduces colonialism and racial capitalism to the past because, simply put, 'we are all now post-colonial' (Samudzi 2020). In challenging temporal abstractions performed in and through law, radical demands for colonial and climate reparations attempt to slow down time's forward motion and produce 'a moment of disunity or delay which makes visible the past, impels and projects it, by lending it the quickness of the present' (Enright 2018, p. 50). While encountering important obstacles, these claims disturb the 'melancholy' of mainstream international law, create a crack in the frame, and make alternatives 'seeable' (Nesiah 2022, p. 186). Ultimately, in contesting the unjust temporal orders encoded in the law through a misreading of legal provisions, they help reconfigure the temporal assumptions entrenched in the field and amplify the possibilities latent in critical engagements with legal doctrines (Johns 2024).

5 Conclusion

This article explored the relationship between international law's temporal foundations – particularly its linearity and forward-moving character – and the question of reparations for

https://doi.org/10.1017/S1744552325100074 Published online by Cambridge University Press

enduring colonial and climate injustices. It called attention to the doctrines and techniques through which international law seeks to manage, and often to suppress, 'Other' temporalities. The concept of *chronocenosis* allows us to explore how multiple temporalities collide, sometimes tending towards conflict; to illuminate the political dynamics through which one (contested) temporal regime becomes dominant; and how authority is legally construed through the silencing of competing temporalities. Temporal abstractions performed through law enable the resolution of such conflicts and reaffirm international law's commitment to a forward-moving teleology. The term 'abstraction' comes from the Latin *abstrahere*, which means to 'take outside of', to 'extract', to 'separate from'. But what happens to what is left behind?

The linear, future-oriented temporal narratives of modernity and progress, with which international law has long been inflected, are increasingly under question. Invitations to push the temporal boundaries of the law – notably, Johns's invite to read international human rights law anachronistically and to amplify its 'radical untimeliness' (Johns 2016, p. 55), and Nesiah's call to 'misuse' reparations in international law – offer food for thought. Ongoing demands for colonial and climate reparations reinvigorate the conversation about the politics of time in international law, exposing the conflict between international law's commitment to temporal abstractions and the concrete *tempo* of those seeking redress; between the law's claim to certainty and closure and continuities of socio-ecological privileges and vulnerabilities.

My contention has been that studying how specific temporal imaginaries are encoded in and through legal norms and doctrines is helpful in appreciating, at a more granular level, how international law stabilises the prevailing distribution of power, authority and resources. Contributing to a deeper understanding of the workings of time in international law also has profound implications for critique and the possibilities of transformation. The promise of global justice through international law comes alive primarily as a series of rules that are imagined as flexible enough to be taken out, remade and then plugged back in to reinforce international law's progress story (Lindgren 2023). In a similar way, time can be manipulated – put together anew through the transformation of some regimes, the continuation or ignorance of others and the interruption of others (Edelstein, Geroulanos and Wheatley 2020, p. 28). International law's double-sided quality – its rigidity as well as its malleability – 'can cut both ways' (Mutua 2021, p. 30). An analysis of the multiple, conflicting temporalities of reparations ultimately illuminates how international law operates between continuity and change (Stolk 2023, p. 324) and how legal authority is made, unmade and remade across space and time.

Time is a daunting topic (Edelstein, Geroulanos and Wheatley 2020, p. 6); when one starts to pay attention to it, we are left with more questions than answers. How can we empower the claims of the past? How can we enact more just presents, while working within and against the law? And, perhaps the most daunting question of all: how can legal times be reconfigured? There are many research avenues that can be opened up by engaging with these questions. Moving forwards, an empirically focused study of how time is experienced by communities at the forefront of climate and colonial justice campaigns to identify the role of different practices in determining how time is legally constituted and contested seems a valuable research project. For the time being, I leave these questions to hang – or, better, to swing – like a pendulum clock.

References

Adam B (1998) *Timescapes of Modernity: The Environment and Invisible Hazards*. UK: Routledge.

Adam B (2002) The gendered time politics of globalisation: Of shadowlands and elusive justice. *Feminist Review* **70**, 3.

Agathangelou AA and Killian KD (eds.) (2017) *Time, Temporality and Violence in International Relations: (De)fatalizing the Present, Forging Radical Alternatives*. Routledge.

Anghie A (2005) *Imperialism, Sovereignty, and the Making of International Law*. UK: Cambridge University Press.

Anghie A (2023) Rethinking international law: A TWAIL retrospective. *European Journal of International Law* **34**, 7.

https://doi.org/10.1017/S1744552325100074 Published online by Cambridge University Press

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Res 60/147, 60th sess, UN Doc A/Res/60/147 (21 March 2006).

Bevernage B (2008) Time, presence, and historical injustice. *History and Theory* **147**(2), 49–167.

Bevernage B (2012) *History, Memory and State Sponsored Violence: Time and Justice*. UK: Routledge.

Beynon-Jones SM and Grabham E (eds.) (2019) *Law and Time*. UK: Routledge.

Bhabha J, Matache M and Elkins C (eds.) (2021) *Time for Reparations*. Philadelphia, US: University of Pennsylvania Press.

Birth K (2018) Standards in the shadows for everyone to see: The supranational regulation of time and the concern over temporal pluralism. In Beynon-Jones S and Grabham W (eds.), *Law and Time*, p. 196.

Brownlie I (1983) *System of the Law of Nations: State Responsibility (Part I)*. UK: Oxford University Press.

Burke K (1969) *A Grammar of Motives*. Oakland, US: University of California Press.

Burkett M (2009) Climate reparations. *Melbourne Journal of International Law* **10**, 509.

Butler J (2010) *Frames of War: When Is Life Grievable?*. UK: Verso.

Chakrabarty D (2000) *Provincializing Europe: Postcolonial Thought and Historical Difference*. Princeton: Princeton University Press.

Chowdhury T (2017) Temporality and criminal law adjudication's multiple pasts. *Liverpool Law Review* **38**, 187.

Chowdhury T (2020) *Time, Temporality and Legal Judgment*. UK: Routledge.

Chua LJ (2021) Interregna: Time, law, and resistance. *Law and Social Inquiry* **46**, 268.

Couzen Hoy D (2012) *The Time of Our Lives: A Critical History of Temporality*. Cambridge, MA, USA: The MIT Press.

Crawford J (2005) *The International Law Commission's Articles on State Responsibility. Introduction, Text and Commentaries*. UK: Cambridge University Press..

Cusato E (2021) *The Ecology of War and Peace: Marginalising Slow and Structural Violence in International Law*. UK: Cambridge University Press.

Cusato E (2024) Progress and linear time: International environmental law and the uneven distribution of futurity. *Heidelberg Journal of International Law* **84**, 865.

D'Aspremont J (2022) Time travel in the law of international responsibility. In Besson S (ed.), *Theories in International Responsibility Law*. UK: Cambridge University Press.

Davis A, Dent G, Meiners ER and Ritchie BE (2022) *Abolition. Feminism. Now*. UK: Penguin Books.

de Sousa Santos B (2014) *Epistemologies of the South: Justice against Epistemicide*. UK: Routledge.

Dehm J (2020) Climate change, 'slow violence' and the indefinite deferral of responsibility for 'loss and damages'. *Griffith Law Review* **29**(2), 220–252.

Dehm J (2022) The temporalities of environmental human rights. In McNeilly K and Warwick B (eds.), *The Times and Temporalities of International Human Rights Law*. UK: Hart.

Donaldson M (1996) The end of time? aboriginal temporality and the British invasion of Australia. *Time and Society* **5**(2), 187.

Edelstein D, Geroulanos S and Wheatley N (2020) Chronocenosis: An introduction to power and time. In Edelstein D, Geroulanos S and Wheatley N (eds.), *Power and Time: Temporalities in Conflict and the Making of History*. USA: University of Chicago Press.

Enright M (2018) "No. I won't go back": National time, trauma and legacies of symphysiotomy in Ireland. In Beynon-Jones M and Grabham E (eds.) *Law and Time*, p. 46.

Eslava L and Pahuja S (2012) Beyond the (post)colonial: TWAIL and the everyday life of international law. *Journal of Law and Politics in Africa, Asia, and Latin America* **45**, 195.

Fabian J (2014) *Time and the Other: How Anthropology Makes its Object*. USA: Columbia University Press.

Forrester K (2019) Reparations, history and the origins of global justice. In Bell D (ed.), *Empire, Race and Global Justice*. UK: Cambridge University Press, p. 22.

Freeman E (2010) *Time Binds: Queer Temporalities, Queer Histories*. USA: Duke University Press.

Gathii JT (2021) The promise of international law: A third world view. *American University International Law Review* **36**(3), 377.

Gevers G (2023) Slavery and international law. *American Journal of International Law Unbound* **117**, 71.

Goldmann M (2024) The ambiguity of colonial international law: Three approaches to the namibian genocide. *Leiden Journal of International Law* **37**(3), 580–607.

Gonzalez-Salzberg DA (2022) Queering reparations under international law: Damages, suffering, and (heteronormative) kinship. *American Journal of International Law Unbound* **116**, 5.

Gordon G (2018) Railway Clocks. In Hohmann J and Joyce D (eds.), *International Law's Objects*. UK: Oxford University Press.

Gordon G (2019) Imperial standard time. *European Journal of International Law* **29**, 1197.

Gordon G (2021) The time of contingency in international law. In Venzke I and Heller KJ (eds.), *Contingency in International Law: On the Possibility of Different Legal Histories*. UK: Oxford University Press, p. 162.

Grabham E (2016) *Brewing Legal Times: Things, Form, and the Enactment of Law*. Canada: University of Toronto Press.

Greenhouse CJ (1989) Just in time: Temporality and cultural legitimation of law. *Yale Law Journal* **98**, 1631.

Hart HLA and Honoré AM (1985) *Causation in the Law*, 2nd Edn. Oxford, UK: Clarendon Press.
Hartman S (2002) The time of slavery. *South Atlantic Quarterly* **101**, 757.
Hartman S (2008) *Lose your Mother: A Journey Along the Atlantic Slave Route*. USA: Macmillan.
Hassan R (2009) *Empires of Speed: Time and the Acceleration of Politics and Society*. The Netherlands: Brill.
Hom A (2010) Hegemonic metronome: The ascendancy of western standard time. *Review of International Studies* **36**(4), 1145.
Humphreys S (2014) Climate justice: The claim of the past. *Journal of Human Rights and the Environment* **5**, 134–148.
Hunfeld K (2022) The coloniality of time in the global justice debate: De-centering western linear temporality. *Journal of Global Ethics* **18**(1), 100.
Hutchings K (2008) *Time and World Politics: Thinking the Present*. Manchester University Press.
Innerarity D (2012) Chronopolitics: A theory of social rhythm. In *The Future and Its Enemies: In Defense of Political Hope*. Redwood City: Stanford University Press, pp. 77–89.
International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, with Commentaries (A/56/10), 2001 [ARSIWA].
Johns F (2016) The temporal rivalries of human rights. *Indiana Journal of Global Legal Studies* **23**, 39.
Johns J Organising international law. *Völkerrechtsblog*, 30 July 2024. doi: 10.17176/20240730-151952-0.
Kapur R (2018) *Gender, Alterity and Human Rights: Freedom in a Fishbowl*. UK: Edward Elgar.
Knop K and Riles A (2017) Space, time, and historical injustice: A feminist conflict-of-laws approach to the comfort women agreement. *Cornell Law Review* **102**, 853.
Koskenniemi M (2021) *To the Uttermost Part of the Earth: Legal Imagination and International Power 1300–1870*. UK: Cambridge University Press.
Lanovoy V (2022) Causation in the law of state responsibility. *The British Yearbook of International Law*. https://doi.org/10.1093/bybil/brab008.
Lindgren T (2023) Grounding ecocide, humanity and international law. In Mégret F, Natarajan U and Chapaux V (eds.), *Routledge Handbook on International Law and Anthropocentrism*. UK: Routledge.
Lixinski L (2019) Temporalities of international heritage law. In *International Heritage Law for Communities: Exclusion and Re-Imagination*. UK: Oxford University Press.
Matsuda M (1987) Looking to the bottom: Critical legal studies and reparations. *Harvard Civil Rights-Civil Liberties Law Review* **22**, 323.
Mawani R (2014) Law as temporality: Colonial politics and indian settlers. *UC Irvine Law Review* **4**, 65.
Mbembe A (2001) *On the Postcolony*. USA: University of California Press.
McNeilly K (2019) Are rights out of time? International human rights law, temporality, and radical social change. *Social and Legal Studies* **28**(6), 817–838.
McNeilly K and Warwick B (eds.) (2022) *The Times and Temporalities of International Human Rights Law*. UK: Hart.
Meyer LH and Pranay S (eds.) (2017) *Climate Justice and Historical Emissions*. UK: Cambridge University Press.
Mignolo W (2011) *The Darker Side of Western Modernity: Global Futures, Decolonial Options*. USA: Duke University Press.
Miller Z (2021) Temporal governance: The times of transitional justice. *International Criminal Law Review* **21**, 848.
Mills C (2014) White time: The chronic injustice of ideal theory. *Du Bois Review: Social Science Research on Race* **11**(1), 27.
Mills C (2020) The chronopolitics of racial time. *Time and Society* **29**, 297.
Mitchell T (2000) The stage of modernity. In Mitchell T (ed.), *Questions of Modernity*. USA: University of Minnesota Press, p. 7.
Morss J (2014) Riddle of the sands: Time, power, and legitimacy in international law. In Singh P and Mayer B (eds.), *Critical International Law: Postrealism, Postcolonialism, and Transnationalism*. Oxford University Press, p. 53.
Mutua M (2021) Reparations for slavery: A productive strategy?. In Bhabha J, Matache M and Elkins C (eds.), *Time for Reparations,* p. 19.
Nanni G (2012) *The Colonisation of Time: Ritual, Routine, and Resistance in the British Empire*. UK: Manchester University Press.
Nesiah V (2019) German colonialism, reparations and international law. *Völkerrechtsblog*, 21 November 2019. Available at https://voelkerrechtsblog.org/german-colonialism-reparations-and-international-law/
Nesiah V (2022) A double take on debt: Reparations claims and regimes of visibility in a politics of refusal. *Osgoode Hall Law Journal* **59**(1), 153–187.
Nesiah V (2023) Slavery's afterlives: Humanitarian imperialism and free contract. American Journal of International Law Unbound 117, 66.
Nixon R (2011) *Slow Violence and the Environmentalism of the Poor*. USA: Harvard University Press.
Nollkaemper A (2024) Causation Puzzles in International Climate Litigation. Amsterdam Law School Legal Studies Research Paper No. 2024-17, Amsterdam Center for International Law No. 2024-03.
Nuti A (2019) *Injustice and the Reproduction of History: Structural Inequalities, Gender and Redress*. UK: Cambridge University Press, p. 21.
O' Connell P (2022) Human rights futures. In McNeilly K and Warwick B (eds.), *The Times and Temporalities of International Human Rights Law*. UK: Hart, p. 212.

Ogle V (2015) *The Global Transformation of Time 1870–1950*. USA: Harvard University Press.
Orford A (2013) On international legal method. *London Review of International Law* **1**, 171.
Otto D (1997) Rethinking universals: Opening transformative possibilities in international human rights law. *Australian Year Book of International Law* **18**, 1.
Pahuja S (2005) The postcoloniality of international law. *The Harvard International Law Journal* **46**, 459.
Pahuja S (2011) *Decolonising International Law: Development, Economic Growth and the Politics of Universality*. UK: Cambridge University Press.
Paparinskis M (2020) A case against crippling compensation in international law of state responsibility. *Modern Law Review* **83**, 1246.
Parfitt R (2017) Newer is truer: Time, space, and subjectivity at the bandung conference. In Eslava L, Fakhri M and Nesiah V (eds.), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures*. UK: Cambridge University Press, p. 49.
Parfitt R (2019) *The Process of International Legal Reproduction: Inequality, Historiography, Resistance*. UK: Cambridge University Press.
Petersmann MC (2025) Rethinking climate harms in international law: A reparative approach to climate justice. forthcoming Leiden Journal of International Law.
Plakokefalos I (2015) Causation in the law of state responsibility and the problem of overdetermination: In search of clarity. *European Journal of International Law* **26**, 471.
Polackova-Van der Ploeg K (2022) International law through time: On change and facticity of international law. In der Ploeg V ***et al.*** (eds.), *International Law and Time,* p. 313.
Polackova Van der Ploeg KL, Pasquet L and Castellanos-Jankiewicz L (eds.) (2022) *International Law and Time: Narratives and Techniques*. Switzerland: Springer.
Ranchordás S and Roznai Y (eds.) (2020) *Time, Law, and Change: An Interdisciplinary Study*. UK: Hart.
Rao R (2020) *Out of Time: The Queer Politics of Postcoloniality*. UK: Oxford University Press.
Report of the Special Rapporteur on Contemporary Forms of Racism (2019) Racial Discrimination, Xenophobia and Related Intolerance, E. Tendayi Achiume, UN Doc. A/74/321, 21 August 2019.
Report of the Working Group of Experts on People of African Descent (2021) Environmental Justice, the Climate Crisis and People of African Descent, UN Doc. A/HRC/48/78, 2021.
Rifkin M (2017) *Beyond Settler Time: Temporal Sovereignty and Indigenous Self-Determination*. Duke University Press.
Riley-Case S (2023) Looking to the horizon: The meaning of reparations for unbearable crises. *AJIL Unbound* **117**, 49.
Said E (1995) *Orientalism: Western Conceptions of the Orient*. UK: Penguin Books.
Samudzi Z (2020) Reparative futurities: Thinking from the Ovaherero and Nama Colonial genocide. *The Funambulist Magazine* (30). https://thefunambulist.net/magazine/reparations/reparative-futurities-thinking-from-the-ovaherero-and-nama-colonial-genocide-by-zoe-samudzi.
Saunders A (2022) Law after dominium: Thinking with Martti Koskenniemi on property, sovereignty and transformation. Transnational Legal Theory 13(4), 475.
Schwarz K (2022) *Reparations for Slavery in International Law: Transatlantic Enslavement, the Maangamizi, and the Making of International Law*. UK: Oxford University Press.
Scott V (2018) Preface: Evil Beyond Repair. Small Axe vii 55.
Skouteris T (2010) *The Notion of Progress in International Law Discourse*. Switzerland: Springer.
Spivak GC 1988) Can the subaltern speak?. In Nelson C and Grossberg L (eds.), *Marxism and the Interpretation of Culture*. Urbana, p. 66.
Staggs-Kelsall M (2022) Disordering international law. *European Journal of International Law* **33**(3), 729.
Stefanelli JN and Lovall E (eds.) (2021) reparations under international law for enslavement of African Persons in the Americas and the Caribbean. In Proceedings of the Symposium of the American Society of International Law, 20–21 May, 2021.
Stolk S (2023) A vague reflection on value, or, the (im)possibility of radical imagination. In Feichtner I and Gordon G (eds.), *Constitutions of Value: Law, Governance, and Political Ecology*. Routledge, p. 321.
Stonks M (2022) *Grasping Legal Time: Temporality and European Migration Law*. UK: Cambridge University Press.
Sullivan G (2014) Transnational legal assemblages and global security law: Topologies and temporalities of the list. *Transnational Legal Theory* **5**, 81.
Swart M 'Pushed into the Burning Desert': German 'Reparations' to the Herero Through a Luxemburgian Lens, Critical Legal Thinking, 30 November 2022. Available at https://criticallegalthinking.com/2022/11/30/pushed-into-the-burning-desert-german-reparations-to-the-herero-through-a-luxemburgian-lens/.
Ta-Nehisi Coates (2014) The case for reparations. The Atlantic. Available at https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/.
Táíwò OO (2022) *Reconsidering Reparations*. UK: Oxford University Press.
Táíwò OO The Fight for Reparations Cannot Ignore Climate Change. Boston Review (10 January 2022). Available at https://www.bostonreview.net/articles/the-fight-for-reparations-cannot-ignore-climate-change/.

https://doi.org/10.1017/S1744552325100074 Published online by Cambridge University Press

Theurer K (2023) Minimum legal standards in reparation processes for colonial crimes: The case of Namibia and Germany. *German Law Journal* **24**, 1146.

Thompson EP (1967) Time, work-discipline, and industrial capitalism. *Past and Present* **38,** 56–97.

Tzouvala N (2020) *Capitalism as Civilisation: A History of International Law*. UK: Cambridge University Press.

Tzouvala N (2023) The alibis of history, or how (not) to do things with Inter-temporality. CIL Blog, 8 February 2023. Available at https://cil.nus.edu.sg/blogs/the-alibis-of-history-or-how-not-to-do-things-with-inter-temporality/.

Valverde M (2015) *Chronotopes of Law: Jurisdiction, Scale and Governance*. New York: Routledge.

van Marle K (2003) Law's time, particularity and slowness. *South African Journal on Human Rights* **19**, 239.

Vanhullebusch M (2022) China, confucian time and international law: A normative and behavioral account. In der Ploeg P.-V. ***et al.*** (eds.), *International Law and Time*, vol. **283**.

von Arnauld A (2021) How to illegalize past injustice: Reinterpreting the rules of intertemporality. *European Journal of International Law* **32**(2), 401.

von Arnauld A (2023) The third world and the quest for reparations: Afterword to the foreword by Antony Anghie. *European Journal of International Law* **34**(4), 787.

von Benda-Beckmann K (2014) Trust and the temporalities of the law. *The Journal of Legal Pluralism and Unofficial Law* **46,** 1.

Wallis GW (1970) Chronopolitics: The impact of time perspectives on the dynamics of change. Social Forces 49(1), 102.

Westley R (2005) The accursed share: Genealogy, temporality, and the problem of value in black reparations discourse. *Representations* **92**(1), 81.

Young SM (2019) The temporal trap of human rights. In McNeilly K and Warwick B (eds.), *The Times and Temporalities of International Human Rights Law*, p. 87.

Cite this article: Cusato E (2025). Against temporal abstractions: the battle for colonial and climate reparations in international law. *International Journal of Law in Context*, 1–19. https://doi.org/10.1017/S1744552325100074