

The Settler Unchained

Constituent Power and Settler Violence

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The phrase “monopoly of violence” operates as a sort of refrain in contemporary radical critiques of the racist and colonial underpinnings of the liberal state. A shorthand for Max Weber’s declaration in “Politics as a Vocation” that “a state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory,” the phrase has come to signify that which must be resisted to imagine new modes of sociality not predicated on oppression.¹ In May 2013, this phrase figured centrally in a very different critique of the liberal state: Glenn Beck’s keynote address delivered at the annual convention of the National Rifle Association (NRA). Toward the end of his rambling hour-and-forty-four-minute-long talk, dressed like a disheveled academic, Beck displayed the phrase in title type on his slide presentation to unpack two unlikely illustrations of the dangers of gun control:

The founders warned of the “monopoly of violence.” Because they knew that governments could turn against their people.

And if the government had a monopoly of violence, tyranny would go undefeated. If you don’t believe me . . . ask the Japanese-Americans who spent the war in internment camps. If you don’t think our government can do terrible things to its citizens? Explain this:

The Lakota Indians were asleep by the river when the US troops arrived on a freezing December morning. For everyone’s protection, the troops began to enter the tents of the sleeping Indians and confiscate their guns.

One boy, a deaf boy, tried to hold onto his gun. Trying to explain that he had paid a lot for it. In the struggle to hang onto it, the gun discharged.

The US Soldiers stepped back and unloaded on the group of around 300 men, women, and children. 150 were killed, another 51 wounded. Others

tried to run to the creek, only to be caught and killed by the soldiers. Without any defense.

The Creek was called “Wounded Knee.” The year was 1890. To emphasize to the press the urgency and necessity of disarming those savage Indians, twenty medals of honor were awarded to the American Soldiers. That’s more than awarded for D-Day . . . only four. Battle of the Bulge . . . seventeen. Pearl Harbor . . . fifteen.

This gun belonged to a member of that tribe.²

Beck’s marshaling of the examples of the internment camps and Wounded Knee into the service of a politics that is patently racist and imperialist is indicative of a broader trend. Increasingly, US conservatives are employing examples of state violence against racialized and indigenous peoples to bolster arguments against gun control.³ The grotesque distortions of the argument are not hard to catalog. In one of the more obvious, Beck identifies the Lakotas who were massacred at Wounded Knee as US citizens, when in fact American Indians were not granted US citizenship until 1924 (and few would be afforded voting rights until decades later). Furthermore, as Potawatomi legal scholar Angela Riley argues in her masterful history of Indians and federal gun law, “Indians and Guns,” American Indians are not in fact fully protected by the Second Amendment. Tribal governments are not bound by the Second Amendment in their sovereign ability to regulate gun ownership on tribal lands.⁴ Through his misrepresentation, Beck enables his largely white audience’s fantasies of state oppression by suggesting that state violence perpetrated against a sovereign indigenous nation might just as easily be unleashed on them. In a perverse act of settler indigenization, Wounded Knee is transformed from a state-perpetrated massacre that empowered the settler polity into a state-perpetrated massacre that threatened that polity’s popular sovereignty.

Despite such absurdities, the uncomfortable proximity of Beck’s rhetoric to that of leftist critique should give us pause. Whatever can be said about the broader hypocrisy of his claims, Beck and his allies are entirely genuine when they argue that the individual citizen ought to retain a violent sovereign capacity that operates autonomously from the state. As the steady rollback of gun control measures and the proliferation of “stand your ground” laws attest, in the United States this conception of the sovereign citizen is gaining ground against liberal advocacy for a state “monopoly of violence” (a phrase Beck spuriously attributes to the founding fathers).⁵ This being the case, and given that people of color and indigenous peoples bear the brunt of gun violence in overwhelmingly disproportionate numbers, it is necessary to ask whether this conception of the Weberian state adequately accounts for the endemic violence against racialized and indigenous populations in the United States.

The drafting of the Second Amendment, while inspired in part by settler colonists' fear of centralized state power, was also profoundly motivated by a fear of slave uprisings and of what the Declaration of Independence calls "the inhabitants of our frontiers . . . the merciless Indian savages."⁶ Anglo-American settlers enshrined the right to bear arms in the constitution in large part because they believed the federal government—like the British imperial government before it—would be too cumbersome and centralized a bureaucracy to facilitate the violence necessary to sustain the process of indigenous dispossession and the institution of chattel slavery. Beck argues for the Second Amendment's role in preserving constituent power as a check on racial and anti-indigenous violence. This decoupling of necropolitical violence from the state, however, serves as vital means of perpetuating the very forms of oppression and dispossession that Beck claims the right to bear arms might prevent.

My purpose in this article is to argue that the mode of resistance to the state's "monopoly of violence" exemplified by Beck's gun politics is indicative of a specifically settler colonial conception of sovereignty. In his essay "Necropolitics," Achille Mbembe employs an expansive definition of sovereignty to capture the fluid nature of sovereign power in a colonial and postcolonial African context in which "the generalization of insecurity has deepened the societal distinction between those who bear weapons (*armes*) and those who do not."⁷ For Mbembe, "the ultimate expression of sovereignty resides, to a large degree, in the power and the capacity to dictate who may live and who must die. . . . To exercise sovereignty is to exercise control over mortality and to define life as the deployment and manifestation of power."⁸ Such an understanding of sovereignty is equally important for understanding the irregular nature of the exercise of sovereign power on the settler colonial frontier and the peculiar situation in the contemporary United States, where an increasing power to "dictate who may live and who must die" is granted to individual citizens. This mode of sovereignty distributes the capacity for necropolitical violence throughout the settler polity, allowing it to be unleashed by individuals operating independently of, and occasionally in defiance of, the constituted power of the state. In Mbembe's analysis, Europe stands as a stronghold of the *jus publicum* in which the power to kill is "civilized" by its accrual to the state, whereas "the colonies are like the frontiers. They are inhabited by 'savages.' The colonies are not organized into a state form and have not created a human world."⁹ The postfrontier settler colony stands as an anomaly in this spacialization of sovereign power. There is no doubt that these societies share with Europe a juridical order shaped by the extreme violence of the state.¹⁰ Settler colonies never succeed, however, in overcoming indigenous resistance or in shedding their own frontier self-images. As a result, the settler colony never relegates the category of the

“savage” to a space beyond its borders or entirely suppresses the anomic violence employed against indigenous and racialized bodies by the settler polity within the sovereign territory of the settler state. The contemporary United States—with its proliferation of violent right-wing terrorist groups operating with near impunity in defiance of the liberal state—stands as the extreme example of this phenomenon.

While suggesting that the gun politics of Glenn Beck and his followers constitutes a mode of settler violence might seem an obvious enough point to make, the parallels between his rhetoric and that of the academic left are not an accident. A romanticization of settler sovereignty also haunts many leftist theorizations that imagine liberation struggles as a Manichaean showdown between constituent power and the state’s monopoly of violence. Such formulations celebrate constituent power as a mode of popular sovereignty that predates and exceeds the constituted power of the state.¹¹ In so doing, these formulations either elide or, in extreme examples such as the one considered below, celebrate the anti-indigenous violence that underwrites popular sovereignty in European political philosophy’s favorite example of the space of constituent power: the American frontier.

“Splitting the Atom of Sovereignty”: The Second Amendment and Lawmaking Violence

A brief consideration of *District of Columbia et al. v. Heller*, the 2008 Supreme Court decision that stands as one of the gun lobby’s most stunning juridical victories, illustrates how conservative theorizations of the Second Amendment relate to familiar leftist conceptions of constituent power. The Second Amendment—which reads, in its entirety, “a well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed”—is interpreted in the opinion of the court, delivered by Justice Antonin Scalia, and in the dissents delivered by liberal justices John Paul Stevens and Stephen Breyer, as one that “codified a *pre-existing* right” to bear arms in a citizen’s militia that would serve as a “safeguard against tyranny.”¹² Stevens cites the Second Amendment as an example of the founders’ “splitting the atom of sovereignty” that cedes to the states’ popular militias a check against the military power of the federal government.¹³ In this manner, the court demonstrates a broad consensus that, remarkably, aggregates to the people’s militia a right to bear arms that would grant them the potential to wield, in Walter Benjamin’s well-known terminology, lawmaking violence against the law-preserving violence of a tyrannical federal state.¹⁴ While the court’s decision acknowledges, in a tortured reading of the amendment that allows for handgun ownership but prohibits private ownership of higher-grade military weaponry, that “it may be true that no amount

of small arms could be useful against modern-day bombers,” it still maintains that “the fact that modern developments have limited the degree of fit between the prefatory clause and the protected right cannot change our interpretation of the right.”¹⁵ While thus recognizing that, in the contemporary moment, the lawmaking power of the Second Amendment is all but a fantasy, the court is unanimous in its claim that the Second Amendment grants a right to bear arms for the purpose of resisting a potentially tyrannical government.

Where the court’s majority departs from their liberal colleagues—and with at least a century of judicial precedent—is by effectively splitting the atom of sovereignty even further by reading the amendment’s operative clause as independent of its prefatory clause to claim that the amendment protects the citizen’s right to bear arms in defense of “self, family, and property.”¹⁶ Remarkably, considering that the case focused on a city’s attempt to regulate firearm ownership within the urban center, the debate over the right to bear arms for self-defense focused on the founders’ intent vis-à-vis the use of arms on the frontier. In oral arguments, Justice Anthony Kennedy raised questions about the hypothetical case of the “remote settler” three times to Walter Dellinger, the attorney representing the District of Columbia, to argue that the Second Amendment protected the right to bear arms as a means of self-defense. Here is a representative example:

MR. DELLINGER: —the second clause, the phrase “keep and bear arms,” when “bear arms” is referred to—is referred to in a military context, that is so that even if you left aside—

JUSTICE KENNEDY: It had nothing to do with the concern of the remote settler to defend himself and his family against hostile Indian tribes and outlaws, wolves and bears and grizzlies and things like that?¹⁷

In what could be read as an unwitting allusion to Giorgio Agamben’s *homo sacer*, Kennedy imagines the indigenous in a metonymic chain alongside a familiar pairing. With the outlaw and the wolf, the hostile Indian becomes a figure of the sovereign ban, the *homo sacer* whom “anyone could kill with impunity.”¹⁸ In Agamben’s account, the bare life of the *homo sacer* stands as the secret object of state power, but the operation of necropolitical violence is consolidated in the constituted power of the modern state. In Kennedy’s formulation, necropolitical violence that underwrites the sovereign ban implicitly accrues to the remote settler “himself” [*sic*] when the violence of settler colonial conquest is refigured as an act of self-defense that protects the integrity of both property rights and the heteronormative futurity embodied in the settler’s family.¹⁹ Under this guise, the Second Amendment cedes to the individual not only the

potentiality to bear arms against a tyrannical state but also the potentiality to bear arms against the indigenous bodies that obstructed the free exercise of settler sovereignty.²⁰

The peculiar logic that guides Justice Kennedy's challenge to Delinger is extended in the opinion of the court. Ignoring the scholarship linking the drafting of the Second Amendment to the necessity of maintaining slave patrols, Justice Scalia's majority decision casts the Second Amendment as a vital protection for abolitionists. This argument echoes, unsurprisingly, the very rhetoric Justice Stevens invoked to characterize the frontiersman's need for self-defense. After noting that "antislavery advocates routinely invoked the right to self-defense," Scalia's decision approvingly quotes Charles Sumner's 1856 Senate speech on "Bleeding Kansas" in which Sumner argued that "the rifle has ever been the companion of the pioneer and, under God, his tutelary protector against the red man and the beast of the forest. Never was this efficient weapon more needed in just self defense, than now in Kansas."²¹ Sumner's speech casts the decidedly extralegal violence being marshaled by the free-soil Kansans as self-defense because he is anxious to prove that their violence—law making in the sense that it was undertaken in a struggle against proslavery forces to establish Kansas territory as a free state—is not at odds with the constituted power of the United States. To accomplish this rhetorical feat, he has to equate the violence of the antislavery forces with the frontier violence that had long ago been mythologized as a defense of person and property rather than a conquest.

In his writing on settlement and genocide, Patrick Wolfe has noted the paradoxical relationship between frontier violence and the settler colonial state. Speaking to the US circumstance, he argues that the agency that dispossesses indigenous peoples is "often not some state instrumentality but irregular, greed-crazed invaders who had no intention of allowing the formalities of federal law to impede their access to riches available in, under, and on Indian land."²² Despite its extralegal nature, this violence, "rather than something separate or running counter to the colonial state, constitutes its primary means of expansion." For Wolfe, the extralegal nature of this violence does not threaten the juridical order of the settler colonial state because, taking place "behind the screen of the frontier," it could be disavowed by "officials who express regret at the lawlessness of this process while resigning themselves to its inevitability."²³ The Australian settler project has been marked by prominent official "express[ions] of regret" regarding the violence of the frontier that seek to imagine that violence as a thing of the past unrelated to the contemporary multicultural liberal state.²⁴ In the United States, on the other hand, the rhetorical strategy employed by Sumner and Scalia has played a much more prominent role in reconciling irregular settler violence with constituted power.

In American political rhetoric and juridical discourse, frontier violence, imagined as a defense of person and property that serves the cause of freedom (and, perversely, racial justice), is rendered compatible with the constituted power of the federal state. In the economic metaphor, the Second Amendment and its attendant discourses ensure that the violence of state instrumentality may be too big to fail, but as the catastrophic statistics on US gun violence attest, state violence will never corner the market.²⁵

While, as the court's opinion acknowledges, the right to bear arms bears a dubious relationship to any contemporary resistance to the state, the Second Amendment has disaggregated the power to decide who lives and dies to individuals. While formally available to all, one need only contrast the (as of this writing ongoing) violent seizure of the federal commons by Cliven Bundy to the rights enjoyed by black and brown bodies subjected to stop-and-frisk policies to understand that the right to bear arms accrues primarily to the same white, heteronormative male subjects mythologized for enacting the lawmaking violence of the frontier.²⁶ The message of Beck's address to the NRA and of the *Heller* opinion could not be more clear: that which separates the settler subject from the savage body is the individual right to bear arms against threats to family, person, and property.

“The Frontier of Freedom”: Settler Violence and Leftist Rhetoric

Despite their seeming ideological distance from Beck's pseudohistory or the US Supreme Court's *Heller* decision, many contemporary leftist theorizations of state power also romanticize rather than critique settler colonialism's tendency to decouple necropolitical sovereignty from the institutions of the state.²⁷ Critiques of the US state articulated by the Occupy movement, for instance, have often leaned heavily on settler colonial rhetoric while representing the movement as resisting the state's monopoly of violence via expressions of constituent power in public spaces.²⁸ Occupiers who avoided the sort of direct settler colonial rhetoric critiqued by indigenous scholars such as Sandy Grande nevertheless tended to imagine constituent power as a sort of unbounded expansive mobility.²⁹ Chris Taylor (one of Occupy's most outspoken academic champions) imagined one potential theorization of Occupy as a movement guided by an “antagonistic perspective of constituted versus constituent power, of Power (calcified and senescent) versus power—mobile and youthful, filled with potential.” Taylor represents constituent power as “our substantive and virtual potential, our constitutive and constituent power that, in its extensive and intensive mobility, exceeds the formalism of constituted Power, its mechanisms of control, capture, and reform.”³⁰

In *Insurgencies: Constituent Power and the Modern State*, Antonio Negri offers an oft-cited and thorough theorization of constituent power

understood as an immanent “absolute process” marked by the sort of expansive mobility that Taylor and the Occupy movement tend to celebrate. What is not often noted about this text is that the exemplar of constituent power it celebrates is the figure of the American frontiersman. In a section of *Insurgencies* titled “Constituent Power and the ‘Frontier’ of Freedom,” Negri joins a long line of continental philosophers in arguing that the conditions of sovereignty found in the United States are fundamentally different from those realized in Europe. He warns those who analyze US governmentality against neglecting what he, modifying a phrase of Edmund Burke, calls “the Tartar sense of freedom” of the American frontier: “To forget this savage dimension of American freedom, its sublime character, results in Tocqueville’s formalistic (and potentially pessimistic) closure, or, even worse, in the syrupy expansive utopia theorized by Hannah Arendt, who . . . forgets that once the savage space becomes finite, expansion translates into expansionism and imperialism.”³¹ Negri rejects the embrace of American constitutionalism Arendt advocates in her 1963 book *On Revolution* because, in his reading, Arendt misreads how US democracy was affected by the *closing* of the frontier. For Negri, the United States is not properly imperialist until the savage space of freedom—presumably a reference to the contemporary space occupied by the US state—had become finite. Constituent power, for Negri, is found in its purest form in the lawmaking violence of the frontiersman.

While this claim raises immediate alarms for contemporary scholars of indigenous and settler colonial studies, it is not surprising when one considers Negri’s sources: he cites, without qualification, Frederick Jackson Turner and Henry Nash Smith as experts on the frontier experience.³² It is in the work of these exceptionalist scholars, for whom the frontier represented a mythic dividing line between “savagery and civilization,” that Negri finds the mythical figure who realized “the actuality of constituent power,” “an ontology of the constituent strength of the masses,” on a frontier imagined as unpopulated space.³³ Negri’s politics, then, become a mode of frontier nostalgia. For him the current deficiencies of US constitutionalism can be attributed to the country’s departure from its settler colonial origins.³⁴ As he puts it, “Constituent power in America is subjected to an extraordinary effort of containment and mystification. . . . It is on the basis of this exasperation of constituent power that the American ‘exception’ becomes typical.”³⁵ For Negri the settler colonial spirit was not quashed by the triumph of constitutionalism and the closure of the frontier but, rather, persists indefinitely as a contradiction at the heart of American democracy. As Negri has it, “The idea that the soul of the republic is not the constitution but the frontier will stay alive: the Jeffersonian spirit will live for a long time in its purity and in its might.”³⁶ If the *Heller* decision is any indication, Negri is correct: that the

frontier continues to be evoked as a justification for ceding to individuals the power to employ lawmaking violence speaks to the vitality of the Jeffersonian spirit.

Toward the end of his chapter on the United States, Negri finally addresses the indigenous and racialized subjects for whom US settler colonial expansion represented anything but a “frontier of freedom.” If his argument up to this point had left any doubt that his model of constituent power is realized at the expense of indigenous peoples, he explicitly warns his readers against imagining indigenous peoples as grievable subjects: “Let’s not cry over the Indians, whose civilization and savage independence are sacrificed to freedom. In this we see only the symptom of a more universal heteronomy of effects, the symptom of a revolution blocked in its concept, of a process of liberation that becomes a process of destruction, of a principle of freedom that becomes a principle of oppression.”³⁷ For Negri it is necessary to imagine the purity of the frontier moment, because in that moment he finds a modern white subject whose violence exceeds that of the European subject of the liberal state. To cast that violence as liberatory rather than oppressive, Indian space must be transformed into “the wilderness,” the indigenous subject must be rendered ungrievable, and the fact of indigenous dispossession and genocide must be imagined as total (the sacrifice of indigenous civilization is cast as a *fait accompli*) and as an unfortunate by-product—rather than the primary aim—of settler colonial expansion. Negri represents indigenous peoples as the transit (to borrow Jodi Byrd’s term for this particular mode of indigenous erasure) across which the “constitutive strength of the [settler] masses” expands.³⁸

Negri’s approach to the other key question that must haunt any apologist of the Jeffersonian spirit—how to account for slavery and its persistent legacy of racism—is much different. In the final paragraph of his chapter on the United States, he writes that American constituent power “is marked by an originary fact: the preservation of slavery and the question of African Americans in general. This colored rupture is also the conceptual rupture of the universality of the concept of freedom and equality. It is not by chance that any great American constitutional crisis is therefore marked by a revival of the constituent spirit of the African American people.”³⁹ Here the paradigm is assimilationist rather than genocidal, but it is not marked by a commitment to the sort of state regime of discipline generally associated with assimilation. The African-American subject in this model is not interpellated by the constituted power of the state but instead joins the Euro-American frontier of freedom opened by Euro-American expressions of constituent power. The single colored rupture, taken to be an originary perversion of the American expression of constituent power, is corrected in the postbellum

period by the fact of African Americans' participation in the traversing and violating of constituted power.⁴⁰

I have lingered on Negri's frontier romance not simply to call into question the appropriateness of his particular conception of the relationship between constituent and constituted power as a paradigm for the study of violence in the United States but, rather, to ask whether any political ontology that imagines a mode of violent popular sovereignty posed against the state's monopoly of violence as its radical horizon offers a genuine alternative to settler colonialism, a process whose violence has never been entirely contained by state instrumentality.

Indigenous scholarship in North America has a long history of writing back against historical and theoretical narratives that imagine the site of indigenous/settler contact as a site of liberation, even when those historical narratives attend more closely to questions of indigenous dispossession than do Negri and his Turnerian sources.⁴¹ In an essay meditating on the continuing aporia between indigenous scholarship and revisionist frontier historiography conducted by settler scholars, Byrd notes that "one of the challenges facing indigenous studies in conversation with settler colonial studies and frontier histories is to resist the continual prioritizing of an effect for a cause, of requiring the settler and the frontier rather than the indigenous as the structuring analytic through which to assess the consequences of colonialism."⁴² For Byrd, a reorientation toward the indigenous would demand a recognition that "US Empire propagates itself at the site of a transposable Indianness rather than through a forever relocatable frontier." Such a reorientation would recognize, then, that before they could have the savage space of the frontier, settlers had to imagine, "through sheer legal temerity," a category of humanity that is subsumed within the territoriality of the settler polity, subject to its necropolitical violence yet outside the aegis of its regime of rights.⁴³ "For indigenous peoples, the frontier is neither lawless nor a wilderness filled with beasts," and the constituent power of the settler is the lawmaking violence of the invader.⁴⁴

In his analysis of the internal dynamics of settler sovereignty, settler colonial theorist Lorenzo Veracini works to account for the tendency of settler colonies to adopt antistatist and internally democratic forms of collectivity in terms that do not neglect or rationalize the anti-indigenous violence upon which settler colonialism depends.⁴⁵ Using transnational examples but focusing on the eighteenth- and nineteenth-century United States, Veracini examines settler polities that, paradoxically, saw themselves as at once escapees from and representatives of the colonizing state. He describes this unique relationship between frontier settlements and the metropole as "isopolitical," meaning that settlers imagined their communities as sovereign, self-constituted polities yet still thought of themselves

as bearing the full rights and privileges of citizens of the metropole.⁴⁶ Veracini attributes the internally democratic characteristics of the settler colonial frontier to the settlers' attempt to escape the oppressive forces of the political economy of the colonizing metropole. As he puts it, "An account of an ongoing drive to *escape* market forces should accompany established patterns [of analysis] centered on 'imperialism' and 'settler capitalism'; the two movements could then be understood as coexisting, even if operating in mutual tension."⁴⁷ Settlers were wary of centralized state power in large part because they were wary of the state intervention that could cut off their access to the land and resources that had allowed their escape. Veracini suggests that settler colonialism acts, then, as a quasi-revolutionary social movement, enabling a redefinition of the terms of sovereignty without resort to revolutionary violence: "Only an outward movement allows an assertion of a separate sovereignty that does not require a revolutionary break: it is not a leftover from transplanted political traditions, it is the beginning of a distinct political tradition and its sovereignty."⁴⁸

Veracini tempers his claims about the autonomous and quasi-revolutionary nature of the distinct political traditions of settler isopolities, however, through a consideration of how these isopolities deployed—and expected the states of their metropolises to deploy—violence against indigenous populations. While acknowledging that the usual relationship that develops between settler communities and the military regime of the colonizing state is one in which "the community of settlers vocally demands the [military] protection of the colonizing metropole," Veracini emphasizes the important fact that it was often "the settlers that were contributing to the imperial effort, not *visa versa*."⁴⁹ The autonomous and republican nature of settler isopolities paradoxically serves, then, as a challenge to the metropole's monopoly on violence, yet also as a diffusion of that violence throughout the settler polity *in the service of* the indigenous dispossession that is undertaken, in many circumstances, in defiance of both the laws and borders of the metropolitan or (later) settler colonial state. Such violence nevertheless serves to extend the plenary power of the state. The violent, mobile sovereignty that Negri lauds thus emerges in the transnational process of indigenous genocide and dispossession.

Conclusion:

Resistance and the Settler Colonial Imaginary in *Django Unchained*

By way of conclusion, I return to the contemporary moment to consider a final object that illustrates the consequences of imagining settler colonial modes of constituent power as exemplary forms of freedom: Quentin Tarantino's 2012 film *Django Unchained*. In the already substantial critical

conversation regarding this film's take on race and violence, little effort has been made, thus far, to explore what is perhaps the most salient feature of the film's narrative and visual aesthetics—its transmutation of a “Southern” into a Western. The journey of Django (Jamie Foxx) from slave to liberated outlaw, ostensibly through the Deep South, discordantly takes place against the backdrop of filming locations that include the Grand Tetons in Wyoming and the chaparral hills of Southern California—landscapes that stand within the settler colonial imaginary as some of the most potent metonymic signifiers of the freedoms of the frontier. The Western hero that Django becomes is as familiar as the landscapes he traverses: he is transformed from a slave into the hypermasculine lawman who, like Gary Cooper in *High Noon*, paradoxically stands as his own sovereign authority even as he claims to represent the law. Less familiar to the Western genre, however, is the character of Dr. King Schultz (Christopher Waltz). A German immigrant and expert bounty hunter, it is Schultz who, in the film's decisive moments, tutors and encourages Django to take on the role of the lawman who is above the law, and who declares, in the narrative's chronologically disjunctive final scene, that Django has become “the fastest gun in the South.” Schultz's Germanic heritage might make him an anomalous Western genre hero, but it marks him as a familiar figure of assimilable difference if considered in relation to Turnerian historiography. The frontier thesis casts the German immigrant as the figure for the mode of frontier assimilation that Negri lauds. As Turner has it, the subjectivity of the frontiersman, forged by his masculine trials in the wilderness, is not simply “the development of Germanic germs. . . . The fact is, that here is a new product that is American.”⁵⁰ Tarantino offers a similar narrative (albeit one that foregrounds the questions of race and violence that Turner infamously neglects) when he imagines Schultz coaching Django through a process of Americanization whereby Django learns to “dictate who must live and who may die.”⁵¹

Negri's notion that the ultimate affirmation of the constituent power is found in African-American resistance is neatly illustrated in *Django's* plot. Having been carefully tutored in the ways of constituent power by a figure of white frontier sovereignty, Django is free to express his own constituent strength, which finds expression not as a collectivist struggle against the settler state but, rather, as an individualist escape that is effected, in Django's final victory, when he “lights out for the Territory” with his bride.

Numerous commentators have already effectively argued for the ways in which *Django Unchained* amplifies the myth of the “talented tenth,” betraying the collectivist struggles that marked historical acts of slave resistance.⁵² A consideration of the film's representation of indige-

neity speaks to the final limitations of this imagining of settler colonial expansion as a model for liberatory struggle.⁵³

In the culminating conflict of the film, Django, en route to a slave mine where he is to be worked to death, escapes his captors to ride back to the Candy Plantation and fully realize his freedom by rescuing his wife, Broomhilda, and killing Mrs. Candy. In his screenplay, Tarantino describes Django's ride back to the plantation: "The bare black man riding the horse bareback, holding the rifle in one hand, a fistful of horse's mane in the other, hauling ass against the gorgeous SUNSET SKY, looks like an Indian." In this complex moment of racial performance (a white man representing a black man playing Indian) we see the ultimate expression of freedom settler multiculturalism has to offer: in becoming a cowboy, Django is also playing Indian, performing the mythical authentic command of the great American spaces that the settler reads the Indian as possessing, and that he, in his own expression of constituent power, attempts to appropriate.⁵⁴ Django's freedom is won not at the expense of the settler state or the institution of slavery (which he seems to have no interest in challenging above and beyond his efforts to secure his own family's freedom) but certainly at the expense of the erased Indian whom he replaces.

In Tarantino's fantasy of African-American liberation, we see a startling parallel to Beck's invocation of Wounded Knee. After Beck conjures a dystopian vision whereby he invites his audience to imagine themselves as the abjected indigenous bodies subjected to settler violence at Wounded Knee, he shifts to a much more familiar mode of playing Indian when he picks up the Lakota rifle referenced in his speech, hoisting it aloft in a gesture of defiance, casting himself as the empowered indigenous subject, fighting for freedom against the tyranny of state instrumentality. Beck shaking the Lakota rifle above his head in defiance of the liberal state and Django doing the same while riding bareback into the sunset are both figures of settler freedom in which the settler looking like an Indian stands as an ultimate figure of constituent power.

Tarantino has suggested that this mode of playing Indian informs the whole of *Django Unchained*, as well as his 2009 film *Inglourious Basterds* and a third film he has yet to produce. He describes these films' plots in multiple interviews as centered on the idea of an Apache resistance. He explains this odd designation in *Inglourious Basterds* when Aldo Raines (Brad Pitt) describes to his recruits how they will deal with the Nazis they encounter:

I don't know about y'all, but I sure as hell didn't come down from the goddamn Smoky Mountains, cross five thousand miles of water, fight my way through half of Sicily and jump out of a fuckin' air-o-plane to teach the

Nazis lessons in humanity. . . . Now, I'm the direct descendant of the mountain man Jim Bridger. That means I got a little Injun in me. And our battle plan will be that of an Apache resistance. We will be cruel to the Germans, and through our cruelty they will know who we are. And they will find the evidence of our cruelty in the disemboweled, dismembered, and disfigured bodies of their brothers we leave behind us.⁵⁵

“Through our cruelty they will know who we are”—it is this Hegelian conception of subjectivity, spuriously ascribed to indigeneity, that structures the liberation narratives of Tarantino’s counterfactual histories. For Tarantino’s frontiersmen protagonists, performing indigeneity becomes a means of authenticating the violence that they enact. For both Beck and Tarantino, liberation is figured as a process of indigenization whereby, to paraphrase Byrd, the settler becomes the Indian in order to replace her.⁵⁶

The logic that finds an extreme expression in this mode of playing Indian also informs the attempt to “split the atom of [necropolitical] sovereignty” enacted both in the *Heller* decision and in Negri’s reading of the tension between constituent and constituted power that marks the Jeffersonian spirit. If we are to move beyond such genocidal imaginings of freedom, we must be willing to recognize the injustices perpetrated not only by the settler state but also by a transnational settler colonial conception of constituent power that predicates the liberation of some upon the erasure of others.

Notes

The author thanks Macarena Gomez-Barris, David Lloyd, Ho’esta Mo’e’hahne, Aziz Rana, Lorenzo Veracini, the USC Indigenous and Decolonial Research Cluster, and the American Studies Association’s Comparative Ethnic Studies Committee for their valuable feedback on drafts of this article.

1. Max Weber, “Politics as a Vocation,” in *From Max Weber: Essays in Sociology*, ed. H. H. Gerth and C. Wright Mills (New York: Routledge, 2009), 78.

2. Glenn Beck, “Keynote (NRA Convention, Houston 2013 [as prepared for delivery],” www.glennbeck.com/2013/05/06/glenn-beck-keynote-nra-convention-houston-2013/ (accessed 28 September 2013).

3. For another example of a conservative commentator using critiques of the state’s monopoly of violence to advocate against gun control, see Glenn Harlan Reynolds, “Gun Free Zones Provide False Sense of Security,” *USA Today*, 12 December 2012, www.usatoday.com/story/opinion/2012/12/14/connecticut-school-shooting-gun-control/1770345/. More recently, William Norman Grigg directly compared the Cliven Bundy standoff with Wounded Knee in a widely republished blog opinion piece, “The Cliven Bundy Standoff: Wounded Knee Revisited,” www.infowars.com/the-cliven-bundy-standoff-wounded-knee-revisited/ (accessed 11 May 2015).

4. Angela Riley, “Indians and Guns,” *Georgetown Law Review* 100 (2012): 1676. Riley gives a full accounting of how, even after Indian citizenship, tribal governments have been theorized in US jurisprudence as sovereign entities not bound by

the Second Amendment, because Second Amendment rights were not among those extended in the Indian Civil Rights Act of 1968.

5. The term *sovereign citizen* is a reference to the growing (and increasingly violent) radical right-wing movement of individuals that reject various aspects of federal and state sovereignty. See J. J. MacNab, “‘Sovereign’ Citizen Kane?,” *Intelligence Report*, no. 139 (2010), www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2010/fall/sovereign-citizen-kane.

6. See Riley, “Indians and Guns,” 1691; and Robert J. Cottrol and Raymond T. Diamond, “The Second Amendment: Toward an Afro-Americanist Reconsideration,” *Georgetown Law Journal* 309 (1991): 326.

7. Achille Mbembe, “Necropolitics,” trans. Libby Meintjes, *Public Culture* 15, no. 1 (2003): 34. For Mbembe’s relevance to analyses of settler colonial conquest and state formation, see Sunera Thobani, *Exalted Subjects: Studies of the Making of Race and Nation in Canada* (Toronto: University of Toronto Press, 2007), 12.

8. Mbembe, “Necropolitics,” 12.

9. *Ibid.*, 24.

10. For more on extreme violence and the law, see Etienne Balibar, “Violence and Civility: On the Limits of Political Anthropology,” *Differences* 20, nos. 2–3 (2009): 9–35.

11. See Andreas Kalyvas, “Popular Sovereignty, Democracy, and Constituent Power,” *Constellations* 12, no. 2 (2005): 223–44.

12. “Opinion of the Court,” *District of Columbia et al. v. Heller*, 554 US 570 (2008): 592, 600; emphasis in original.

13. “Stevens, J. Dissenting,” *ibid.*, 652.

14. “Opinion of the Court,” 627–28; Walter Benjamin, “Critique of Violence,” in *Reflections: Essays, Aphorisms, Autobiographical Writings* (New York: Schocken, 1986), 284–86.

15. “Opinion of the Court,” 628. David C. Williams explores the paradox of the *Heller* decision’s expansion of gun rights yet curious downplaying of the “bulwark against tyranny” in “Death to Tyrants: *District of Columbia v. Heller* and the Uses of Guns,” *Ohio State Law Journal* 69 (2008): 641–69.

16. “Opinion of the Court,” 652. The application of the “splitting the atom of sovereignty” phrase to self-defense is my own and relates to Mbembe’s understanding of sovereignty rather than the court’s. In reading the US Supreme Court’s definition of the right to self-defense, which includes the defense of property (made all the broader in states that have adopted “stand your ground” laws), as an instance of lawmaking violence, I am building on Benjamin, who notes that “the death penalty in primitive legal systems is imposed even for such offenses against property, to which it seems quite out of proportion. Its purpose is not to punish the infringement of law but to establish new law” (“Critique of Violence,” 286).

17. “Oral Arguments Transcript: *District of Columbia et al., Petitioners, v. Dick Anthony Heller*,” Alderson Reporting Company, March 2008, www.supremecourt.gov/oral_arguments/argument_transcripts/07-290.pdf.

18. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1998), 72. The tendency to associate Indians and animals in US juridical discourse is discussed further in Robert A. Williams Jr., *Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the Legal History of Racism in America* (Minneapolis: University of Minnesota Press, 2005), 42. Williams’s critique is discussed in relation to sovereignty theory in Jodi Byrd, “Follow the Typical Signs: Settler Sovereignty and Its Discontents,” *Settler Colonial Studies* 4, no. 3 (2014): 1–4; Byrd’s work is discussed further below.

19. For an overview of how settler colonialism pits “reproductive, propertied straightness” against a “queer[ed] . . . colonized population,” see Daniel Heath Justice, Mark Rifkin, and Bethany Schneider, “Introduction: Sexuality, Nationality, Indigeneity,” *GLQ* 16, nos. 1–2 (2010): 5–39.

20. Cheryl Harris discusses the confusion of property rights and sovereign entitlement that accompanied settler colonial conquest: “The assumption of American law as it related to Native Americans was that conquest did give rise to sovereignty. Indians experienced the property laws of the colonizers and the emergent American nation as acts of violence perpetuated by the exercise of power and ratified through the rule of law. At the same time, these laws were perceived as custom and ‘common sense’ by the colonizers.” Harris, “Whiteness as Property,” *Harvard Law Review* 106, no. 8 (1993): 1727.

21. “Opinion of the Court,” 609.

22. Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8, no. 4 (2006): 391.

23. *Ibid.*, 392.

24. For more on how official expressions of regret have served to sequester indigenous claims of injustice in the past, see Edward Kavanagh’s reading of the “Redfern Address” in “History, Time and the Indigenist Critique,” in *Stolen Lands, Broken Cultures: The Settler-Colonial Present*, ed. John Hinkson, Paul James, and Lorenzo Vericini (North Carlton, VIC: Arena, 2012), 16–40. The United States has never had a Redfern moment. That the US Supreme Court and even liberal commentators like to describe frontier violence solely as self-defense speaks to the extent to which the denial of culpability continues to be a dominant (though far from exclusive) mode through which settler colonial violence in the United States is interpolated.

25. For general US firearm violence statistics, see Michael Planty and Jennifer Truman, “Firearm Violence, 1993–2011: U.S. Department of Justice Bureau of Justice Statistics Special Report” (2013), US Department of Justice, www.bjs.gov/content/pub/pdf/fv9311.pdf. For statistics relating specifically to the rise in total homicides and “justifiable homicides” following the enactment of stand your ground laws, see “Shoot First: Stand Your Ground Laws and Their Effect on Violent Crime and the Criminal Justice System,” Mayors against Illegal Guns, the National Urban League, and VoteVets.Org, September 2013, s3.amazonaws.com/s3.mayorsagainstillegalguns.org/images/ShootFirst_v4.pdf.

26. Examining data from stand your ground states between 2005 and 2011, researchers found that “when white shooters kill black victims, 34% of the resulting homicides are deemed justifiable, while only 3.3% of deaths are ruled justifiable when the shooter is black and the victim is white” (“Shoot First,” 7). Cliven Bundy is a Nevada rancher who, between 1993 and 2014, amassed over 1 million dollars in unpaid grazing fees, owed to the federal Bureau of Land Management (BLM), and court-ordered fines. In March 2014, the BLM organized a cattle roundup to remove Bundy’s cattle from BLM land in the area surrounding Bunkerville, Nevada. In response, Bundy organized a group of heavily armed protesters to intimidate the BLM into halting the roundup. After several tense armed standoffs in April 2014, Bundy’s efforts succeeded, and the BLM released his cattle. No charges have been filed against Bundy or the protesters for their actions (which included brandishing weapons at federal officers) in April 2014. For more on the standoff, see Christopher Ketcham, “The Great Republican Land Heist: Cliven Bundy and the Politicians Who Are Plundering the West,” *The Nation*, February 2015, harpers.org/archive/2015/02/the-great-republican-land-heist/.

27. I have previously written on Gilles Deleuze and Félix Guattari's investment in exceptionalist frontier logics, exemplified by their celebratory representation of "the rhizomatic [American] West" as a space of freedom and expansion that they contrasted to the "arborescent" spaces of "old Europe" in *A Thousand Plateaus* (Minneapolis: University of Minnesota Press, 1987). See Young, "Settler Sovereignty and the Rhizomatic West, or, the Significance of the Frontier in Postwestern Studies," *Western American Literature*, 48, nos. 1–2 (2013): 115–40.

28. See "FAQ," #Occupy Wall Street: NYC General Assembly, www.nycga.net/resources/faq/ (accessed 1 October 2013).

29. Sandy Grande, "The Accumulation of the Primitive: The Limits of Liberalism and the Politics of Occupy Wall Street," *Settler Colonial Studies* 3, nos. 3–4 (2013): 369–80.

30. Chris Taylor, "Mr. Bloomberg, Tear Down This Wall: #S17, Police, and Constituent Power," clrjames.blogspot.com/2012/09/mr-bloomberg-tear-down-this-wall-s17.html (accessed 1 October 2013).

31. Antonio Negri, *Insurgencies: Constituent Power and the Modern State*, trans. Maurizia Boscagli (Minneapolis: University of Minnesota Press, 1999), 143.

32. *Ibid.*, 355n31.

33. Frederick Jackson Turner, "The Significance of the Frontier in American History," in *Rereading Frederick Jackson Turner: "The Significance of the Frontier in American History" and Other Essays*, ed. John Mack Faragher (New Haven, CT: Yale University Press, 1999), 32; Negri, *Insurgencies*, 176.

34. This mode of thought is also reflected in Michael Hardt and Antonio Negri's brief analysis of the Second Amendment in *Commonwealth* (Cambridge, MA: Belknap Press, 2009), in which they laud the amendment's purportedly liberatory purpose and decry the fact that recent decisions focusing on defense of property have given it "an opposite meaning" (11). As I suggest in my reading of *Heller*, I see the forms of popular sovereignty the amendment was drafted to protect as productive of the court's contemporary reading of the amendment rather than antithetical to it.

35. Negri, *Insurgencies*, 176.

36. *Ibid.*, 158.

37. *Ibid.*, 188.

38. Jodi Byrd, *The Transit of Empire: Indigenous Critiques of Colonialism* (Minneapolis: University of Minnesota Press, 2011), xiii; Negri, *Insurgencies*, 176.

39. Negri, *Insurgencies*, 190.

40. *Ibid.*

41. See, e.g., Elizabeth Cook-Lynn, "Why I Can't Read Wallace Stegner," in *Why I Can't Read Wallace Stegner and Other Essays: A Tribal Voice* (Madison: University of Wisconsin Press, 1996), 29–40; and Philip Deloria, "What Is the Middle Ground Anyway?," *William and Mary Quarterly*, 63, no. 1 (2006): 15–22.

42. Byrd, "Follow the Typical Signs," 3.

43. *Ibid.*, 1; Negri, *Insurgencies*, 143.

44. Byrd, "Follow the Typical Signs," 3. Glenn Coulthard has offered a similar yet more expansive critique of "those inclined to advocate a blanket 'return to the commons' as a redistributive counterstrategy to the neoliberal state's new round of enclosures . . . in liberal settler states such as Canada" as neglecting not only indigenous peoples' sovereign claim but also "Indigenous modes of thought and behavior that offer profound insights into the relationships within and between human beings and the natural world built on principles of reciprocity, nonexploitation, and respectful coexistence." Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014), 12.

45. Aziz Rana performs an analysis with a similar theoretical focus working exclusively on the United States in his political history *The Two Faces of American Freedom* (Cambridge, MA: Harvard University Press, 2010).

46. Lorenzo Veracini, *Settler Colonialism: A Theoretical Introduction* (New York: Palgrave, 2010), 69–73.

47. *Ibid.*, 61.

48. *Ibid.*, 58–59.

49. *Ibid.*, 58.

50. Turner, “Significance of the Frontier in American History,” 33.

51. Mbembe, “Necropolitics,” 11.

52. See, e.g., Ishmael Reed, “Black Audiences, White Stars, and ‘Django Unchained,’” *Wall Street Journal*, 28 December 2012, blogs.wsj.com/speakeasy/2012/12/28/black-audiences-white-stars-and-django-unchained/. “The talented tenth” is the theory, popularized by W. E. B. Du Bois, that a select vanguard of educated black men should be developed in order to spearhead efforts toward racial uplift.

53. In contrast to the mode of white abolitionist fantasy exemplified in *Django Unchained*, Beck’s speech, the *Heller* decision, and Negri’s analysis, the intervention of black studies scholars in the ongoing and productive debates regarding settler colonialism and antiblackness as mutually constitutive modes of oppression has not embraced the Manichaeic logic of the frontier but has largely centered on a critique of “sovereignty as such.” Fred Moten, quoted in Jared Sexton, “The *Vel* of Slavery: Tracking the Figure of the Unsovereign,” *Critical Sociology* (2014): 11, doi: 10.1177/0896920514552535.

54. For more on settler performances of Indianness, see Philip Deloria, *Playing Indian* (New Haven, CT: Yale University Press, 1999).

55. *IngLOURIOUS BASTERDS*, directed by Quentin Tarantino (Los Angeles, CA: Universal Studios, 2009), DVD; “Django Unchained Screenplay,” dailyscript.com, www.dailyscript.com/scripts/Django.pdf (accessed 13 May 2015).

56. In a critique of Deleuze and Guattari, Byrd argues that “the Left intellectual who steps forward to ventriloquize the speaking Indian [transforms] the becoming- into *replacing* Indian,” emphasizing how narratives of “becoming Indian” in putatively counterhegemonic scholarly and cultural production can reproduce the eliminatory logic of settler colonialism (*Transit of Empire*, 16).