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Introduction: Special Issue on Racial Capitalism and Law

Racial capitalism is a conceptual framework that illuminates the relationship between race and class in the global economy. Formulated initially by South African scholars and activists, the concept of racial capitalism was further developed by US political theorist Cedric Robinson ([1983] 2000), building on the Black Radical tradition, including the works of W.E.B. Du Bois, C.L.R. James, Oliver Cromwell Cox, and Eric Williams. The concept of racial capitalism has spawned a vast interdisciplinary literature, reflecting multiple theoretical perspectives on the various ways that race and class (along with gender, disability, and other markers of identity) are structurally imbricated and consign humans to different roles in the capitalist world economy in order to generate wealth and profit for a transnational capitalist class dominated by Euro-descendent elites.

Drawing on the work of Robinson, among many others, we define racial capitalism as a global system of racialized extraction in which race-making operates as a means of stratifying populations for the purpose of facilitating profit-making. Based on the work of Omi and Winant (2015), among others, we define racism as a technology of governance that naturalizes socially constructed hierarchies and treats them as the inevitable outgrowth of human physical and cultural differences rather than the product of coercive and extractive practices and ideologies.

The expansion of racial capitalism as a global system was fueled by the expropriation of the communal lands of European peasants and the brutal colonization of the Americas, marked by Indigenous genocide and land theft, and by the kidnapping and enslavement of Africans. Racial capitalism continuously reconfigures existing hierarchies (such as caste and patriarchy) and creates new hierarchies to facilitate and legitimate the ongoing exploitation and confiscation of the land, labor, and the natural and collectively produced wealth of people differentially racialized (and gendered). Those racialized as inferior are more vulnerable to having their land, labor, and assets commandeered without compensation or with inadequate compensation. Racial capitalism also constructs nature as an inert object to be dominated and commodified. The unbridled plunder of nature, often at the expense of persons racialized as nonwhite, has contributed to the concentration of wealth in the hands of the few while triggering unprecedented ecological crises, including climate change, that jeopardize the future of life on the planet.

The concept of racial capitalism has gained prominence among scholars and activists as a means of exploring the common roots of seemingly unrelated contemporary phenomena. These include extreme economic inequality; the resurgence of right-wing authoritarian ethno-nationalism; increasingly militarized and racialized policing and border control; the ongoing dispossession of Indigenous peoples and others racialized as inferior through various means such as mining, land grabbing, and resource wars; the expulsion to the margins of society of growing numbers of humans

(including persons who are unemployed, incarcerated, or homeless); and the unprecedented degradation of the ecological systems that support human and non-human life.

Our main goal as editors and contributors is to participate in the ongoing development of the theory of racial capitalism and to highlight, with concrete examples, the ways that law and legal institutions shape, justify, and naturalize the injustices that racial capitalism creates. The remainder of this introduction briefly describes the papers included in this special issue.

In the lead article, “Mapping Racial Capitalism: Implications for Law,” we contribute to the theory of racial capitalism by describing its historical foundations and analyzing what we believe to be its two key structural features: profit-making and race-making for the purpose of accumulating wealth and power. We examine three distinct but overlapping profit-making processes (exploitation, expropriation, and expulsion) and three race-making processes (racial stratification, segregation, and the creation of sacrifice zones). Profit-making and race-making, we argue, are mutually constitutive and reinforcing, and are structured and justified, at least in part, by law and legal institutions, as illustrated by examples discussed in our article. We define these profit-making and race-making processes and briefly explain their mutually constitutive operation below.

Exploitation involves the commodification of labor and its exchange on “free” markets for incomes that are less than the value workers produce, but are nevertheless sufficient to meet basic needs (possibly captured in the concept of a living wage). Expropriation is an intensification of exploitation. Relying on the work of Nancy Fraser (2018), we define expropriation as the process of extracting wealth from the unpaid or grossly underpaid labor (often of women and those racialized as inferior), as well as from their land, homes, productive assets, and nature more generally, without paying for these, without paying enough to cover the cost of workers’ social reproduction and replenishment, or without ensuring their regeneration. What distinguishes exploited workers from expropriated workers (such as fast-food workers, domestic workers, and farm workers) is that the latter are paid less than a living wage and must therefore work long hours or multiple jobs, rely on family or government assistance, or work in the informal economy, among other strategies, in order to survive.

Inspired by the work of Saskia Sassen (2014), we define expulsion, an outgrowth of exploitation and expropriation, as the process of discarding as “waste” or “surplus humanity” persons who are no longer profitable to capitalism as workers or consumers (and who are often confined in slums, ghettos, reservations, prisons, and migrant detention centers with little prospect of remunerative employment). However, expulsion is also a technique of profit-making because the warehousing of humans in for-profit prisons, as well as the revitalization and gentrification of blighted neighborhoods, is generally highly lucrative.

Race-making, we contend, grounds the capitalist processes of exploitation, expropriation, and expulsion. The division of humanity into a social hierarchy of superior and inferior “races” subjects certain groups primarily to exploitation (historically, white male populations in Europe or settler-colonial states), while non-white/non-European populations racialized as inferior are rendered disproportionately vulnerable to expropriation of their labor, land, and natural wealth, and to expulsion to the margins of society. Born in colonialism, racial segregation facilitates the efficient operation of racial capitalism’s different modes of racialized accumulation by allowing one mode of profit-making to predominate in different nations, regions, or neighborhoods and by permitting privileged groups to restrict access to the spoils of racial capitalism through the policing of neighborhood and national borders to repress resistance and keep subordinated groups in their

designated “place.” Segregated space is all too often converted into “sacrifice zones,” where humans expelled to the margins of society, along with the contaminated and degraded lands they occupy, have been abandoned by capital and left to die because they cannot be profitably reclaimed or commodified any time soon.

Saru Matambanadzo’s article, “Gender, Expulsion, and Law Under Racial Capitalism,” deepens our understanding of racial capitalism by examining, through the lens of social reproduction and intersectionality, the ways that gender intersects with race to produce not only differentiated forms of exploitation and expropriation, but also disproportionate vulnerability to economic precarity that may result in expulsion from the social and economic order. For example, women racialized as nonwhite who have been relegated to low-wage, low-status work that deprives them of the ability to adequately care for their families often endure the expropriation of their labor because of the looming threat of expulsion through job loss or deportation if they dare to resist. And when the burden of working multiple jobs to support their families makes it impossible to provide intensive high-quality parenting, this inability is treated as a willful failure, which renders them “unfit” mothers and exposes their children to expulsion to the margins of society, including the school-to-prison pipeline. Transgender persons are routinely expelled from both their families and the workforce due to pervasive bias, thereby rendering them disproportionately vulnerable to homelessness, violence, and incarceration. Through multiple examples and careful analysis of applicable legal frameworks, Matambanadzo highlights law’s complicity in racial capitalism’s construction and perpetuation of interlocking racial and gender hierarchies and rigid gender binaries that facilitate the expropriation and expulsion of women and transgender people. In doing so, her article underscores the importance of adopting an intersectional approach in theorizing racial capitalism and sheds new light on the concept of expulsion.

Ntina Tzouvala’s article, “Invested in Whiteness: Zimbabwe, the *von Pezold* Arbitration, and the Question of Race in International Law,” examines the relationship between racial capitalism and international law through a close reading of an arbitral decision finding that Zimbabwe’s land redistribution program racially discriminated against white commercial farmers. The land at issue in the arbitration was originally acquired through the colonial dispossession of Indigenous Ndebele and Shona people, and subsequently protected by the openly racist property laws of Rhodesia. The white claimants purchased the land during the ten-year period following Zimbabwe’s independence, during which Zimbabwe’s sovereign right to expropriate the land (even with compensation) was restricted under the agreement ending the Zimbabwean War of Liberation.

Tzouvala’s article illustrates how international arbitrators, impervious to the persistence of racism in a supposedly post-racial, colorblind world, reinforced white privilege and wealth by adopting three racialized assumptions common in international and domestic legal reasoning. The first assumption is that racism is an artefact of the past and that the white farmers who purchased land in the open market after Zimbabwe succeeded Rhodesia were therefore not complicit in white supremacy. Contrary to this assumption, Tzouvala notes, the property rights acquired under colonialism and maintained under open white supremacy were entrenched and protected by domestic and international law after independence—thereby perpetuating racial hierarchies and racially skewed distributions of property and income.

The second assumption is that international law was not implicated in Rhodesia’s colonial patterns of land ownership, and therefore had no duty to repair the harm. As Tzouvala observes, international law contributed to these patterns of land ownership by declaring that the Ndebele and Shona people who lived on the lands now known as Zimbabwe were uncivilized and therefore incapable of

possessing rights cognizable by law. In addition, the UN Security Council only belatedly authorized sanctions against the white supremacist Rhodesian government, and stood by as several European and Euro-descendent settler colonial states openly flouted these sanctions.

The third assumption is that racism is an irrational prejudice enacted by the state through openly discriminatory laws, which should be remedied through colorblind measures that minimize interference with the perceived neutrality of the “market.” As Tzouvala points out, this assumption exempts from legal and political scrutiny the co-constitutive nature of race and property in settler colonial states or, in the language of the lead article, the mutually constitutive processes of race-making and profit-making.

Sensitive to the particulars of this arbitration but informed by broader trends in international law, Tzouvala’s article contributes to the literature on racial capitalism by identifying problematic assumptions about race and racism embedded in domestic and international law that seek to foreclose historically and materially grounded analyzes.

The article by Shelley Cavalieri and Lua Kamál Yuille, “The White Androcentric Disposition of Capitalist Property,” takes up the issue of property under ongoing capitalist relations, arguing that its nature is both white and androcentric. Cavalieri and Yuille root their analysis in the simple but provocative key tenet of the progressive property movement: Property is not a thing, such as a house, a car, land, money, or other “stuff” valued in society. Rather, property indicates state-protected relationships among persons with respect to socially valued material and nonmaterial resources. That is, property is constituted by social relationships that are structured in reference to socially valued goods. To the extent that society is organized to maintain and reproduce racial and gendered hierarchies in which whiteness and androcentricity are privileged, property, Cavalieri and Yuille suggest, will be racialized and gendered.

Cavalieri and Yuille are explicitly agnostic about whether the extant capitalist system is the only capitalism that is possible. But under the political economy of capitalism as enacted today, they argue that property is employed and further shaped by two types of social relations. The first type is social relations of extraction, in which it is acceptable for persons to extract labor from others and for powerful people to extract the raw materials of others over their objection. The second type is social relations of accumulation, in which it is acceptable to engage in ceaseless accumulation of resources beyond what is needed for basic consumption in the short and medium term. Cavalieri and Yuille suggest that race and gender are central technologies in the mutually constitutive and synergistic institutions of property and capitalism, such that race and gender, and specifically whiteness and masculinity, act as normative instruments of power. Using care work and housing as examples, they sketch how the relationship among race, gender, property, and capitalism is apparent across different conceptions of capitalism, and suggest that the current order may best be captured by a theory of racial capitalism.

Finally, Gil Gott’s article, “Microcredit and the Financial Frontiers of Racial Neoliberalism,” expands the range of racialized extractions discussed in this special issue by examining the racialized profit-making processes that predominate under neoliberalism. His article focuses on microcredit, which entails the extension of very small unsecured loans with high interest rates to impoverished individuals or groups predominantly in the global South. A subspecies of microfinance (which includes services such as digital banking), microcredit’s ostensible goal is to aid borrowers in starting their own

micro/small businesses. Born in the humanitarian idea of empowering poor people, particularly women, microcredit programs were initially subsidized and operated through nonprofits. However, since the 1990s, microcredit and lending have been commercialized, becoming a profitable private financial sector with strict repayment rules.

Gott turns to his examination of microcredit after exploring the racialized and neoliberal ground on which it operates, including the different ways in which racialized identity is structured globally and within the global South. He argues that neoliberalism operates through leveraging the values and racial and colonial formations these racial hierarchies establish. He then draws on Polanyi's notion of land, labor, and especially money as fictitious commodities to expound on the financialization of the global economy under racial neoliberalism. Discussing two of its well-known patterns, Gott first notes that financialization of the economy focuses more on extracting value or wealth from speculation, rents, and debt than on accumulating wealth through creating new value by producing goods and services. Second, he remarks on neoliberalism's ideology and programs, which seek to shrink the state's role in development and social reproduction, including the state financing of education, health, and social services, and to replace state programs with market-based "solutions."

Gott suggests that microcredit is a racialized technology of extractive governance. It is a frontier technology, seeking to incorporate and enclose increasing numbers of the global poor and their proximate "informal" sectors into its extractive circuits, and to put global credit markets in more direct and close relationship with local borrowers without intervention (or protection) from the state. Ultimately, Gott compares microloans and the assumption of debt by the poorest people in the global South to the extractive financial operations of payday loans and subprime lending in communities of color in the global North. As in the gig economy (for example, Uber's business model), the leading ideological figure in microcredit is the "entrepreneur," an economic actor represented as freely choosing to engage in the market. Microcredit has been sold as "empowering" a borrower to solve her own problems of survival, education, health, and welfare by becoming an entrepreneur—learning how to fish instead of being given a fish. Within the microcredit system, a borrower is encouraged to start her own business with the support of loans—with success determined by eligibility for more loans. Gott argues that it is not surprising that microcredit has failed to solve poverty (indeed, in some cases microcredit has increased poverty), given that its rationales, rhetoric, and practices reduce the analysis of domestic and global racialized social relations of poverty to the simple issue of credit availability.

Each of these articles, we suggest, contributes to the important and growing literature on racial capitalism. We believe that the concept of racial capitalism is a promising area for legal scholarship, and we hope that this special issue will inspire more legal scholars to engage with the interdisciplinary literature on this topic.

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