WHITE SUPREMACIST
CONSTITUTION OF THE U.S.
EMPIRE-STATE: A SHORT
CONCEPTUAL LOOK AT THE
LONG FIRST CENTURY

Left Quarter Collective

ABSTRACT

Against the prevalent assumption that the United States is and has been
a nation-state, this article proposes to reconceptualize it as an empire-
state, a state encompassing hierarchically differentiated spaces and peoples.
In addition to being descriptively more apt, an empire-state approach
provides a firmer basis for understanding the United States as a racial
state, a state of white supremacy. Drawing on evidence from constitutional
law, I examine the early development of the U.S. empire-state, the long
19th century. The article demonstrates how U.S. state formation has
always entailed the racial construction of colonial spaces, specifically
“territories” and American Indian lands. Through an extended considera-
tion of Dred Scott v. Sandford, the 1857 Supreme Court case associated
almost exclusively with African Americans and hardly ever with empire, I
argue for a unified framework to analyze the different but linked racial
subjections of colonized and noncolonized peoples. The article concludes
with several implications of an empire-state approach to the United States.
The United States has never been a nation-state.
The United States has always been an empire-state.\(^1\)
The United States has always been a racial state, a state of white supremacy.

I am tempted to stop here, for fear of diminishing returns and out of embarrassment for sharing commonplace, even if not common, observations. At the risk of explaining the obvious, I would nevertheless like to make a case for their banality. My genuine hope is for the disappearance and obsolescence of what I write here— the quicker, the better. Analytically, I wish for my words to fade into the background, as the brute facts of the U.S. empire-state and white supremacy become commonsensical axioms for theoretical elaborations and empirical investigations. Politically, I look forward to the day when the notions of U.S. empire-state and white supremacy have only historical referents.

My strategy for this paper is simple and straightforward: I discuss several concepts and apply them in, by turns, broad and fine strokes to the case of the United States. None of the concepts or applications are, or should be, controversial in and of themselves. Taken together, they may cohere into something original and useful, particularly in my own discipline of sociology.\(^2\) I examine the early development of the U.S. empire-state, the long 19th century, drawing on evidence from constitutional law for two reasons. First, the Constitution, its initial framing and subsequent interpretations and amendments, provides and represents the basic foundation or architecture of the evolving U.S. state. Although my aim is not to assert their primacy in relation to other state institutions or nonstate actors, constitutions are undeniably a crucial component of modern state formation (Arjomand, 1992).\(^3\) Second, given the practical limitations of an article-length study, restricting the empirical purview to constitutional law furnishes a measure of coherence and concision to the discussion.\(^4\)

My intention is not to specify a new theory but to outline the basic elements of a framework upon which theorizing can take place. The emergent empire-state approach aims to bring together studies of race, the state, and empire, which is generally lacking with respect to the United States. It also allows us to make unified sense of, and see connections between, the divers histories of peoples who have been racially subjected to and have struggled against the U.S. empire-state, without overlooking significant differences and particularities. I begin with a few words on a few concepts and introduce the argument that the United States has always been an empire-state, not a nation-state. I flesh out the argument in the
subsequent sections, analytically separating out the two defining dimensions of colonialism: the hierarchical differentiation of spaces and of peoples. I show how U.S. state formation has always entailed the racial construction of colonial spaces, focusing on the acquisition and disposal of “territories” and on American Indian lands and sovereignty. Given the racial subjection of various peoples of the U.S. empire-state, which has been overwhelmingly, but mostly group-specifically, documented, I ask whether and on what basis we should study the imperial subjection of colonized and noncolonized peoples within the same framework, which I answer through an in-depth analysis of a counterintuitive Supreme Court case, *Dred Scott v. Sandford*. The paper concludes with several implications of the empire-state approach.

II

In their widely and justly celebrated *Racial Formation in the United States*, Omi and Winant ([1986] 1994) place the state squarely at the center of their analysis. More than two decades after its first publication, the book is still one of the rare exceptions to the ongoing mutual nonrecognition and disengagement between theories of racial formation and of state formation (Goldberg, 2002, pp. 2-4; James & Redding, 2005, p. 193; King & Smith, 2005, p. 79). Contra other theories of racial inequalities and domination, many of which emphasize, for instance, economic interests and relations, Omi and Winant foreground the political. The U.S. state, they argue, “from its very inception has been concerned with the politics of race” (Omi & Winant, 1994, p. 81). In their Gramscian perspective, the racial order at a given historical moment is “equilibrated by the state – encoded in law, organized through policy-making, and enforced by a repressive apparatus.” Periodically, especially since World War II, social movements may successfully pressure the state and destabilize the racial order, and the state responds variously to establish a new “unstable equilibrium,” a new racial order (*ibid.*, p. 84). “Inherently racial,” the state, for Omi and Winant, is “increasingly the preeminent site of racial conflict,” and “race will always be at the center of the American experience” (*ibid.*, pp. 5, 82).5

I agree that the U.S. state is inherently racial and, in all likelihood, will always be racial. As “inherently” and “always” signal, Omi and Winant are not proffering purely empirical statements about the U.S. state but theoretical claims about its intrinsic character. But on what basis can we make such assertions, and how has the U.S. state been racial? I suggest that the questions remain considerably unanswered and unanswerable because
the U.S. state is almost universally assumed to be, and to have been, a nation-state.6

Let us first define the constituent, hyphenated terms. A nation is, as Benedict Anderson memorably put it, “an imagined political community – and imagined as both inherently limited and sovereign.” A categorical identity, it entails direct membership and is “always conceived as a deep, horizontal comradeship” (1991, pp. 6, 7; emphasis added).7 States are “coercion-wielding organizations that are distinct from households and kinship groups and exercise clear priority in some respects over all other organizations within substantial territories” (Tilly, 1990, p. 1). Modifying Max Weber’s classic definition, Charles Tilly concurs on the basic importance of coercion and territory but scales back on the idea that the state claims a monopoly of coercion or its legitimacy.8

My contention is that, for the United States, the political community to which the state has been coupled has never been the nation. I do not mean in the trivial sense that the nation-state is an ideal type no actual nation-state fits precisely but that the United States has not been a nation-state in a fundamental, square-peg-in-a-round-hole sense. By virtue of the assumed internal horizontality of nations, nation-states imply politically homogeneous populations of citizens, or state members. As a corollary, territories over which nation-states claim sovereignty are politically homogeneous spaces, symbolized on atlases by evenly colored, neatly bounded blocks. The United States has never come close to achieving these political “ideals” and, in all probability, is constitutionally, both literally and figuratively, incapable of doing so.

The polity to which the U.S. state has always laid claim in fact, if not in rhetoric, is an empire. Unlike nation-states, empire-states (Cooper, 2005) are not horizontally homogeneous but hierarchically differentiated. Empire-states entail the usurpation of political sovereignty of foreign territories and corresponding populations. In terms of geography, an empire-state encompasses spaces of “different degrees of sovereignty” (Stoler, 2006, p. 128), territories of unequal political status. In terms of belonging or membership, the peoples of an empire-state effectively, through de jure and de facto practices, have differential access to rights and privileges. These conditions are what George Steinmetz (2008, p. 591) refers to as the “sovereignty” and, following Partha Chatterjee (1993), “rule of difference” criteria of colonialism, the formal supplantation and exercise of sovereignty over territories and peoples. Here, I would add a caveat to the rule of difference criterion. Steinmetz writes, “Where conquered subject populations are offered the same citizenship rights as conquerors in exchange for
their assimilation into the ruling culture, we are better off speaking of modern state making rather than colonialism” (2005, p. 348; see also Cooper, 2005, p. 27). But if we were to view the rule of difference from the vantage point of subject populations, like the indigenous peoples of North America and Hawai‘i, we would find that the imposition of “equal” citizenship can be and, by many, is seen as a practice of colonial rule (Brunelle, 2004).9 In other words, without the consent of the colonized, unilaterally ridding the rule of difference through assimilation rather than decolonization may not eliminate but instead reproduce and even deepen colonial domination. After all, extermination and assimilation were but two poles of the U.S. state’s genocidal colonial policies toward American Indians in the 19th century and beyond, summed up by the two infamous quotes “The only good Indian is a dead Indian” and “Kill the Indian in him and save the man” (Wolfe, 2006, p. 397).10

III

“The main battle in imperialism is over land, of course…”

— Edward Said (1993, p. xii)

“I am persuaded no constitution was ever before as well calculated as ours for extensive empire and self-government.”

— Thomas Jefferson (1809 letter to James Madison as quoted in Williams, 1980, p. vii)

The continual misrecognition of the United States as a nation-state, not least by the state itself, has been integral to U.S. nationalism, and its attendant sense of exceptionalism, and thereby to the formation, fortification, and imperception of the United States as an empire-state.11 As Steinmetz (2006, p. 137) notes, “American power…seems continually to generate the mirage of its own disappearance.” This is not, however, due to “the deceptively informal character of American empire since the early nineteenth century” — that “American power…does not typically annex and permanently occupy foreign lands — with the important exceptions of the westward expansion of the continental state, Hawai‘i, and the colonies created from the spoils of the Spanish-American War” (Steinmetz, 2006, pp. 136, 137; emphasis in original).12 Although the informal, or nonterritorial, facet of U.S. empire has been immense,13 the “important exceptions” have been important but far from exceptional or uncharacteristic, which is readily apparent when we take in their spatial expanse: the overland and overseas annexations of the long 19th century stretched from the original 13 states westward to the Eastern Hemisphere, northward
to above the Arctic Circle, and southward to below the equator and, with certain exceptions like the Philippines and the Panama Canal Zone, are still under the formal jurisdiction of the United States.

Many may object that the great majority of the territory under U.S. sovereignty are the 50 states, which are all of equal standing and in which the U.S. Constitution fully and evenly applies, and that the only true and brief foray into formal empire-building by the United States was at the turn of the last century consequent to the Spanish–American War. Obsessed with comparisons to what they imagine to have been the prototypical (i.e., European) empires, the British above all, academic and nonacademic commentators alike eagerly point out how the United States has been and is exceptional. Of course, a careful examination would reveal an equal number of empires and exceptions (and ideologies of exceptionalism), as well as repertoires of ruling practices that greatly overlapped, and varied, between empires and changed over time within them. No one, or one type of, empire-state epitomizes the category to the exclusion of others, and the United States is no exception.

As troubling as the persistent ideology of exceptionalism is how the U.S. state's own practical categories of colonial rule frequently and insidiously double as analytical categories. Foremost, in much of the literature on the U.S. empire, the legal distinction between incorporated and unincorporated territories, drawn by the Supreme Court in the *Insular Cases* in early 20th century, marks the analytical distinction between metropole and colony: states and incorporated territories, on the one hand, and unincorporated territories, on the other (see discussions below). Therefore, Guam, the Philippines (up to 1946), and Puerto Rico are treated as bona fide colonies, whereas Hawai‘i, Alaska, and all parts of what are now the 48 contiguous states are not.

The uncritical reproduction of U.S. exceptionalism and state categories has a couple of related consequences: the temporal depth and spatial breadth of the U.S. empire-state are routinely and often grossly underestimated, and its history becomes oversimplified. As a countermeasure, I propose that we see less like the state and more like the ruled. In the context of the U.S. empire-state, such an optical shift must begin with the indigenous. From the vantage point of the Native peoples of North America, the birth of the United States as a state was at once the birth of the United States as an empire-state. If we accept that England had established colonies in North America, usurping the political sovereignty of Native American peoples and territories, what changed after the colonies broke away and founded a state, or a federation of states, of their own? For the indigenous, the United States immediately became one more empire-state
with which they had to contend. After all, as Christopher Tomlins (2001, p. 365) reminds us, the colonists declared independence, “in large part, in order to free themselves from imperial constraints that restrained their own colonizing (or to use the preferred anodyne phrase, their own ‘westward movement’).”

As already indicated, the metropole/colony distinction is of limited utility in analyzing the U.S. empire-state. In part, this may have to do with its principally overland character. But much more than that, the vulgar and deadly immodesty of the state’s and its white citizens’ colonial ambition rendered metropole and colony largely overlapping and, at times like the present, nearly coterminous. Taken as a whole, the abiding colonial logic was to wrest land away from indigenous sovereignty and control. In North America, it was to empty the land of Indians, through coerced cessions, broken treaties, extermination, and assimilation, and geographically confine the survivors on ever shrinking reservations with diminished Native sovereignty. In effect, doing away with the metropole/colony distinction itself has been part and parcel of the U.S. colonial project, a condition of possibility for assertions that the United States has been a nation-state, not an empire-state. Native survival and resistance, above all, have been what put the lie to such claims. Indigenous territories under colonial rule today consist minimally of the Indian reservation lands, maximally of the entire United States, and quite reasonably of all the lands that were never ceded.

Colonial rule over Indian-held lands was one of the fundamental issues for the United States from the very beginning. Under the British, a royal proclamation in 1763 had drawn a line along the Appalachian Mountains to keep Indians and white settlers apart, prohibiting, if futilely, the latter from the western portion that extended to the Mississippi River and was designated Indian territory. The newly independent states had to decide what to do with the territory, a crucial issue since some states, as a carryover from the British era, had claims to it, and others none. As one of the latter, Maryland cited the former’s relinquishment of their claims as a precondition for its ratification of the Articles of Confederation, which required unanimous assent. All states eventually ceded their trans-Appalachian claims. In this way, the very formation of the U.S. state hinged on lands occupied by Indians but over which it asserted ultimate sovereignty (Meinig, 1986; Nobles, 1997). The issues originally raised by the trans-Appalachian territories would continue to shape, bedevil, and haunt the geography of U.S. empire-state formation: the acquisition and disposal of “territories,” and Indian sovereignty.

The blueprint for the nascent state, the U.S. Constitution expressly acknowledged the reality of spaces under U.S. sovereignty that did not enjoy
equal standing with the "several states." In short, colonial spaces. In Article IV, Section 3, it vested Congress with the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." The "United States" was therefore not literal: it comprised not only the states but also other political spaces, which were to be ruled ultimately as Congress saw fit and would not have voting representation in the federal government. The constitutionality of further acquisition of territories was initially and periodically uncertain. Nonetheless, by 1853, with the Gadsden Purchase from Mexico, the United States had assumed sovereignty over the entire area of today's 48 contiguous states, with that of 16 future states still composed of territories.

The Constitution did not address how territories could be transformed into states, merely stating in the aforementioned article and section, "New States may be admitted by the Congress into this Union" (Article IV, Section 3). The widely held assumption during the 19th century was that the process followed the principle set out in the Northwest Ordinance of 1787 for the disposal of the northwestern portion of the trans-Appalachian territories (Sparrow, 2006): temporary governments organized by Congress, followed by "establishment of States, and permanent government there-in...on an equal footing with the original States, at as early periods as may be consistent with the general interest" (Section 13).

The acquisition of overseas territories in the late 1890s, particularly the former Spanish colonies of Guam, the Philippines, and Puerto Rico, profoundly upset the tacit assumption. Above all, racism toward their nonwhite, non-Anglo-Saxon inhabitants incited the uproar and debate, both among imperialists and anti-imperialists, and centrally informed the construction of the categories of "incorporated" and "unincorporated" territories, distinguishing those slated to become states and others that could be kept and governed indefinitely as territories (Burnett & Marshall, 2001b; Kramer, 2006). But this categorical bifurcation of territories did not suddenly inject racism into a hitherto nonracial practice of empire-state formation. Rather it laid bare the white supremacist underpinnings.

Acquiring territories, even under the assumption that they would be turned into states, has always been a racist process. The politics around conquering and taking possession of Texas and what would become the U.S. Southwest from Mexico, for example, had been patently structured by anti-Mexican racism, as numerous studies have shown. What the new territories of 1898 provoked were a more radical doubt of whether white supremacy could be maintained through the usual colonial practices of the U.S. state and its resolution through the Insular Cases' doctrine of territorial
incorporation. The deviant case of Hawai‘i was revealing. Like the island colonies obtained through the Spanish–American War, it was annexed in 1898, located overseas, and inhabited predominantly by nonwhites – Native Hawaiians and migrant laborers from China, Japan, and elsewhere. However, unlike them, it was slotted into the newly invented “incorporated” category, the same one to which all past and then present U.S. territories on the North American continent retroactively belonged. The decisive difference was that Hawai‘i’s economy and politics had long been dominated by white settlers from the United States, foremost descendants of missionaries from the Northeast.\textsuperscript{25} It was precisely because U.S. white supremacy was already and sufficiently guaranteed that Hawai‘i was incorporated while other overseas territories were not. Still, principally because of its concerns about the nonwhite-majority population, Congress would not grant Hawai‘i admission into the Union as a state until 1959 (Bell, 1984; Jung, 2006; Merry, 2000; Osorio, 2002).\textsuperscript{26} If the unincorporated former Spanish colonies were considered “foreign to the United States in a domestic sense,” the Territory of Hawai‘i was seen and treated as domestic in a foreign sense – a part yet apart, rather than vice versa.\textsuperscript{27} On the flip side, we can infer that the relatively short and smooth transition of most territories to statehood was also underwritten by white supremacy, that the taken-for-granted certainty of white dominance was a necessary condition of possibility.\textsuperscript{28} And in the antebellum period, the transition always took into account the delicate sectional balance of power in the U.S. Senate between the North and the South, evening out the numbers of “free” and “slave” states admitted. Needless to say, the equilibration helped to preserve and prolong the white supremacist institution of slavery (Sparrow, 2006).

In addition to acquiring and ruling territories, incorporated and unincorporated, U.S. empire-state formation has always entailed the construction of colonial spaces in relation to the indigenous populations. But the Constitution was evasive. “Indian” appeared twice in the original Constitution, in the Three-Fifths and Commerce Clauses, but neither mention dealt directly with Indian lands.\textsuperscript{29} Nonetheless, given the intrinsic coloniality of the U.S. state, built as it was on soil that was once exclusively the domain of Native Americans, constitutional questions about their political status were unavoidable. The initial answers were proffered in the Marshall Trilogy, three related Supreme Court cases in early 19th century whose prevailing opinions were penned by Chief Justice John Marshall. In Johnson v. M‘Intosh of 1823, the Court formally invoked the extra-constitutional, and profoundly white supremacist, doctrine of discovery as the basis of U.S. sovereignty over Indian territories, adopting and adapting
the centuries-old colonial logic and rationale of European rule over non-
Europe: “This principle was, that discovery gave title to the [European] 
government by whose subjects, or by whose authority, it was made, against 
all other European governments, which title might be consummated by 
possession.” In other words, each European power acquired title to non-
European lands that it “discovered” to the exclusion, and customarily with 
the tacit agreement, of other European powers. The Court reasoned that 
“original inhabitants” retained their “right of occupancy” and use of land, 
but their rights and “sovereignty, as independent nations,” were “necessarily, 
to a considerable extent, impaired” and “diminished,” as the “ultimate 
dominion” lay with the European “discoverer.”

Corollarily, the latter held the right of preemption, the “exclusive right to extinguish the Indian title of 
occupancy, either by purchase or by conquest.”

According to the decision, the United States, upon its independence, inherited this unmistakably 
colonial relationship from Britain.

The remaining two rulings of the trilogy further specified the relationship. 
The 1831 case of Cherokee Nation v. Georgia determined whether the 
Cherokee, and by extension other Native American nations, constituted a 
state and, if so, what kind of state. On the first question, the Court decided 
in the affirmative: “They have been uniformly treated as a state from the 
settlement of our country. The numerous treaties made with them by the 
United States recognize them . . . . The acts of our government plainly 
recognize the Cherokee nation as a state, and the courts are bound by 
those acts.” At the same time, indigenous peoples were not “foreign States.” 
Rather, they were deemed to be “domestic dependent nations” in a “state of 
pupilage” with a relationship to the United States “resembl[ing] that of a 
ward to his guardian,” sounding a rhetorical echo for the unincorporated 
territories to come. A year after Cherokee Nation v. Georgia, the inferior 
but definite sovereignty of Indian nations was affirmed in another case 
involving the Cherokee and the state of Georgia, Worcester v. Georgia. 
“Indian nations” were recognized as “always [having] been considered as 
distinct, independent political communities, retaining their original natural 
rights, as the undisputed possessors of the soil, from time immemorial,” but, 
per the discovery doctrine, “with the single exception of that imposed 
by irresistible power.”

And the authority of that imposition by the United 
States lay entirely with the federal government.

The scope of federal authority grew and turned out to be without limit. 
A half century of white settler encroachment and violence, genocidal 
warfare, cession treaties, and removals onto reservations later, the Supreme 
Court weighed in on United States v. Kagama in 1886 to uphold a new
federal law that intruded on the internal affairs of Indian reservations for the first time.\textsuperscript{35} Extending the logic of the Marshall Trilogy, again on extra-constitutional grounds, the Court further undermined Native sovereignty and conferred on Congress plenary, or complete, power over Indians (Wilkins, 1997). Having already passed a law in 1871 to no longer deal with Indians bilaterally through treaties, Congress was now constitutionally empowered to, and did, legislate unilaterally to reorder and seize Indian lands and otherwise regulate Indian lives.\textsuperscript{36} In 1903, the Supreme Court outdid itself again. Asserting that the "plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning" and that, citing Kagama, "Indian tribes are the wards of the nation...communities dependent on the United States," the Court, in \textit{Lone Wolf v. Hitchcock}, declared that Congress, but not Indians, could disregard existing treaties at its discretion: "When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the power to abrogate existed in Congress."\textsuperscript{37} Attesting to its manifest racism, a U.S. senator responded at the time, "It is the \textit{Dred Scott} decision No. 2, except that in this case the victim is red instead of black. It practically inculcates the doctrine that the red man has no rights which the white man is bound to respect, and, that no treaty or contract made with him is binding" (Matthew Quey as quoted in Wilkins, 1997, p. 116).\textsuperscript{38} Lest we dismiss such cases as relics of the past, the ruling in \textit{Lone Wolf}, like those in the \textit{Insular Cases}, still obtains, as does, it should be clear, the U.S. empire-state (Aleinikoff, 2002; Biolsi, 2005; Sparrow, 2006).

\textbf{IV}

"But the principal meaning of colonization has come to involve people rather than land...."

– Frederick Cooper (2005, p.27)

"These Indian Governments were regarded and treated as foreign Governments as much so as if an ocean had separated the red man from the white...."

– Roger Toney in \textit{Dred Scott v. Sandford} (1857)\textsuperscript{39}

The hierarchical differentiation of space and the hierarchical differentiation of people, both immanent and foundational to empire-state formation, are plainly related.\textsuperscript{40} Since the hierarchical differentiation of space is not about space in itself but about the \textit{politics} of ordering space, it is inextricably always already about the politics of ordering people. And, as argued above, the construction of U.S. colonial spaces – whether they be Indian lands,
incorporated and unincorporated territories, the "several states," or the United States as a whole—centrally turned on the racialization of their inhabitants, on the production and reproduction of white supremacy. With little controversy, at least on the left and even among liberals, we could probably agree that certain populations were colonized by the U.S. state: indigenous peoples of North America and Hawai'i, Mexicans of northern Mexico/southwestern United States, and peoples of the so-called unincorporated territories. (With a little controversy, we could also acknowledge that most, if not all, of them continue to be colonized.41)

What about other people of color, others subjected to racial domination? In much of the literature on colonialism, the binary oppositions of colonizer/colonized, European (or equivalent)/native, and citizen/subject are unproblematically assumed to refer to the same relationship.42 How then should we conceive of noncolonized, nonnative subjects? For the United States, does it make sense, for example, to categorize Blacks, past or present, as colonized? This is exactly what theories of internal colonialism once contended (e.g., Blauner, 1972), with which I disagree specifically but agree generally.43 The racial domination of Blacks in the United States has not been one of colonial domination, which, by definition, would involve the formal usurpation of territorial sovereignty. The formation of the U.S. empire-state did not entail the expropriation of lands over which Blacks had prior claims. In other words, the "main battle" has not been "over land" (Said, 1993, p. xii).

In a broad sense, however, theories of internal colonialism were right to frame the oppression of Blacks in terms of colonial empire. First, as a matter of historical fact, the state with which they have had to contend for the past two and a half centuries has been an empire-state, not a nation-state. Second, Blacks have always been treated, through de jure and de facto practices, as less than full citizens, as less than equal to white citizens. But even so, while it may be of undoubted relevance with respect to colonized peoples, like Native Americans, Puerto Ricans, or Samoans, does the imperial, rather than national, character of the U.S. state significantly impinge upon how we understand the racial domination of Blacks, and other noncolonized peoples, who have been systematically treated as less than white citizens? Has the imperial state form been merely incidental to anti-Black or most anti-Asian racisms? Had the U.S. state been a nation-state, would the exclusion of Blacks and other noncolonized peoples from full citizenship have been significantly different? Put simply, what do we gain analytically by insisting on an empire-state theoretical approach?
In an empire-state, racial domination of colonized peoples does not happen in isolation from that of noncolonized peoples, and vice versa. Though qualitatively different, they are intimately and intricately linked. Rather than a series of self-contained dyadic relations between whites and various racial others, white supremacy comprises a web of crisscrossing discursive and practical ties. It is a unified, though differentiated, field that calls for a unified, though differentiated, theoretical framework. For instance, in the afterglow of the Louisiana Purchase of 1803, President Thomas Jefferson envisaged in the newly acquired territory an expanded "empire of liberty" in which his vaunted citizenry of white yeomen could grow and flourish. He also saw potential solutions to vexing racial problems supposedly posed by those beyond the pale pale of citizenship: "the means of tempting all our Indians on the East side of the Mississippi to remove to the West" (as quoted in Meinig, 1993, p. 78) and of "diffusing" and thereby defusing Blacks, slavery, and the dreaded threat of insurrection, made all too real by the Haitian Revolution (Freehling, 2005). Such articulations of empire, white supremacy, racialized citizenship, and colonial and noncolonial imperial subjection were not rare or limited to the early 19th century and the ruling elite. To take an example from the turn of the 20th century, the state and the public, military and civilian officials, legislators and judges, academic and popular commentators, officers and soldiers, business and labor leaders, editorialists and cartoonists, and many others apparently could not imagine, talk about, write on, wage war against, or govern the newly colonized peoples of the former Spanish colonies and Hawai'i without references to Blacks, Native Americans, and the Chinese. They compared, differentiated, analogized, contrasted, transposed, extended, ranked, and homogenized. As much as the imperialists, anti-imperialists -- whether they were white former abolitionists, Black antilynching activists, or white trade unionists active in the anti-Chinese and anti-Japanese movements -- made the associations, though with obviously divergent intentions and effects (e.g., Jacobson, 1998; Kramer, 2006; Murphy, 2009).

The U.S. state, itself a unified but differentiated field, is a principal agent, or set of agents, in the field of white supremacy. Like other agents, it, too, confronts and helps to reproduce the field that is a unified but differentiated whole; it makes certain distinctions between colonial and noncolonial imperial subjects as well as within those categories, but it also generates identities, parallels, and overlaps. Explicitly and implicitly, intentionally and unintentionally, the state thus divides and unites as it rules. (It thereby sets barriers against and, dialectically, possibilities for coalitions of resistance.)
Compared to many nonstate agents and even among state institutions, the Supreme Court has relatively fewer degrees of freedom, constrained as it is, at least nominally, by *stare decisis* and the Constitution itself. Nonetheless, it, too, continually affirms the interconnectedness of practices of racial rule, the overall “unity” of a “‘complex structure’...in which things are related, as much through their differences as through their similarities” (Hall, 1980, p. 325). To illustrate, I discuss one case that is identified hardly ever with empire and almost exclusively with African Americans: *Dred Scott v. Sanford* (1857).

Marking one of the most significant moments in the history of African Americans, the *Dred Scott* decision denied U.S. citizenship to Blacks, both “free” and slave, in no uncertain terms, drawing an unambiguous distinction between “the citizen and the subject – the free and the subjugated races.” According to the odious opinion of the court, authored by Chief Justice Roger Brooke Taney, the Constitution was unequivocal in distinguishing between the “citizen race, who formed and held the Government, and the African race, which they held in subjection and slavery and governed at their own pleasure.”

Evincing the complex unity of white supremacy, this case quintessentially about Blacks could also be seen, in a nontrivial sense, as a part of Native American, Asian/Asian American, Pacific Islander, and Latina/o histories. Toward the start of his opinion, right after summarizing the question before the Court, Taney takes a seemingly gratuitous detour for a long paragraph. It is entirely devoted to contrasting the “situation...of the Indian race” to that of “descendants of Africans”: since the “colonial” era, “although [Indians] were uncivilized, they were yet a free and independent people, associated together in nations or tribes and governed by their own laws....These Indian governments were regarded and treated as foreign Governments as much so as if an ocean had separated the red man from the white, and their freedom has constantly been acknowledged.” Therefore, although they were “brought...under subjection to the white race...in a state of pupilage,” Indians could “without doubt, like the subjects of any other foreign Government, be naturalized by the authority of Congress...and if an individual should leave his nation or tribe and take up his abode among the white population, he would be entitled to all the rights and privileges which would belong to an emigrant from any other foreign people.”

A decade before, however, the Supreme Court, in another opinion written by Taney, had arrived at a contrary conclusion. In *United States v. Rogers* (1846), lands held by Indians were judged to be “a part of the territory of the
United States” that had been merely “assigned to them.” Further, ever since European “discovery,” “native tribes…have never been acknowledged or treated as independent nations.”

How do we account for the inconsistency? In *Dred Scott*, Taney contradicted his earlier opinion regarding Indians to forestall a presumably more dire contradiction regarding Blacks. In 1790, Congress had passed a law restricting the right of naturalization to “aliens being free white persons.” But, evidently not satisfied with this statutory proscription, Taney sought to *constitutionally* block even the future *possibility* of naturalized citizenship for Blacks. One of the two dissenters in the case, Benjamin Robbins Curtis conceded, needlessly, that Congress’s constitutional power of naturalization was confined to “aliens.” But he went on to note that being “colored” itself did not pose a constitutional barrier and, in fact, American Indians and Mexicans had already been made U.S. citizens through treaties.

The other dissenter, John McLean, likewise remarked, “Under the late treaty with Mexico, we have made citizens of all grades, combinations, and colors. The same was done in the admission of Louisiana and Florida.”

Presumably because they had uncontroversially been seen as “aliens” before U.S. annexation, Taney did not bother to address Mexicans of the Southwest or nonwhites of Louisiana and Florida territories in his opinion. He also granted that “color” was not a constitutional hindrance to naturalization. But, though not explicitly pushed by Curtis on it, the issue concerning Native Americans could not be so easily dispensed with: some Indians who had been born under U.S. sovereignty according to previous rulings, including his own, had been accorded U.S. citizenship. If they could be naturalized, why could Blacks not be? Taney resolved the apparent dilemma by insisting that the Constitution “gave to Congress the power to confer [citizenship] upon those only who were born outside of the dominions of the United States” and asserting that Indians, abruptly redefined as “aliens and foreigners,” fit this description. Thus lacking the capacity to “raise to the rank of a citizen anyone born in the United States who…belongs to an inferior and subordinate class,” Congress could not naturalize Blacks even if it were so inclined.

In *Dred Scott*, ruling on, and ruling, Blacks led to a reexamination into the rule of Indians (and Mexicans and others). The racial subjection of one was related to the racial subjection of the other, evidencing a common field of white supremacy. The articulation in this instance was one of difference. To refuse U.S. citizenship to all Blacks, the Supreme Court was provoked to state explicitly how Native Americans were dissimilar, modifying its previous view on Indian sovereignty. In this way, the Court endorsed and
justified the differential treatment of the two “subject” populations, one rooted in slavery and the other in colonization. At the same time, the decision also alluded to the inevitable imbrications of imperial subjection. In support of the Court’s opinion, Taney cited a number of state laws that ostensibly formed a consensus against the idea of Black citizenship. Though not commented on by the Court, three of them—two forbidding intermarriage with whites and one prohibiting travel without a written pass—applied not only to “any negro” or “mulatto” but also “Indian.”

The decision in *Dred Scott* with regard to Black citizenship was overruled, at least formally, by the passage and ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution during Reconstruction. But some of its reasoning survived to be debated anew decades later. One of the arguments put forth by the plaintiff Dred Scott was that his residence from 1836 to 1838 at Fort Snelling, taken there by his owner, had made him free. With the Missouri Compromise of 1820, which had simultaneously admitted Missouri as a slave state and Maine as a “free” state to maintain sectional balance, Congress had prohibited slavery in the remaining territories of the Louisiana Purchase lying north of 36° and 30’ latitude; this area included the part of Wisconsin Territory in which the aforementioned army post stood.

The Supreme Court rejected Scott’s claim, concluding that Congress had overreached: the Missouri Compromise, already voided by the Kansas-Nebraska Act of 1854 by the time *Dred Scott* made its way to the Court, was unconstitutional. According to Taney, Congress’s constitutional “Power to dispose of and make all needful Rules and Regulations respecting the Territory...belonging to the United States” (Article IV, Section 3) was immaterial: the Territorial Clause pertained *only* to the territory claimed by the United States at the time of the Constitution’s original adoption and could “have no influence upon a territory afterwards acquired from a foreign Government.” The lone means to acquire and, implicitly, govern additional territories was instead through the Admissions Clause: “New States may be admitted by the Congress...” (Article IV, Section 3). From acquisition to admission, temporary territorial governments organized by Congress were permissible, but it had no plenary power to “establish or maintain colonies...to be ruled and governed at its own pleasure.” Just as in the several states, Congress had “powers over the citizen strictly defined, and limited by the Constitution,” but “no power of any kind beyond it.” Thus, legislating as it did for the Louisiana Purchase territories in the Missouri Compromise, Congress had overstepped its definite powers and infringed on U.S. citizens’ right of property, the “right of property in a slave.”
Having pronounced that Congress had “no power...to acquire a Territory to be held and governed permanently in that character,” Dred Scott was bound to reemerge when various state and nonstate actors were clamoring to do just that in the overseas territories annexed at the turn of the century, and others were mobilizing in opposition. It appeared extensively in Downes v. Bidwell (1901), “generally considered the most important of the Insular Cases”; Justice Edward Douglass White's opinion in the case, immediately about tariffs on Puerto Rican goods, introduced and detailed what would eventually become the controlling doctrine of territorial incorporation (Burnett & Marshall, 2001a, p. 7).

Somewhat dissonant with the amply deserved infamy of Dred Scott, Taney's opinion on territories perversely took on a kind of “premature anti-imperialist” quality (Levinson, 2001, p. 130). For the four dissenting judges in Downes, the Constitution included all territories when referring to the “United States” and was fully in effect there. As John Marshall Harlan averred in his dissent, “The Constitution is supreme over every foot of territory, wherever situated, under the jurisdiction of the United States, and its full operation cannot be stayed by any branch of the government....” In the opinion signed onto by all of the dissenters, Chief Justice Melville Weston Fuller drew on Dred Scott, noting that “the Court [had been] unanimous in holding that the power to legislate respecting a territory was limited by the restrictions of the Constitution.”

In the lead opinion in Downes, Henry Billings Brown took a diametrically opposing position. For him, the “United States” referred strictly to the constituent states. The Constitution applied to any given territory only if, and only to the degree, Congress explicitly extended it. Brown discussed Dred Scott at great length and concluded that Taney’s thoughts on territories were irrelevant as legal precedent (Sparrow, 2006, p. 88): the question in Downes was “readily distinguishable from the one” on slavery, and that Dred Scott had taken up the territory question at all had been unnecessary and “unfortunate.”

White’s concurring opinion, joined by two others, split the difference between the maximalist and minimalist definitions of the “United States.” Like Brown, he affirmed Congress’s plenary power over territories, which had been disputed by Dred Scott but, both before and after it, had been sustained in other cases. But he disagreed with Brown’s criticism of Dred Scott and partly sided with Fuller: “the principle which that decision announced, that the applicable provisions of the Constitution were operative” in the territories, was still valid. The question was not, per Brown, “whether the Constitution is operative, for that is self-evident,
but whether the provision relied on is applicable" to a given territory, a question that hung on "its relations to the United States." Some territories, like the continental ones and Hawai'i, were "incorporated" into the United States. Others like Puerto Rico and, by extension, the other former Spanish colonies "had not been incorporated into the United States, but [were] merely appurtenant thereto as...possession[s]." In other words, the "United States" included some territories but not others, although all were "subject to [U.S.] sovereignty." The precise meaning and consequences of "incorporation" remained fuzzy, but this and subsequent cases seemed to suggest that the Constitution "fully" applied in the incorporated territories. For the unincorporated territories, White's opinion, though theoretically different, had the identical practical implications as Brown's: "only certain fundamental constitutional prohibitions" – underspecified but certainly fewer than in incorporated territories – "constrained governmental action there" (Burnett & Marshall, 2001a, pp. 9–10). In 1904, White's doctrine of territorial incorporation was adopted by a majority of the Court for the first time, in Dorr v. United States. Among other things, the opinion of the Court quoted the same passage from Curtis's opinion in Dred Scott that White had cited in Downes.

As in Dred Scott, and later Insular Cases, race and citizenship were front and center in Downes. A major impetus and impact of legally inventing the category of unincorporated territories were the prevention of incorporating their inhabitants on an equal footing with white Anglo-Saxon citizens and the empowerment of Congress to calibrate how unequal the footing should be. In his lead opinion in Downes, Brown gave voice to the animating fear: what would happen if Congress did not have the discretionary power to determine the citizenship "status" of a territory's "inhabitants"? After all, if territories "are inhabited by alien races...the administration of government and justice according to Anglo-Saxon principles may for a time be impossible." But those "alien races" needed not to worry, for "there are certain principles of natural justice inherent in the Anglo-Saxon character which need no expression in constitutions or statutes to give them effect or to secure dependencies against legislation manifestly hostile to their real interests" – never mind how different their stated interests may have been.

To give credence to this paternalistic argument, Brown cited a number of cases involving noncitizens who already lacked constitutional protection – one dealing with American Indians, Johnson v. M'Intosh, and several dealing with Chinese "aliens [who were] not possessed of the political rights of the citizens of the United States." Thanks to Anglo-Saxon self-restraint, the inhabitants of the new territories, or any territory, would likewise not be
"subject to an unrestrained power on the part of Congress to deal with them upon the theory that they have no rights which it is bound to respect" – the last phrase an obvious, if not obviously negative, allusion to Dred Scott. 70

White's concurring opinion sounded the same alarm about citizenship. He illustrated his point with a hypothetical example, appealing to the discovery doctrine espoused in Johnson v. M'Intosh, among other cases, and tacking on a bit of feigned concern about the potential tax burden on the colonized to his paramount apprehension about racial fitness for citizenship:

Citizens of the United States discover an unknown island, peopled with an uncivilized race, yet rich in soil, and valuable to the United States for commercial and strategic reasons. Clearly, by the law of nations, the right to ratify such acquisition and thus to acquire the territory would pertain to the government of the United States. Johnson v. M'Intosh, 8 Wheat. 543, 595, 5 L. ed. 681, 694. . . . Can it be denied that such right could not be practically exercised if the result would be to endow the inhabitants with citizenship of the United States and to subject them, not only to local, but also to an equal proportion of national, taxes, even although the consequence would be to entail ruin on the discovered territory, and to inflict grave detriment on the United States, to arise both from the dislocation of its fiscal system and the immediate bestowal of citizenship on those absolutely unfit to receive it? 71

Worse yet, Brown pointed out, even if immediate bestowal of citizenship could be avoided, "children thereafter born, whether savages or civilized, [would be] . . . entitled to all the rights, privileges and immunities of citizens. If such be their status, the consequences will be extremely serious." 72

He closed his opinion with a warning, "A false step at this time might be fatal to the development of what Chief Justice Marshall called the American empire." 73

Brown's reference to "children thereafter born" stated aloud what must have implicitly informed the other judges' discourse on citizenship. Though unmentioned in any of the opinions in Downes, he was alluding to United States v. Wong Kim Ark (1898), a case decided by the same court just three years earlier. To go a little further back, nine years before that case, the Supreme Court, in Chae Chan Ping v. United States, had unanimously upheld the racially based Chinese exclusion laws of the 1880s, specifically the Chinese Exclusion Act of 1888. 74 The broader effect of the decision was to establish Congress's plenary power over "aliens," which, like the plenary powers over American Indian sovereignty and over territories, still obtains to this day (Aleinikoff, 2002). (A corollary effect was that the constitutional sanction afforded to Congress to legislatively contravene international treaties, with China in this particular case, provided precedential support for the 1903 ruling in Lone Wolf that gave similar sanction to abrogate treaties
with Native Americans—yet another example of the interconnectedness of racial rule, the imbrications of colonial and noncolonial imperial subjection. However, even the patent anti-Chinese racism of the Court had its legal limits. Both Congress and the courts had consistently denied the right of naturalization to Chinese migrants and would continue to do so until 1943. But given the Fourteenth Amendment—"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States...." (Section 1)—the Supreme Court could not but acknowledge, in *Wong Kim Ark*, birthright citizenship of "all children here born of resident aliens," including the Chinese. Consequently, as argued by Brook Thomas, "*Wong Kim Ark* forced any Justice intent on denying citizenship to residents of the insular territories to restrict the definition of what comes within the territorial limits of the United States" (2001, p. 96; see also Levinson, 2001, p. 132). And restrict they did.

On racial grounds, the Court chose to define the "United States in a domestic sense" as being composed of states and incorporated territories and relegated the inhabitants of the unincorporated territories in Asia, the Pacific, and the Caribbean indefinitely to something always less than full citizenship, that is, colonial subjection. Uniformly denied initially, residents of today's unincorporated territories, except American Samoa, have been accorded U.S. citizenship over the years, with or without their consent. Yet, in the context of the colonial relationship between the U.S. state and these territories, characterized by Congressional plenary power, U.S. citizenship has never meant equality, not just informally but formally, and territorial inhabitants have been systematically withheld certain privileges and immunities. (Same goes for American Indians, on all of whom, if not before through treaties or previous legislation, U.S. citizenship was imposed through the Indian Citizenship Act of 1924.)

With the exception of one justice, the same Supreme Court that heard *Wong Kim Ark* and *Downes* had also been on the bench for *Plessy v. Ferguson* (1896). One of four dissenters in *Downes*, Harlan had been famously lone in that role in *Plessy*. Insisting that "there is no caste" and that the "Constitution is color-blind," he predicted, "In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott Case*" and "stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens." Referring to Taney's opinion, he argued that the postbellum amendments to the Constitution were supposed to have "eradicated these principles" of excluding Blacks from the "rights and privileges which [the Constitution] provided for and secured to citizens of..."
the United States." Here, Harlan used *Dred Scott* to analogize the state-endorsed racial subjection of antebellum Blacks to what would follow from *Plessy*.

A former slave owner from a slave-owning family, Harlan has been hailed for his judicial antiracism (Chin, 1996; Przybyszewky, 1999; Sparrow, 2006; Yang, 2009). A product of its time, however, it had definite limits. Harlan’s “antiracism” was one within the boundaries of white supremacy, one for *legal* equality that he was certain would not upset but safeguard white dominance: “The white race deems itself to be the dominant race in this country. And so it is in prestige, in achievements, in education, in wealth and in power. So, I doubt not, it will continue to be for all time if it remains true to its great heritage and holds fast to the principles of constitutional liberty.”

Harlan’s opinion was firmly anchored to the idea of equal *citizenship*, and his temporal comparison of the plight of Blacks led to a second comparison. His discussion of Blacks’ *Dred Scott* past and *Plessy* future segued to his timeless contempt for the Chinese:

> There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race. But, by the statute in question, a Chinaman can ride in the same passenger coach with white citizens of the United States, while citizens of the black race in Louisiana, many of whom, perhaps, risked their lives for the preservation of the Union, who are entitled, by law, to participate in the political control of the State and nation, who are not excluded, by law or by reason of their race, from public stations of any kind, and who have all the legal rights that belong to white citizens, are yet declared to be criminals, liable to imprisonment, if they ride in a public coach occupied by citizens of the white race.

The Louisiana law that the decision upheld, mandating racial segregation of railway trains, did not mention the Chinese, nor did it indicate to which of “the white, and colored races” they belonged, nor did it confine its purview to citizens (*Revised Laws of Louisiana*, 1897, pp. 762–763). Yet in discussing the subjection of Blacks, Harlan evidently felt compelled to do all three.

Toward the beginning of his dissent, Harlan wrote, “While there may be in Louisiana persons of different races who are not citizens of the United States, the words in the act ‘white and colored races’ necessarily include all citizens of the United States of both races residing in that State. So that we have before us a state enactment that compels, under penalties, the separation of the two races….” The initial phrase of the first sentence, and the statute itself with its ambiguous conjunctions and punctuation, were
unclear on how many “races” there were, but by the end of the sentence, Harlan definitely settled on two and equated “colored” with Black. He also narrowed the scope of the case to “citizens” and then further narrowed the scope to “citizens of...both races”: constitutional protections were for U.S. state members only, and U.S. state membership included two “races,” and two “races” only, Black and white. The tragedy, from his vantage point, was that the U.S. state would permit and abet the maintenance of racial distinction and inequality between these two categories of citizens. But he saw no contradiction between this “color-blind” jurisprudence and his acceptance and advocacy of other racial distinctions and inequalities, namely those concerning the Chinese (Yang, 2009). That persons “belonging to [the Chinese race] are, with few exceptions, absolutely excluded from our country” was how it should be. Likewise for their inability to “become citizens.” What rankled was that the “few” Chinese who were in the country would be able to “ride in the same passenger coach with white citizens,” while Black citizens could not. For Harlan, the Chinese quintessentially constituted the citizen’s racial other – two mutually exclusive categories. In this light, Harlan’s remarks on the Chinese in Plessy were hardly a throwaway digression at odds with his otherwise commendable antiracism but spoke to a vital component of a coherent racism that prefigured his, and only one other justice’s, unwillingness to recognize even the birthright citizenship of U.S.-born Chinese two years later in Wong Kim Ark (Levinson, 2001; Yang, 2009). The difference between Harlan and the other justices was not that he was antiracist and they were racist, but that he and they drew, at the dawn of the 20th century, the “color line, — the relation of the darker to the lighter races of men [and women] in Asia and Africa, in America and the islands of the sea” — differently in relation to U.S. citizenry and empire (Du Bois [1903], 1965, p. 221; Chin. 1996; Thomas, 2001). 

V

Dred Scott v. Sandford was of a piece with the U.S. Constitution; naturalization laws; the Missouri Compromise; treaties with American Indians, France, Spain, and Mexico; Johnson v. M’Intosh; United States v. Rogers; Reconstruction Amendments; Plessy v. Ferguson; United States v. Wong Kim Ark; Dred Scott, Dorr v. United States, and other Insular Cases; and more. The racial subjection, colonial and noncolonial, and fates of Blacks, American Indians, Mexicans, Chinese, Puerto Ricans, Filipina/os, Samoans, Chamorros, and others were interlinked. So were the
constructions of politically unequal spaces, including states, incorporated and unincorporated territories, and Indian reservations. Clear and stable demarcations between metropole and colony, domestic and foreign, citizen and subject, and colonized and other imperial subjects proved impossible, made impossible by the very efforts to clarify and stabilize them. Of course, this brief study only begins to touch on issues of race, geography, and citizenship in relation to one institution of the U.S. empire-state; it does not even broach the practices of other state actors, much less those beyond the state. But even with this simplified, myopic scope, we can glimpse the U.S. empire-state’s complex structure of racial rule, a unified but differentiated field in which a tremor or quake in one area can set off intended and unintended aftershocks in others.

In a different context, Andreas Wimmer and Nina Glick Schiller (2003, pp. 576–578) warn of the pitfalls of “methodological nationalism,” the pervasive, unquestioning “naturalization of the nation-state by the social sciences”:

We have identified three variants of methodological nationalism: 1) ignoring or disregarding the fundamental importance of nationalism for modern societies; this is often combined with 2) naturalization, i.e., taking for granted that the boundaries of the nation-state delimit and define the unit of analysis; 3) territorial limitation which confines the study of social processes to the political and geographic boundaries of a particular nation-state.

In Pierre Bourdieu’s terms, the variants are all a part of the dominant social-scientific habitus. When the object of analysis is the United States, we need to also recognize the unreflexive meta-methodological nationalism involved: a figment of U.S. nationalism, the nation-state has never been. The illusion of the nation-state, rather than the nation-state itself, is what is naturalized, and the reality of the U.S. empire-state is what is just as habitually denied.

An empire-state approach has manifold theoretical and empirical implications. Cooper (2005) incisively explores many of them for the far-flung interdisciplinary field of colonial studies. I end this paper with several for a relatively neglected tract of that field, sociology of the United States. Overall, methodological nationalism simply can no longer operate as habitus, which, if taken seriously, has the potential to unsettle the entire discipline. In the sociology of race, a literature mostly segregated from colonial studies, an empire-state approach would expose the inadequacy of the standard practice of focusing on one particular white-nonwhite relation of domination at a time within the borders of a nonexistent nation-state, and questions of empire, absent since the demise of theories of internal
colonialism, would rightly return to prominence. We would be more open and better positioned to discern connections between histories of racial subjection that have been treated as more or less discrete, especially between those of colonized and noncolonized peoples of color, and to make sense of the qualitative differences between them. Silence concerning the indigenous peoples of North America and the Pacific would be, one hopes, too deafening to persist. Heretofore all but ignored except in relation to racial categorization and the census, the racial state could no longer be overlooked and could be theorized on a firmer footing. And familiar topics could be seen from a fresh critical angle. For example, given the extraordinary rise, size, and racial character of the prison-industrial complex, prisons and prisoners (and former prisoners) could be seen for what they are: imperial spaces and subjects. What about “aliens,” who, like territorial inhabitants and American Indians, are still subject to Congressional plenary power? Are they citizens-in-waiting of this supposed nation of immigrants, or are many, especially the undocumented, subjects indefinitely without rights which the state and its citizens are bound to respect? How distinct is the line between citizen and subject, and how is it drawn?

For the sociology of the U.S. empire, an empire-state approach would open up this small but growing field. Temporally, the entire history of the United States awaits, not only the undeniably important turns of the 20th and 21st centuries but also the turn of the 19th century and all else. Geographically, we need to correct for our hyperopia, obviously not to impair our improving capacity to see faraway overseas but to enhance our ability to see nearby overland. The constituent states of the Union and incorporated territories have not been politically homogeneous spaces to be classified unproblematically as the “metropole,” coextensive with what has been misconceived as the nation-state. On a related note, U.S. colonialism and (nonterritorial) imperialism have not been serial but concurrent moments, which can go unnoticed if we look only overseas. The U.S. empire-state has always produced overlapping and competing temporalities and geographies, and we would be well advised not to accept the official ones, like the notion that contemporary United States is a postcolonial nation-state. Finally, an empire-state approach to the United States would bridge the counterproductive divide between the sociologies of race and empire. The imperial subjections of noncolonized peoples, usually the province of the former, and of colonized peoples, usually the province of the latter, form a unified but differentiated field of white supremacy that calls for critical and innovative research, and praxes, across existing boundaries.
NOTES

1. On the concept of empire-state, see Cooper (2005), especially Chapters 1 and 6. For an early usage of the term, see Francis (1954, pp. 8–9).

2. Legal scholars, historians, cultural critics, and others substantially outpace sociologists in recognizing the full spatial and temporal scope of the U.S. colonial empire (e.g., Kaplan, 2002; Kaplan & Pease, 1993; Meinig, 1986; Williams, 1980; Wilson, 2002).

3. "The constitutions of the last two centuries are monuments to an eminently modern enterprise... Constitution-making is a deliberate attempt at institution-building at the fundamental level of laying down the normative and legal foundations of the political order" (Arjomand, 1992, p. 39; see also Go, 2003, p. 90).

4. But for constraints of space, the analysis could readily be brought to the present and cast a much wider empirical net.

5. For a recent effort in political science that expands on and is mostly compatible with Omi and Winant (1994), see King and Smith (2005). They differ in a few ways. Whereas the former stresses the struggle between social movements and the state as the central dynamic in racial politics, the latter sees the opposing forces as racial institutional orders, rival political coalitions made up of both state and nonstate actors. As a consequence, King and Smith find the state to be less unitary in relation to race. They also do not share Omi and Winant's view that the U.S. state is inherently racial and speculate that "someday the United States may transcend [racial institutional orders] entirely — though that prospect is not in sight" (King & Smith, 2005, p. 75). As with Omi and Winant, however, the U.S. state is still conceptualized implicitly as a nation-state.

6. For example, though critical of Omi and Winant's theory of the racial state, Goldberg (2002, p. 4) affirms the nation-state as the primary object of analysis: "In The Racial State I seek to comprehend the co-articulation of race and the modern state. I argue that race is integral to the emergence, development, and transformations (conceptually, philosophically, materially) of the modern nation-state. Race marks and orders the modern nation-state, and so state projects, more or less from its point of conceptual and institutional emergence."

7. Although I use Anderson's definition of nation, I could substitute it with others without much consequence.

8. Weber (1946, p. 78; emphasis in original) defines the state as "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory."


10. The quotes are attributed to General Philip Sheridan, in 1869, and Captain Richard Pratt, in 1892. The former, however, is the popular rendering of what Sheridan might actually have said: "The only good Indians I ever saw were dead" (Hutton, 1999, p. 180).

11. From the beginning of U.S. history to the present, amnesias and denials of empire have also been punctuated by moments of recognition, acceptance, celebration, and critique of empire. But as the cycle of forgetting and remembering may predict, most recognitions and critiques have been only too partial, in both senses.
12. Other exceptions include American Samoa, Northern Mariana Islands, Panama Canal Zone, and Virgin Islands.

13. In this paper, I do not discuss nonterritorial imperialism and imperialistic activity (Go, 2007, 2008; Steinmetz, 2005).

14. To be clear, I do not mean that comparisons cannot be useful or that empires are all equally different from each other.

15. I refer, of course, to Scott's (1998) Seeing Like a State.

16. Certainly in sociology but, I am sure, in a number of other disciplines, the silence with regard to the Native peoples of North America and the Pacific Islands is shamefully nearly absolute.

17. Limited, but not no, utility. The boundedness of colonies and the existence and relative autonomy of colonial states within empire-states are variable.

18. Of the over two billion acres of indigenous land taken by the United States from its founding to 1900, only half was “purchased by treaty or agreement” (Barth, 1982, p. 7). Indian reservations within the contiguous United States totaled 84,159 square miles as of 1984 (Frantz, 1999, p. 44), approximately the size of Utah or Idaho. See Biolsi (2005) for a range of mutually nonexclusive sovereignty claims made by Native Americans premised on different geographies.

19. Two states, North Carolina and Georgia, did so after the adoption of the Constitution.

20. Congress’s power was complete in this regard as long as an admission did not involve areas under the jurisdiction of any existing states, in which case the legislative consent of the affected states was required.

21. Though not novel, the ideas behind this and the previous paragraphs have all but been forgotten. For example, despite his racist imperialism, political scientist Abbott Lawrence Lowell’s characterization of U.S. history of colonialism, in a popular forum in 1899, was on target: “Properly speaking, a colony is a territory, not forming, for political purposes, an integral part of the mother country, but dependent upon her, and peopled in part, at least, by her emigrants. If this is true, there has never been a time, since the adoption of the first ordinance for the government of the Northwest Territory in 1784, when the United States has not had colonies” (1899a, p. 145). The ideology of U.S. exceptionalism and, after the Insular Cases, the close identification of the former Spanish colonies as the only true U.S. colonies were likely significant culprits for the collective memory loss.

22. Rather than whether the Constitution would “follow the flag” or whether U.S. citizenship would be conferred, Burnett and Marshall (2001a) see indefiniteness as the overriding defining feature of unincorporated territories. Burnett (2005) adds further that separability, the constitutional possibility of deannexation, distinguishes unincorporated territories from states and incorporated territories.

23. For an example, see Lowell (1899a). See Smith (2001) for a discussion of Lowell (1899a). Lowell’s (1899b) legal scholarship prefigured the eventual doctrine of territorial incorporation developed in the Insular Cases.

24. For an example related to the law, see Perea (2001).

25. Hawaii’s sugar-based economy depended on tariff-free access to the U.S. market, which had been established a quarter century prior, through the Reciprocity Treaty of 1875. Politically, the white elite, with the backing of the U.S. minister to
Hawai‘i and U.S. troops, had overthrown the Hawaiian monarchy in 1893 and set up a “republic” which actively invited U.S. annexation.

26. Similar dynamics prevailed for the territories of New Mexico and Oklahoma (Levinson & Sparrow, 2005).

27. The quote is from Justice Edward White’s concurring opinion in Downes v. Bidwell (182 U.S. 244 [1901] at 341). Those familiar with the case will note that my usage of White’s phrase exceeds his narrow, legal meaning, and my inversion of it would not make sense in the original context.

28. White supremacy was not, however, a sufficient condition for a short and smooth path to statehood. Utah, with its Mormon population, had a particularly long and rough ride.

29. Section 2 of Article I excludes “Indians not taxed” from enumeration for apportioning seats in the House of Representatives and “direct Taxes,” which was later reproduced in the Fourteenth Amendment. In the same article, Section 8 empowers Congress to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”


31. Ibid. at 587. For recent discussions of the discovery doctrine, see Miller (2008), Newcomb (2008), and Robertson (2005).

32. Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831) at 16–17; emphasis added. “Pupilage” and other cognate notions had also appeared in Supreme Court cases in relation to U.S. overland territories, prior to the Insular Cases in relation to unincorporated, overseas territories (see Burnett & Marshall, 2001a, pp. 33n52); in fact, cases involving Indian sovereignty have had a largely separate legal genealogy from those involving “territories,” including unincorporated ones (Thomas, 2001).

It should be noted that tutelary metaphors had divergent meanings. For incorporated territories, they signified “growing” into being accepted as one of the several states on an equal footing. For unincorporated territories, they could mean eventual independence but not necessarily. And for the indigenous of North America, they promised neither equality nor independucce.


34. “The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokee themselves, or in conformity with treaties, and with the acts of congress” (ibid. at 561).

35. 118 U.S. 375 (1886).

36. Perhaps the most devastating was the General Allotment Act of 1887 that privatized reservation lands and distributed parcels to individual Indians. After such allotment, the remaining lands, often the choicest, were sold by the government to whites, the proceeds from which went toward programs for assimilating Indians. In this way, nearly two-thirds of Indian-held lands were taken between 1887 and 1934 (Frantz, 1999; O’Brien, 1989).

37. 187 U.S. 553 (1903) at 565–567.

38. The oft quoted passage from Dred Scott v. Sandford that Quay paraphrased is, “They [Blacks] had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race either in social or
political relations, and so far inferior that they had no rights which the white man was bound to respect, and that the negro might justly and lawfully be reduced to slavery for his benefit” (60 U.S. [19 How.] 393 [1857] at 407).
39. Ibid. at 404.
40. Not symmetrically related, however. The former implies the latter, but the reverse is not necessarily true.
41. Of the mentioned, the colonial status of Mexicans would be the most questionable, as a vast majority of Mexican-origin people in the United States today are migrants or descendants of migrants, not descendants of those who had once lived under Mexican sovereignty in what is now the U.S. Southwest.
42. The boundary within the pairs is increasingly recognized, rightly, as having been variably motile, but colonialism is nonetheless “fundamentally dualistic” (Steinmetz, 2008, p. 593).
43. The sudden and fatal decline of internal colonialism as a theoretical framework in the social sciences has been lamentable. It did not get everything right; in fact, it probably got more things wrong than right. But it had enormous value in calling attention to and critiquing U.S. racism and linking it to questions of colonialism. Although many factors led to the theories’ precipitous decline, one of the major shortcomings was that many exponents, and nearly all of the critics, agreed that the theories, as applied to racism in the United States, took the notion of colonialism only metaphorically: the United States might have exhibited certain similarities to European colonialism in Africa and Asia but had not really engaged in colonialism proper. Thus, the United States was, once again, seen as exceptional.
44. With regard to Native Americans, Deloria and Wilkins (1999, p. 55) write, “Incisive and tedious review of Supreme Court decisions would show that this tendency to write law without reference to any doctrines or precedents is more the rule than the exception.”
46. Ibid. at 403–404.
47. 45 U.S. (4 How.) 567 (1846) at 571–572. For an in-depth discussion, see Wilkins (1997, pp. 38–51).
49. Ibid. at 578. As Smith (1997) suggests, Curtis’s concession was rash and ultimately undermined his own argument.
50. Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857) at 586. Curtis cited three treaties: “Treaties with the Choctaws, of September 27, 1830, art. 14; with the Cherokees, of May 23, 1836, art. 12; Treaty of Guadalupe Hidalgo, February 2, 1848, art. 8.”
51. Ibid. at 533.
52. Ibid. at 419.
53. Ibid. at 418–419; emphases added. There is no acknowledgment here that he had noted earlier in the opinion that “the white race claimed the ultimate right of dominion” (ibid. at 403–404; emphasis added).
54. Ibid. at 417; emphasis added. Dred Scott does not appear to directly address foreign-born Blacks who migrated to the United States not as slaves. Smith (1997, p. 266) sees a contradiction, which may be. There is also the possibility that Taney was strictly insisting on, or fudging, the “class of persons” dealt with in the ruling,
defined toward the beginning as "the descendants of Africans who were imported into this country and sold as slaves" (Dred Scott at 403; emphasis added).
55. Ibid. at 413–414, 416.
56. Although there were two earlier examples, including Marbury v. Madison (5 U.S. [1 Cranch] 137 [1803]), which established the doctrine of judicial review, "Dred Scott was the only case in the eighty years of pre-Civil-War constitutional history in which the Supreme Court limited congressional power in any significant way" (Newman & Gass 2004, p. 8).
57. Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857) at 432. With the last phrase "from a foreign Government," Taney rhetorically skirted around the thorny fact that two states, North Carolina and Georgia, had not yet ceded their trans-Appalachian lands when the Constitution was adopted. But since the cessions had been anticipated at the time, he could not plausibly argue that the framers had not intended the Territorial Clause to be operative there.
58. Ibid. at 446, 449.
59. Ibid. at 451.
60. Of course, Levinson means "anti-imperialist" in a very restricted sense. Nobody on the Court gainsaid the U.S. state's right to acquire the former Spanish colonies in the first place.
62. Ibid. at 360.
63. Ibid. at 274.
64. Ibid. at 291–293. See Burnett and Marshall (2001a, pp. 9–11) and Sparrow (2006, pp. 91–93) for discussions of White's opinion.
66. As Burnett and Marshall (2001a, p. 11) note, the Constitution has never applied in full in any territory.
69. Ibid. at 287.
70. Ibid. at 280–281, 283. The cited cases involving the Chinese were Yick Wo v. Hopkins, 118 U.S. 356 (1886); Fong Yue Ting v. United States, 149 U.S. 698 (1893); Lem Moon Sing, 158 U.S. 538 (1895); and Wong Wing v. United States, 163 U.S. 228 (1896).
72. Ibid. at 279.
73. Ibid. at 286.
74. Also known as the Chinese Exclusion Case, 130 U.S. 581 (1889).
75. 187 U.S. 553 (1903) at 566.
76. 169 U.S. 649 (1898) at 693. Exemplifying once again the interconnectedness of noncolonial and colonial racial rule, this case dealing with the Chinese also addressed the U.S. citizenship status of American Indians. The majority opinion invoked Elk v. Wilkins (1884), the "only adjudication that has been made by this court upon the meaning of the clause, 'and subject to the jurisdiction thereof,' in the leading provision of the Fourteenth Amendment," to deny its applicability to "children born in the United States of foreign parents of Caucasian, African or Mongolian descent not in the diplomatic service of a foreign country": the earlier decision had "concerned only members of the Indian tribes within the United States" (ibid. at 680.
As quoted in *Wong Kim Ark*, the ruling in *Elk v. Wilkins* had held that “Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indians [sic] tribes, (an alien though dependent power,) although in a geographical sense born in the United States, are no more ‘born in the United States and subject to the jurisdiction thereof,’ within the meaning of the first section of the fourteenth amendment, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States, of ambassadors or other public ministers of foreign nations” (112 U.S. 94 [1884] at 102). Further, both of these cases cited *Dred Scott*.

77. Residents of the Philippines were denied U.S. citizenship all the way through to independence in 1946.

78. For example, to this day, residents of Puerto Rico cannot elect representatives or senators to Congress or cast a vote for the presidency. They receive fewer and lower social welfare benefits. Puerto Rico’s self-governance does not undermine but is enabled, and can be overridden, by Congressional plenary power. Constitutional rights, including those enumerated in the Bill of Rights, do not apply in Puerto Rico of their own force but were extended there by Congress (Aleinikoff, 2002). Legislatively granted by Congress, birthright citizenship itself of those born in Puerto Rico is “not equal, permanent, irrevocable citizenship protected by the Fourteenth Amendment” (H.R. Report No. 105-131, pt. 1, 1997, p. 19, as quoted in Román, 1998, p. 3).

79. Stephen J. Field on *Plessy* was replaced by Joseph McKenna before the two later cases. Though on the Court at the time, David J. Brewer did not participate in *Plessy*, nor did McKenna in *Wong Kim Ark*.


82. *Ibid.* at 561. Though not discussed here, the well-known majority opinion in *Plessy* also referred to the Chinese (*Ibid.* at 542, 550).

83. How Harlan determined that “by the statute in question, a Chinaman can ride in the same passenger coach with white citizens of the United States” is unclear. The majority opinion’s two references to the Chinese did not concern their treatment under the Louisiana statute. Among the briefs filed in the case, I found only one buried reference to the Chinese, which hardly necessitated and not likely triggered Harlan’s disquisition. On behalf of the plaintiff Homer Adolph Plessy, his lawyer James C. Walker wrote:

> The court [Supreme Court of Louisiana] is confident that the statute obviously provides that the passenger shall be assigned to the coach to which by race he belongs; but the trouble is the court takes for granted what is only assumed, and not granted or proved, that is to say the race to which the passenger belongs; when neither jurists, lexicographers, nor scientists, nor statute laws nor adjudged precedents of the state of Louisiana, enable us to say what race the passengers belongs to, if he be an “octoroon.” We know that he is not of pure Caucasian type, neither can he be said to be of any of the colored races. Which race is the colored race referred to in the statute? There are Africans, Malays, Chinese, Polynesians; there are griffs and mulattos. But which of all these is the colored race the statute speaks of? The legislature might have relieved us from this perplexity, but it has not done so. (*Brief for Plaintiff in Error,* as reprinted in Kurland & Casper, 1975, p. 78.)
84. Plessy v. Ferguson, 163 U.S. 537 (1896) at 553.
85. Although not discussed here, an empire-state approach to the United States would not preclude but encourage studies of trans- and interstate structures and processes. As the ripple effects of Dred Scott suggest, the boundaries of domestic, colonial, imperial, foreign, and so on are blurry and contingent.
86. Sociologists of knowledge would find, I suspect, disquietingly correlated divides of backgrounds, networks, and political and epistemological sensibilities between the two subfields' practitioners.

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