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Gender, Expulsion, and Law Under Racial Capitalism

Abstract: This essay examines how the operation of background rules and institutions provided by law leads to the expulsion of individuals under racial capitalism based upon gender. Aligning itself with anti-capitalist work by critical theorists of social reproduction and intersectionality, it contributes to perspectives on racial capitalism that regard gender, in the way it creates subjects and differentiates between workers, as a co-constituting force with race under racial capitalism. Women and transgender persons, because of gender, are precariously situated on the edge of exile from the economic order. It makes this argument by weaving feminist insights—particularly those articulated in scholarship on social reproduction and intersectionality—with perspectives on racial capitalism.

Keywords: racial capitalism, expropriation, expulsion, feminist theory, social reproduction

I. Introduction

This essay focuses on how law in the United States organizes belonging based on gender and race under racial capitalism. It argues that gender operates within the system of racial capitalism as grounds not only for differentiated exploitation and expropriation, but also for expulsion from the legally maintained realm of belonging. With a focus on the lives of women and transgender persons as gendered subjects under racial capitalism, it argues that legal institutions permit the potential expulsion of two kinds of individuals based on gender: those whose contributions of work, social reproduction, or consumption are deemed undesirable or unnecessary and those whose identities do not comply with rigid binary models of gender.

Throughout the essay I adopt a multi-perspectival understanding of racial capitalism, regarding hierarchies of oppression as interlocking and employing the lens of social reproduction and intersectionality. Multi-perspectival analysis is a methodology that “draws on a wide range of textual and critical strategies to interpret, criticize and deconstruct the artifact under scrutiny” (Kellner 1995, 98). It urges the use of multiple theoretical perspectives and various theoretical tools to provide a more multidimensional way of seeing.

Gender, as a framework for social control and accumulation, is a crucial aspect to understanding the operation of racial capitalism. The process of gendering people functions as a technology of

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exploitation, expropriation, and expulsion for those who fail to comply with its demands. Like other commentators, I start from the premise that gender should not be conceptualized as a secondary form of subordination in the account of racial capitalism. Instead, gender is a co-constitutive force in the operation and administration of racial capitalism.

Law as a technology of exploitation, expropriation, and expulsion structures crucial institutions under racial capitalism that lead to expulsion based on gender. Marriage, the family, and paid work as disciplining institutions are enabled by law and designed to extract the work of social reproduction from those who provide it and expel individuals who cannot conform with frameworks of intelligibility under the sex-gender matrix. In this way, law plays a key role in creating the conditions for expulsion under racial capitalism along the axis of gender.

In Part II of the essay, I examine racial capitalism and its relationship to social reproduction and intersectionality, arguing that race and gender are co-constitutive frameworks of operation under racial capitalism. Part III focuses on expulsion, building on the work of this symposium's lead article by Carmen G. Gonzalez and Athena Mutua (2022). Parts IV and V demonstrate how gender under racial capitalism operates as a basis for expulsion, focusing on the lives of women and transgender persons as structured by the technologies of law—particularly as they relate to work and the family.

II. Gendering Racial Capitalism: On Social Reproduction and Intersectionality

In *Black Marxism*, Cedric Robinson (2000) argues that the operation and organization of capitalism rests not only on the hierarchical exploitation of workers based on class, but also on a racialized logic. Racialized logic preceded capitalism in the European context as part of its social and historical development (Robinson 2000). Race was not merely an instrumental tool for dividing workers. Instead, it was part of the foundational organizing of the capitalist order. Workers (soldiers, laborers, and others—Jewish, Slavic, Celtic, or other) were conceptualized and organized as racialized (Kelley 2017).

Theorists of racial capitalism do not represent one perspective as orthodoxy. This is unsurprising because racial capitalism was never meant to be a totalizing explanatory intervention (Kelley, 2000; Quan 2005). Instead, racial capitalism is an assemblage of theoretical perspectives mapping the relationship between racial inequality and capitalism (Go 2021). The theoretical perspectives relying on racial capitalism have been deployed across disciplinary paradigms like history (Baptist 2016; Morgan 2021) and law (Leong 2013; Jackson Sow 2021). These perspectives share little in some ways but produce accounts of how the strength and resilience of capitalism are linked to racial hierarchies of inequality that shape the social and economic order (Go 2021).

Given its interdisciplinary influence, some might argue that theoretical deployment of racial capitalism suffers from indeterminacy. The indeterminacy of racial capitalism, however, should be regarded as a feature and not a bug. The openness of racial capitalism is a conceptual strength, creating the potential for interdisciplinary promiscuity even in the shadow of fidelity to anti-capitalism, anti-racism, and class liberation. Part of the objective of *Black Marxism* was to leave space for alternative visions within the tradition of radical anti-capitalist responses (Robinson 2020).

Under racial capitalism, the exclusion and marginalization of those who occupy racialized spaces is accomplished in part through the mechanisms of exploitation and expropriation. Expropriation is a method of accumulation that relies upon unfree and frequently racialized and gendered labor to extract gains. Nancy Fraser (2018), whose work lies at the intersection of racial capitalism and social reproduction theory, explains how expropriation and exploitation interact in the service of racialized capitalism. Those conscripted into the process of accumulation differ from those who are exploited in the exchange of wage work. They occupy two different statuses— “the *free exploitable citizen-worker*, on the one hand, and the *dependent expropriable subject*, on the other” (Fraser 2018, 4). The populations subject to expropriation differ from those who are subject to exploitation because expropriated populations are essentially unfree and lack the political status and resources to protect themselves from expropriation. This relationship “is a function not only of accumulation but also of domination” (Fraser 2018, 7). Expropriation and exploitation, however, are not clearly differentiated. Individuals may shift between expropriation to exploitation and back in their lifetimes, and many occupy a hybrid position in which they are “subject simultaneously to both expropriation and exploitation” (Fraser 2018, 12). Exploitation under racial capitalism is entwined with expropriation of racial others in contemporary contexts, and the two statuses are co-constituted in a relational way. The freedom and possibility that exploited wage workers enjoy are dependent upon and defined by the unfreedom and restrictions placed upon expropriated racialized workers. Because of its importance, this method of accumulation through domination, the benefits of expropriation are not merely historical. This relationship is particularly key for the continuation of accumulation in times of crisis (Fraser 2018).

The question of how political economy should account for gender and reproduction has long been a part of analyses of capitalism, even in the late 19th and early 20th centuries (Engels [1884] 1962; Kollontai 1980; Ferguson 2020). Feminists have placed care and intimacy, and their operational importance to political economy under capitalism, into conversation with Marxism and racial capitalism (Giménez 2019; Bhattacharyya 2018; Fraser 2016; Ferguson 2020; Federici 2021). Often this entails reconceptualizing care and intimacy as forms of work that have been devalued or de-commodified. For those who perform the work of care and intimacy, primarily women, this move also expands our understanding of who must be counted as productive separately and apart from waged work (Federici 2021). Activist campaigns, like those demanding wages for housework and care work, challenged the de-commodification of the care work, making the home the site of class struggle (Federici and Austin 2017). These campaigns adopted a sophisticated understanding of what counts as housework, noting it “is much more than housecleaning. It is servicing the waged workers physically, emotionally, and sexually and getting them ready to work day after day for the wage. It is taking care of our children—the future workers” (Federici 2021, 11-12). This tradition continues in contemporary activism. In 2017, women activists in fifty countries joined a strike for International Women’s Day, echoing women’s strikes in 1917 and 1970 (Arruzza, Bhattacharya, and Fraser 2019; Topping and Redden 2017). As part of these efforts, feminist legal scholars have struggled to increase recognition of the importance of care work in law. This scholarship addresses not only the legal failure to account for unpaid care work in our current political and economic order (West 1999; Fineman 1995; Kessler 2005; McCluskey 2003), but also the way in which legal protections for workers exclude and obscure the importance of paid care work performed in the home (Roberts, 1997; Smith 2011; Zatz 2011).

Some feminist interventions in the field rely on theoretical paradigms of social reproduction. Social reproduction is the work of care and sustenance that makes it possible to extract the surplus value of production while ensuring a steady supply of workers to produce value (Fraser 2016; Bhattacharyya 2018; Arruzza, Bhattacharya, and Fraser 2019; Ferguson 2020; Federici 2021). In the United States, the work of social reproduction is gendered, and performed primarily, but not exclusively, by women

(Fraser 2016; Ferguson 2020). Social reproduction scholars highlight our collective willingness to privatize the work of care, imposing its burdens mostly upon women and families. Under the current social contract of the United States, the needs of families to engage in care and market work are not met (Eichner 2013). Social reproduction analyses in the United States reveal the way in which “American capital was built on the unwaged work of millions of women and men and children in the fields, kitchens, and prisons of the U.S. and around the world” (Federici 2021, 11). De-commodifying care work is not inevitable under racial capitalism. The work of social reproduction could be compensated. Care work at home could also be attached to a social wage provided as a recognition of its importance. Further, income and subsistence could be untethered from the realm of wage work, freeing individuals to engage in paid work or home care work as a matter of choice and not coercion.

An economy untethered from coercion is a frequent feature of literary feminist utopias. In Ursula K. Le Guin’s (1974) novel *The Dispossessed: An Ambiguous Utopia*, the people living on the moon Anarres found a “free” anarcho-communalist utopia that is poor and limited in terms of access to goods, but egalitarian in their distribution. Childcare is done in communal spaces. Social pressure, however, exerts some ambivalent control: people are disciplined not by the pervasive scarcity, but by consciousness (Le Guin 1974). Starhawk’s (1993) novel *The Fifth Sacred Thing* constructs a less ambiguous feminist utopia, but also relies on the terrain of consciousness for its operation. In the novel, the political economy of “the City” is built upon access to a basic stipend and guarantee of access and use of housing, water, and food. When one protagonist explains this political economy, she presumes that individuals would want to be useful. Childcare is publicly and privately supported, done in familial/community networks which include poly-configured organizations of mutual aid and care (Starhawk 1993).

Social reproduction must be understood through the dual lens of gender and race in racial capitalism because it distributes the labor and its costs unevenly along lines of race and gender. Analyzing the operation of social reproduction under racial capitalism within our political economy implicates not only class and gender, but also race. Race is a guiding organizational principle that animates the operation of capitalism in the United States. The organization of social reproduction depends mightily on the extraction of labor, the exploitation of persons of color, and the distribution of resources to individuals in alignment with racial capitalism. For this reason, this essay also deploys a lens of intersectionality to think through the operation of racial capitalism.

Intersectionality is a theoretical framework for understanding power and inequality by examining the systemic operation of marginalization along axes of multiple identities. Intersectionality is the theoretical insight that interlocking forms of oppression function together to shape the experience of systemic marginalization. As a theoretical framework, intersectionality’s origin is frequently associated with Black Feminist Thought and Critical Race Theory. In Kimberlé Crenshaw’s (1997) groundbreaking work on the subject, she discusses how law reform projects designed to address domestic violence reinscribe the inequities and harm they are designed to address by failing to recognize how race, citizenship status, and language barriers associated with ethnicity function together with gender.

Intersectional ways of understanding oppression have long been part of the praxis of Black feminist thought and other women of color feminist traditions. The contributions of women like Harriet Tubman, Sojourner Truth, Ida B. Wells, and others engaged in activism as Black women lie at the intersection of class, race, and gender, deploying intersectionality as a form of praxis even before the concept was named. Some scholars also trace the theoretical insights of intersectionality back to the

Combahee River Collective.¹ Further, scholars emerging from a variety of perspectives, including Asian American jurisprudence (Cho [1997] 2003 and 2014) and LatCrit theory (Montoya 1994), among others, have made important contributions to the concept of intersectionality. Closely related to intersectionality lies the theory of anti-essentialism (Harris 1990).

From an intersectional perspective, identity categories like race, gender, disability status, class, and citizenship function together to exacerbate the marginalization of individuals. It is from the groundwork of intersectionality, in part, that we must resist replacing class reductionism with race reductionism in our understanding of racial capitalism. Instead, we must understand how class, gender, race, and other hierarchical identity-based statuses function together, creating interlocking and co-constituting forms of marginalization at the intersection of these concepts.

In the realm of social reproduction, gender, like race, is an organizing technology of political economy—a tool designed to scaffold and organize the costs of social reproduction as it imposes benefits and burdens. It extracts labor from some, imposes the costs of production (and reproduction) upon others, and enables the elite to enjoy the spoils of accumulation. Racial capitalism reveals how the structure of capitalism is dependent upon and organized by race as a logical and inevitable way to distribute opportunities and life chances and extract benefits to support the increased productivity of some workers at the expense of others. Similarly, feminist critical theory scholars have revealed how the relationship between the labor of social reproduction and capitalism is one of dependency. Social reproduction creates the foundations from which capitalism operates and the possibility of productivity. The work of social reproduction, which entails not only cooking and cleaning but also caring for elderly and sick persons and rearing the next potential generation of workers, ensures that workers can continue working and that the interests of capital are provided with a continual flow of workers to replace those that die or retire. The benefits of social reproduction frequently accrue to the interests of the capital class. Yet, in the financial operation of capitalism, at least as administered by the forces of corporate accounting with their accompanying fiduciary obligations of shareholder welfare maximization, the cost of social reproduction is extracted from and internalized by care workers. Whether this care work is performed by unpaid family members or paid market workers, two things are certain. First, the care work of social reproduction is undervalued and poorly compensated, even though it is necessary and beneficial (Zatz 2011). And second, women primarily perform this work.

The co-constituting nature of gender and race under racial capitalism means that white supremacy and patriarchy operate in concert as interlocking, intertwined aspects of racial capitalism. In the system of racial capitalism, gender and race are co-constituting frameworks for the operation of accumulation. Gender is a framework through which race is constructed and understood. Similarly, race is a framework through which gender is constituted. At the same time, race and gender are co-constituted by the market and the market is created by race and gender.

Racial logic dictates and informs the value of labor. As Molton notes, “black laboring bodies in many instances have become redundant, (even as) the social registers of Blackness have been converted into cultural capital and remain highly significant” (Molton 2019). The labor of racialized persons is defined in relation to gender. The expropriation of labor in the institution of slavery, for example, was a race and gender-based project. Enslaved women and enslaved men were often given similar work and held

¹ The Combahee River Collective. 1977. “The Combahee River Collective Statement.” May 10, 2022. <https://www.blackpast.org/african-american-history/combahee-river-collective-statement-1977/>.

to similar standards of productivity but were subject to particularized gender-based forms of punishment and marginalization (White 1999). During the Jim Crow era, while there was some overlap in agriculture and labor, men and women occupied different pieces of the low-wage expropriated labor market (Giddings 2009; Haley 2013). Further, the ideal of productive labor was defined as white male labor; while “capitalism defined the laboring body as male, race placed Black men at the intersection of male privilege and racial exclusion” (Molton 2019).

Gender and race produce market relations, dictating how structural organizing forces distribute work and compensate individuals. As organizing technologies of political economy, the gender and race of a worker give the state and the market crucial information about the potential paths of participation accessible to that individual. Gender and race are not endogenous features of the market. Instead, gender and race shape market relations and dictate the underlying valuations of individuals. While the information derived from a worker’s race and gender is superfluous—after all, race and gender do not truly determine whether one’s talents lie in healing, teaching, building, caring, or programming—race and gender are endowed with information by decisionmakers in ways that inform how talents and potentials are perceived. There is ample evidence indicating that such frameworks shape decisions made in the market by employers (Kang and Lane 2010; Girvan 2015).

The meaning of gender and race shapes the market and is shaped by the market. Gender and race are defined, at least in part, by the work distributed to individuals based on phenotypical characteristics and the value that this work is accorded. For example, James Livingston (2016, 9) argues in an indictment of full employment, “Work has been our way of demonstrating the differences between males and females . . . [and] masculinity and femininity have been defined. . . by their place in a moral economy.” Gender is produced, reproduced, and understood through the way in which labor is distributed based on that classification. Race has a similar function, as people of color have been relegated to liminal spaces in the labor market characterized by poor working conditions, limited opportunity, and poverty wages (Livingston 2016).

Globally, racialized patriarchy animates the operation of racial capitalism in historical and contemporary contexts. The European theft of lands and peoples was justified, in part, through the logic of racialized patriarchy. Infamously, the framework of the “White Man’s Burden” entails the belief that “uncivilized,” “primitive” people of color require guidance provided specifically by white men, who deem themselves morally and economically superior (Gordon 1997). Rudyard Kipling’s (1899) poem *The White Man’s Burden*, considered the “Ur-text” of this ideology (Harris 2005), exemplifies this presumption. Lying at the intersection of paternalistic duty, white supremacy, and noblesse oblige (Baynes 1999), *The White Man’s Burden* served as an ideological justification for imperialism and extractive forms of capital accumulation across borders (Gordon 1997). The presumptions beneath this ideology necessitate a patriarchal order (Gordon 1997; Roman 2000; Gabaldon 2002). In the ideology, white men are regarded as global Fathers to all, by virtue of their status as white men. They are charged with bringing civilization and Christianity to the primitive Black and Indigenous “children” of the global South. The essence of this form of fathering, and the patriarchy that rises in its name, lies in domination, power, and control. These children must be “disciplined” to comply with the demands of the market and serve the interests of capital. This discipline, in the form of extreme austerity in social democracies or the extraction of resources and the expropriation of labor in the global South, is regarded as appropriate and necessary for the development and growth of those (non-white) children. In fact, commentators used the relationship between parents and children as a metaphorical framework to explain the inevitability of white dominance (Gordon 1997). This guiding logic of the racialized patriarch renders women and people

of color children, requiring discipline, guidance, and punishment from the White Father whether the “children” live in the city center in an adjacent but segregated neighborhood, or on a reservation far from their indigenous homelands, or in the empire’s periphery.

Heteropatriarchy and white supremacy are not the only two ideological commitments that animate the operation of racial capitalism and lead to interlocking forms of subordination that shape the material conditions of people’s lives. Racism and sexism function within capitalism to structure the imposition of obligations and burdens and distribute the possibilities for benefits and gain. Other kinds of hierarchical frameworks may have the same function—those concerning the perception of able-bodiedness as a precursor for one’s productive value in a market economy, for example. This creates the conditions of the threat and execution of expulsion from the (limited) benefits of the current economic order. If there are other capitalisms, alternatives might start with the role of race or gender in the operation of accumulation, extraction, and expulsion. We might imagine a world like that created by Dr. Seuss (1961) in his book *The Sneetches*, in which the operation of exploitation, extraction, and expulsion for the purposes of creating accumulation were legally, culturally, and normatively deployed for the benefit of Star-Bellied Sneetches at the expense of those “without stars upon thars.” Race is a sticky and adaptive framework, however. As we have seen in the wake of 9/11, groups that do not represent a cohesive historically racialized group can become racialized (Choudhury 2006; Aziz forthcoming).

III. On Racial Capitalism and Expulsion

In this collaborative symposium, the authors were inspired by the sharp analysis of racial capitalism that Carmen Gonzalez and Athena Mutua (2022) crafted in the lead article. Gonzalez and Mutua make a crucial intervention by framing the operation of racial capitalism through an understanding that it requires not only exploitation and expropriation, but also expulsion of some individuals to operate.

Understanding racial capitalism as an operational trinity aligns with previous literature on racial capitalism. For example, Anthony Farley’s work on racial capitalism employs political theory, philosophy, psychoanalysis, post-colonial theory, and literary theory in demonstrating the forgotten tripartite nature of racialized capitalism. As he argues, “Capitalism is a trinity. Its three faces are genocide. . . colonialism. . . , and slavery” (Farley 2007). Gonzalez’s and Mutua’s genealogical account of racial capitalism traces its wide-ranging theoretical articulations to reveal its operation and applicability to law and political economy. The account of racial capitalism provided by Gonzalez and Mutua also augments the literature on racial capitalism by adding a third “ex” to analyses on the operation of racial capitalism—expulsion. Drawing on the work of Saskia Sassen, Gonzalez and Mutua make a persuasive case for understanding the necessity of expulsion as an operational mechanism within racial capitalism.

Theorized by Saskia Sassen (2014), expulsion is a way of analyzing how complex forces of capitalism operate across diverse nations, economic systems, communities, and groups. Examining these complexities of inequality through the lens of expulsion means interpreting the lack of systematic coherence of this in the operation of capitalism. Classifications of economic systems, nations, and regions into discrete categories (global South v. global North, liberal v. social democracy, communist v. capitalist) collapse. Differences between nations, economic systems, and institutions blur because there are systemic “subterranean trends” that operate across the geopolitical landscape. A part of this operation, the logic of expulsion creates conditions of inequality within which economic growth and

accumulation for some exist simultaneously with displacement, possession, immiseration, and exclusion for others (Sassen 2014).

Expulsion is an assemblage of diverse trends, driven by underlying phenomenon, events, and operations in the market, that result in the extraction of natural resources and the dispossession of individuals. Expulsion is not inevitable or naturally occurring, but is instead the result of a predatory shift in modern capitalism. For Sassen (2014), the current configuration of modern capitalism is characterized by a predatory logic of expulsion, in contrast to the (imperfectly executed) era of Keynesian economics characterized by a logic of inclusion. Expulsion is vast and diverse, and it enables us to map the underlying systemic dynamics that operate beneath the neutrality of law and policy. Part of this dispossession is what Sassen calls “savage sorting”—a process of brutal restructuring of persons and markets that results in the social and economic dismissal of individuals as useful to the operation of modern capitalism (Sassen 2014). The predatory logic of expulsion and its extractive imperative has consequences for people and the environment. Persons subject to expulsion are considered surplus and lack value as workers or consumers. Further, the logic of expulsion marks a shift from understanding these persons as citizens to understanding them as surplus individuals who may be subject to conditions of exclusion and immiseration (Sassen 2016). The logic of expulsion applies not only to people, but also to the planet and its resources, as death in the biosphere comes to characterize this moment. Extractive devastation of environmental conditions and the imperiled biosphere are part of these subterranean trends.

Expulsion is paradoxical and complex. It has historical and contemporary resonance. The dispossession of Indigenous persons in Africa, Australia, and the Americas from their lands and the removal to homelands and reservations represents a recent but historical example of expulsion justified through international law by the Doctrine of Discovery (Williams 1990). In the current moment, the echoes of the dispossession and trafficking of African peoples to be enslaved are present in visually shocking efforts, captured by documentary photographer Paul Ratje, of US government Border Patrol agents brutally “rounding up” Haitian migrants at the US/Mexico border.²

Expulsion can be coercive or voluntary. It can occur at the bottom, where the dispossessed are forcibly expelled, or at the top, where elite individuals of means remove themselves from the social and economic order of citizens and feel no need to be part of society (Sassen 2014). An example of this occurs when wealthy, upper class, and aspirational middle-class people reject local public schools in favor of paying tuition at elite, well-resourced private schools. This move removes these individuals and expels them from the order of citizenship by choice. Although they may still pay property taxes, their time, energy, investments, and devotion are directed toward the private schools their children attend.

Much of the work that Sassen’s rigorously argued text does contributes to a geopolitical and environmental understanding of expulsion. However, expulsion must be understood through the lens of temporality as well. Expulsion can occur for individuals during various periods of their lives. Individuals may face expulsion by incarceration for a fixed term, and then regain access to inclusion

² Chappell, Bill. 2021. “U.S. Border Agents Chase Migrants on Horseback. A Photographer Explains What He Saw.” *NPR*, September 21, 2021. <https://www.npr.org/2021/09/21/1039230310/u-s-border-agents-haiti-migrants-horses-photographer-del-rio>.

and social belonging. Individuals may spend a part of their childhood in a refugee camp, and then gain entry through the asylum process. Of course, while it is possible that expulsion can be a temporary condition, remedied by the inclusion of individuals in the type of imperfect but life-sustaining labor characterized by exploitation or expropriation under racial capitalism, often the period of expulsion means a slide into social or actual death (Bhattacharyya 2018).

The temporal nature of expulsion must include a concept of “always” and “never” for many individuals. Some individuals occupy an abject space in relation to the realm of capitalist citizenship enjoyed by others. They may never have belonged, and even efforts at compliance and engagement will not allow them to ever fully belong. For example, African Americans in the United States who are subject to the school-to-prison pipeline as children and juveniles, and then placed into the adult prison population, may do many things “right” as returned citizens, and yet still face exclusion, discrimination, and marginalization that make life under racial capitalism less than viable. Belonging becomes an impossibility. Others, by virtue of intergenerational wealth and social status, may do many negative things, even committing criminal acts that would lead to expulsion for others, and yet continue to belong. Former President Donald J. Trump, who subverted the norms of federal office and committed offenses some regard as impeachable, remains the *de facto* leader of the Republican Party and enjoys a strong following. Martha Stewart, convicted of securities fraud and incarcerated, has seen a resurgence in her brand.

An additional paradox of expulsion lies in the valuation of the so-called “surplus” persons immiserated and expelled. The surplus population that has suffered expulsion still produces value. Their existence creates jobs for the middling professional classes. The value produced, in part, derives from the administration, management, and warehousing of these populations. The work of their management in the carceral state creates jobs in places in the global North decimated by the ravages of deindustrialization. Their dispossession in the global South, and the movement of individuals seeking asylum that results from expulsion, creates job opportunities for middle-class professionals in law, government, and the non-profit sectors who manage their processing, facilitate the provision of available resources, and guard the border from their entry. In this way, the surplus population produces value in the economic order.

Sites of expulsion are local, national, and transnational. A local example is the city of New Orleans, where gentrification of historically African American neighborhoods in the post-Katrina era has pushed Black residents of the city to peripheral spaces in which flooding is more common and access to schools, amenities, and community networks is limited. Expulsion may also be national. The COVID-19 pandemic in the United States increased pressure upon caregivers, without providing adequate support structures or income stability. Many women caregivers faced increased care obligations and were forced to leave the workforce. This had national implications, as the anecdotal stories of a pending eviction crisis dovetailed with narratives about lost wages and jobs. Many low-wage essential workers facing conflict between care work at home and market work outside the home were forced to leave the workforce, and these essential workers were disproportionately people of color (Powell 2021). Finally, expulsion occurs transnationally, as in numerous examples: from the displacement of Bangladeshi migrants due to climate change, to the migration of Latin American families fleeing violence and instability due to neo-imperialism, to Zimbabwean migrants facing violence and economic exclusion in South Africa, to the displacement of Ethiopian farmers in the wake of land grabs by foreign investors in the country (Sassen 2016).

As Gonzalez and Mutua (2022) demonstrate, exploitation, extraction, expropriation, and expulsion are functional technologies of racial capitalism. They are deployed through institutions. Their logic animates these institutions and undergirds the systemic *raison d'être* behind the complexity of their operations. Law is a key mechanism of operation under racial capitalism (Harris 2021). As a technology, law is necessarily driven by exploitation, extraction, expropriation, and expulsion. The next sections discuss how the logic of expropriation and expulsion along lines of gender function within the operation of legally enabled institutions like the family and work under racial capitalism.

IV. Expulsion, Gender, and Racial Capitalism: Gender, Family, Work, and Care in Women's Lives

There are circumstances in which gender creates conditions of precarity that may result in expulsion. While these circumstances do not exist separately and apart from the operation of racial capitalism, the machinations of extractive racial hierarchy cannot alone explain them. One example of these circumstances arises in contexts where those who do the work of social reproduction—particularly, though not exclusively, women—no longer have caregiving responsibilities. Once the social reproduction work of supporting productive adult workers (spouses) and creating the next generation of workers (children) has been completed, those who have not engaged in paid market work often face a precarious life, always on the edge of economic and social expulsion. Expulsion also occurs when women do the work of social reproduction for populations that are not valued.

Theorists of social reproduction focusing on the gendered nature of care work and people-making often engage primarily with exploitation and expropriation. If we are attentive to the gendered allocation of labor, particularly labor around social reproduction, we can recognize how this work is haunted by the possibility of expulsion. Under racial capitalism, care is often expropriated along the axis of race and gender. When expropriation of this labor is devalued or no longer possible, women are subject to expulsion. Carrie Freshour's research on Black and Latina women workers in the poultry industry demonstrates how the companies that employ these workers create and exacerbate a continual crisis of social reproduction. This crisis, which leaves these racialized women workers unable to provide adequate care and sustenance for their families, ensures that the workers have few choices when it comes to maintaining employment in this difficult, dangerous, and exhausting job. The threats of socioeconomic expulsion and actual deportation that hang over their heads ensure that the company bosses have "a permanent, racialized and gendered reserve army of labor" from which to extract profits (Freshour 2017, n.p.). These women fear expulsion from the social and economic order, while their inclusion within it is dependent upon their willingness to endure exploitation and expropriation in the workplace and at home. Women of color resist, but as Shauna J. Sweeney (2021) argues, such resistance renders women of color pathological at best, and heretical at worst, in relation to a system where productivity and value in the labor market is not only destiny, but also holy doctrine in the faith-based system of capitalism. Walter Benjamin (2004) has suggested that the faith-based nature of capitalism is a cult that serves the same functions of religion. And if racial capitalism is a faith-based belief system that structures the world, then the resistance, refusal, and survival deployed in response by women of color, particularly Black women, represents a type of blasphemy that may require elimination through expulsion.

Gender in the absence of race, however, may even lead to expulsion for white women outside of the paid labor market. Let us take the hypothetical of Jane, a sixty-year-old white woman. This hypothetical mirrors the story of women who experience a "gray divorce." Gray divorces occur after

age 50. Women whose lives are shaped by gray divorce often experience financial circumstances that result in permanent decreases in income. Often, women do not financially recover from a gray divorce (Lin and Brown 2020). The contours of this hypothetical express a certain straight presumption. The gendered political economy of care and domestic work that places the burden of labor upon women is well understood in literature on social reproduction (Fraser 2016; Ferguson 2020). Even in situations where women work outside of the home in a heterosexual relationship, this division of labor persists (Hochschild 2012). While a similar story may be told about same-sex couples in long relationships that involve childrearing and caregiving in rare circumstances, studies have found that same-sex couples do not inevitably mirror heterosexual couples' patterns of domestic labor division; they typically create more egalitarian arrangements of labor than heterosexual couples (Giddings 2003; Goldberg et al. 2013).

Jane was previously a stay-at-home wife and mother, married to Jason, a white man who has a stable union job. When Jane was fifty, after her youngest child left home, her husband had an affair. Jason left Jane to start a new family. Jane was a mother and a wife, doing everything asked of her, but the heart wants what it wants. Jane, who never worked during her marriage, obtained a retail job. She runs the fitting room and makes \$10 an hour. Most weeks, she is lucky and gets almost full-time hours. As part of the dissolution of the marriage, the couple sold the family home. Jane was lucky enough to receive some funds to put a payment down on a small condominium. She also bought a new car. The homeowner's fees, mortgage, and utilities take a sizable portion of Jane's income. Jane received a portion of Jason's pension that will be available when he retires. She will receive a spousal share of social security. Jane lives in a state that disfavors alimony. She will be okay—especially once the Social Security and pension payments start. Sometimes she faces food insecurity, and she has no idea how she will replace her car when it inevitably dies. Her children live economically precarious lives. Living with them is not a possibility. To keep her car running, Jane often takes the bus. Walking to the bus stop one day, Jane trips over a cracked sidewalk and injures herself. She must take unpaid leave from her job under the Family Medical Leave Act. Jane has no idea how she will survive 12 weeks without pay.

Jane is white, heterosexual, and only temporarily disabled. She, like many people in the United States, considers herself middle class, but is still a victim of expropriation and potentially expulsion. After the intensive work of social reproduction was extracted for market gains, Jane's life was rendered far more precarious. Although her position of racial privilege provides some safety nets, resulting in the ability to purchase her condominium, these safety nets are not secure. This precarity, combined with an unlucky turn and a lack of institutions supporting disabled persons, caregivers, and the work of social reproduction may lead her to the realm of expulsion from the economic order.

The life of Jane the Gray Divorcee and the lives of the women working in poultry factories are characterized by the expropriation of their care labor over extended periods of time. However, expropriation may seem preferable to expulsion—and the threat of expulsion for gendered workers, particularly those workers who have aged out of intensive work of caring for children and other workers, is very real. It figures prominently in the US social welfare regime. Access to the meager social welfare assistance in the United States is determined by means-tested schemes that exclude non-elderly, able-bodied individuals without children.

In large part, the hypothetical of Jane's expulsion is a story about law—a story in which feminist reformers who wished to engender equality for people failed to anticipate the consequences arising from their reforms in a capitalist system in which patriarchy and white supremacy are co-constituting

forces. The legal institution of marriage, through which racial capitalism channels the work of social reproduction and benefits of social citizenship, also plays a supporting role in this story. As the architects of marriage equality for same-sex couples in the United States argued, marriage is linked to many social benefits and privileges. *Windsor v. U.S.*, 570 U.S. 744 (2013). Even with demographic changes in which more single mothers are doing the work of social reproduction alone, the legal frameworks supporting this work are presumed to flow through marriages with two people. The reform of divorce in the United States, with its no-fault presumptions and its disfavoring of alimony, was anticipated to help women. Feminist law reformers, believing that a no-fault regime would promote equality and enable women and men to leave unhappy marriages where the partners were incompatible without infidelity, advocated for the adoption of no-fault divorce regimes in the United States. Such regimes have led, however, to social and economic precarity, and to expulsion for many. Further, feminists oriented toward formal equality advocated for gender-neutral changes in the presumptions of alimony, shifting alimony from a gender-based regime that excluded men and favored women, to one tailored to the economic circumstances of the parties. Representing the ACLU Women's Rights Project, future Supreme Court Justice Ruth Bader Ginsburg succeeded in persuading the Supreme Court that state-based laws excluding men from alimony violated the Fourteenth Amendment's Equal Protection provision based on sex discrimination. *Orr v. Orr*, 440 U.S. 268 (1979). Her advocacy also led the Court to hold that Social Security provisions excluding men from the benefits of spousal support violated the Due Process Clause of the Fifth Amendment. *Weinberger v. Wisenfeld*, 420 U.S. 636 (1975); *Califano v. Goldfarb*, 430 U.S. 199 (1977). While these advocacy projects were designed to dismantle harmful stereotypes and create the possibility that market work and care work would be disaggregated from gender, the formal equality models adopted set no floor for poor treatment under law. As happened with alimony and widow's pensions in most places, benefits that previously went to disadvantaged women were not extended to disadvantaged men, but rather were eliminated altogether. (Indeed, formal equality reform is inevitably impoverished because it sets no minimum standard of treatment for individuals—so long as the law treats people equally (Littleton 1987).)

US-based legal feminists also argued for ending gender-based barriers for women in employment and commerce, at least formally. Congress passed the Equal Pay Act of 1963, a law designed to prohibit paying women and men different wages for equal work. In 1964, Congress passed Title VII of the Civil Rights Act, which prohibited discrimination based on sex in employment. In 1978, Congress further expanded the protection of Title VII by passing the Pregnancy Discrimination Act, which explicitly deemed pregnancy discrimination a violation of the statute. The Supreme Court's jurisprudence also expanded protections under Title VII by determining that sexual harassment, *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986), and sexual orientation and gender identity discrimination, *Bostock v. Clayton County*, 590 U.S. ___, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020), was prohibited in employment. While these legal regimes have their limitations and difficulties, they engendered a revolution for women in the workplace.

The promise of these statutes has not been completely realized, however, as the persistence of occupational segregation demonstrates. Less prestigious, low-wage work is performed almost exclusively by women. The value of jobs held by women is diminished because the work is done by women. The United States could have adopted a comparative worth regime in which similar kinds of work with a similar value would be intentionally valued equally, in part to alleviate the inherent sexism reflected in the devaluation of women's work. It did not.

Even so, women's labor force participation increased following these legislative and judicial advancements, and professions that were previously closed to women became more open and inclusive. Feminist law reformers also advocated for reforms to incentivize more universal participation in paid market work outside the home, while advocating for an expanded social welfare regime where childcare, house cleaning, and cooking would be performed by paid workers (Schultz 2000). The possibilities of paid work for women and men as a path to liberation and the good life, and the social supports it would require, however, have failed to materialize.

Even when these statutes were passed, women workers were already differentiated in terms of labor force participation and work. While some women of color would benefit from these reforms, their struggle under racial capitalism was different. Women of color were already working outside of the home in large numbers. Often this work supported the social reproduction of white families, and it was done in a coercive fashion with explicit or implicit work requirements enforced by law (Minoff 2020). The crucial work of social reproduction for women of color was devalued to the point of exclusion from the available supports that were in place for white women. Women of color, particularly Black women in the South, did not have access to mothers' pensions or Aid to Dependent Families with Children. Instead, Black women were expected to perform domestic labor in the homes of white families (Gordon 1994; Quadagno 1996). Women of color were struggling to be placed on equal grounds with white women in terms of how the state recognized and valued their social reproduction work at home, even as white women were in thrall to the "feminine mystique" and the possibilities presented by work outside the home. These struggles were represented in social movements organized by women of color to access welfare so that they had the ability to stay home and care for their families on the same basis enjoyed by white women (Gordon 1994; Quadagno 1996). And ultimately, in the United States, these were battles that poor women, particularly Black women, lost.

Law, while appearing as a tool of liberation in one context, functioned as a technology of surveillance and marginalization in another. The federal government proved willing to allow states to administer welfare in ways that eliminated paths to higher education, decreased benefits, privacy, and autonomy, and increased requirements to work and to associate with the designated "fathers" of their children (Mink 1998; Mink and Kornbluh 2019). The racialized nature of surveillance, shame, and marginalization for Black women that operates beneath the efforts to "reform" welfare in ways that decrease autonomy and exacerbate vulnerability is well documented. Priya Kandaswamy (2021) argues it can be understood as a continuation of 19th-century Jim Crow era efforts.

The combination of the push for gender-neutral alimony laws and feminist reformers advocating universal participation in market work has meant that most jurisdictions came to disfavor alimony, even in circumstances where one spouse has focused on the family's care. This change created a push for those previously engaged in social reproduction as a life's work to assume the mantle of paid market work upon divorce, even when opportunities afforded to them were characterized by low wages and harsh conditions. Legal advocates and reformers, while well-intentioned and focused on helping both men and women to cast off outdated stereotypes, failed to consider the stickiness of inequality. Due to occupational segregation, not all workers are similarly situated in the market.

The challenge of this revolution has been that it has left a system of privatized social reproduction in place. The conceptual division between the work of social reproduction and the work of the market relegated care obligations to the private space of the family, imposing the costs heavily upon families and women as individuals. Against this backdrop, markets of exchange where paid work occurs are

made possible by the work of social reproduction. Social reproduction is a necessary precondition for work and accumulation. The creation of people and the care and feeding of children, the disabled, the elderly, and workers are enabled by social reproduction. The work of social reproduction, in both its paid and unpaid forms, produces and is produced by feminized persons in a gendered caste system who are primarily though not exclusively women. Although some women workers were freed from the constraints of performing the work of social reproduction, many women who entered the workforce were required to engage in a second shift, doing not only the paid work but also the social reproduction work in the home (Hochschild and Machung 1989). In this way, the revolution engendered by the expansion of waged work to include women in waged work offered women “the right to work more, that is, the right to be more exploited” (Federici 2021).

This privatized system of care had profound consequences under racial capitalism for women of color, coercively relegated in the labor market to the low-wage, lightly regulated space of paid care work. Historically, care work in the United States was performed by women of color. Under racial capitalism, paid care work and domestic work done by women of color has been a site of expropriation and expulsion. Paid care work done by women of color has continually enabled the increased labor participation of white women at the expense of women of color who were treated to poverty wages, unregulated hours and obligations, and an inability to care for their own children. For example, in the South, Black women engaged in this work. In the contemporary contexts, such work is often performed by women of color from the global South who leave their own children and families. These women, who are often undocumented or live in the country based on special visas, are unable to hold employers in check and prevent abuses, because employers may retaliate against them by reporting them to immigration authorities. Their acquiescence to the expropriation of their labor, necessary to support the exploitation of women working in the global North, is maintained by the threat of expulsion.

The work of social reproduction produces and is a product of racial capitalism. Racial capitalism structures the market for caregivers by linking compensation and opportunity to a caregiver’s proximity to an ideal that heteropatriarchal white supremacist norms favor. The market values caregivers in a way that privileges white, English-speaking, native-born, cisgender-presenting women. This provides more opportunities for employment and more compensation for those whose identities mirror those norms. Caregivers who are Black or Latino, who do not speak English as a first language, who are not native born, and who are not cisgender-presenting women, may still find opportunities to work, although their labor will be subject to expropriation, lower wages, poor working conditions, and the potential for expulsion. The organization of social reproduction depends upon the expropriation of labor done by persons of color and the distribution of resources to individuals in alignment with racial capitalism. As Pavithra Vasudevan and Sara Smith demonstrate in their case studies focused on the lives of women of color who mother, work, and live in environments characterized by environmentally toxic and unhealthy conditions, “[c]apitalism is predicated upon a racialized hierarchy of gendered bodies” (Vasudevan and Smith, 2020).

Racial capitalism structures not only access to the provision of care services, but also perceptions about who should be allowed to stay home to care for children and how children should be raised. Instead of providing universal assistance so that all parents can choose to stay home with children or work outside the home, racial capitalism provides only neoliberal market-based solutions. Pay-for-access childcare creates challenging circumstances for all but the most well-resourced parents. The arising inequities map onto social reproduction under racial capitalism. When access to high-quality care is contingent on the ability to pay, people of color and single parents who have more limited

resources cannot rely on the market. As workers, Black, Indigenous, and Latino individuals, for example, are subject to persistent exclusion from paid employment and persistent forms of explicit discrimination and implicit bias (Kang and Lane 2010), and are less likely to inherit intergenerational wealth to smooth rough challenges (Rothstein 2018). And when parents are unable to provide the intensive high-quality care that may ensure competitiveness and success, this inability is regarded as a willful failing. Behind these judgments lies the threat that children will be unable to produce adequate value in the current economy—making them subject to warehousing or expulsion. In contrast, caregivers who have the economic means to enable someone to perform the intensive, enrichment-oriented parenting that has become the aspirational gold standard are perceived as completely justified in having one parent stay at home. Not only can poor parents not choose to stay at home and make intensive parenting investments in their children (or hire someone else to do so), but they are also given the social message that any failures arising from this are their fault. Behind these circumstances, the specter of expulsion looms, extracting compliance and dis-incentivizing dissent from the status quo.

Beyond engagements with the depth of expropriation and expulsion present in the process of social reproduction for women, there are additional perspectives on how hierarchies of racial capitalism may operate in ways that take gender as a background condition. This can be revealed by focusing on the lives of transgender persons. Gender, and the process of gendering as a co-constitutive operating force in the theory of racial capitalism, should be understood in a way that also incorporates the lives of transgender persons in this analysis. The next section begins this endeavor by examining how transgender persons' lives are shaped by the expulsion under racial capitalism.

V. Family and Work as Sites of Expulsion for Transgender Persons

Transgender persons are subject to forms of exploitation, expropriation, and expulsion under racial capitalism. Under racial capitalism, transgender persons are often exiled from their families of origin and excluded from the benefits of work and economic citizenship. The ways in which transgender persons are subject to expulsion cannot be understood solely through the lens of race and class. Transgender persons are economically subordinated in ways that cannot be explained without thinking about the role that gender plays—particularly as it demands compliance with binary conceptions of gender.

The transgender community is diverse, and research on non-binary and gender-creative persons is still emerging. This essay grounds its analysis in the larger category of transgender, an umbrella term that includes many individuals whose identities do not neatly map onto those associated with binary sex and gender models (Matambanadzo 2006). Despite this diversity, the price for failing to comply with the demands of the sex-gender binary have long been understood in queer theory to include exile. Queer theorist Judith Butler (1993 and 2004) argues that gender effectively signals membership in the community of those who are intelligible. Butler's theory denaturalizes gender and sex to reveal that it is not inevitable, but instead is contingent upon historical conditions (Lee 2021). Lee notes that a "transsexual Marxism" requires Butler's insights because "it is her materialist assertion that not only gender but also the sexed body itself is social rather than natural" (Lee 2021, 65). The sexed body, like the operation of political economy, is social, temporal, and historical in nature (Lee 2021).

The powerful material effects of gender are understood through the lens of binary sex (Butler 1999); yet gender itself is a fragile category that must be maintained by repetitions and performance (Butler

2004). Those who fail to comply with the intelligible patterns of gendering the self under the straight matrix may be relegated to abject spaces characterized by violence, death, and erasure (Butler 1999; 2004). Much of this erasure and expulsion is based on the failure to comply with the binary models of overlapping sex and gender that are assumed in mainstream society. Law plays a significant role in this process because this “failure” occurs against the backdrop of legal sex. Legal sex in the United States maps the boundaries of belonging and structures many outcomes in individuals’ lives. Present in documents like licenses, passports, Social Security cards, birth certificates, and school records, legal sex frequently influences the safety and security of transgender persons (Spade 2015; Matambanadzo 2006).

The family is a legal institution where the groundwork of expulsion for transgender persons under racial capitalism begins. The expulsion of transgender persons often starts with rejection from their families of origin (Grant et al. 2011; James et al. 2016). This is, at least in part, enabled by the constitutional protections of privacy granted to the family. In the United States, the judge-made constitutional order has endowed the family with a protective veil of privacy that ensures that parents have the right to determine the best path forward for educating and raising children. The Supreme Court has found a right to privacy and autonomy for the family derived from the Fifth and Fourteenth Amendment to the US Constitution. See *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494 (1977). Under these doctrines, the family occupies a zone of privacy. This precedent accords great deference to the decisions of parents on how to raise their children. *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Troxel v. Granville*, 530 U.S. 57 (2000). And while there are some limits to this freedom, *Prince v. Massachusetts*, 321 U.S. 158 (1944), the private nature of the family can be used by parents to keep the state from intervening even in circumstances where parental determinations about what is best for children may be questionable, *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Even parents who have been deemed unfit by the law retain their constitutionally protected rights. *Santosky v. Kramer*, 455 U.S. 745 (1982). Furthermore, the state has no affirmative duty to intervene and protect children in circumstances that would give rise to a cause of action. *DeShaney v. Winnebago County*, 489 U.S. 189 (1989).

Even as the Supreme Court begins the process of dismantling the substantive due process protections for privacy, see *Roe v. Wade*, 410 U.S. 113, 169 (1973), *overturned by* *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. ____ (2022) (slip opinion), it is important to remember that the doctrine of privacy does not provide seamless and consistent protections for vulnerable persons like women, people, of color, or sexual minorities. Privacy for transgender persons within the family is often a shield for the conduct of hostile parental figures, who may seek conversion therapy or other “treatment” options. Feminists in critical race theory have used an intersectional perspective to demonstrate how privacy for poor women and women of color is less meaningful or even nonexistent (Bridges 2017; Roberts 2002; Bach 2013). Under doctrines of privacy and strong constitutional deference to parents, transgender minors are left vulnerable to the wishes of their parents. In the United States, because parents enjoy robust rights over determining how their children should be raised, transgender minor children whose interests may diverge from those of their parents are especially vulnerable. Because the family is an important institution for ensuring that minor children have care and support before they become old enough to work, expulsion from the family can have grave consequences. Transgender persons face violent forms of systemic expulsion from their families, often at an early age. Some of this exclusion occurs in the form of psychological abuse, in which an individual’s confirmed gender identity is not acknowledged or recognized. Other times, exclusion takes the form of physical or sexual violence at the hands of family members. As a result of exclusion,

discrimination, and abuse at the hands of family members, some transgender youth take drastic action by attempting suicide or running away from their families of origin (Grant et al. 2011; James et al. 2016). And while many parents do have children's best interests at heart and work to promote their happiness and well-being, the constitutional doctrines of privacy and the powerful presumptions that parents are best positioned to protect their children can have negative consequences for transgender youth. One such consequence may be expulsion from the family unit, which has economic and social costs.

Transgender people are also subject to expulsion from the benefits of economic citizenship through work under racial capitalism. Transgender persons in the United States occupy a precarious position in relationship to employment, and suffer from discrimination in the workplace (Grant et al. 2011). Empirical research examining the experiences of transgender people exposes devastating rates of discrimination in employment. Many transgender people struggle to find work, and those that are employed face adverse employment action because of their gender identity. As Sandy James and co-authors (2016) demonstrate, of the transgender persons who were employed at the time of the survey, 30% reported being fired, denied a promotion, denied compensation adjustments, harassed, or assaulted at work because they are transgender. In the United States, the benefits of citizenship under capitalism are linked to employment. Yet, transgender people are frequently denied stable access to remunerative work. Transgender people face unemployment rates that are three times higher than their cisgender counterparts in the labor market, with even higher rates of unemployment for transgender people of color (James et al. 2016).

In 2020, the US Supreme Court expanded the sex discrimination protections of Title VII to include discrimination based on gender identity and sexual orientation. *Bostock*, 140 S. Ct. at 1741-43. Legal protections in the workplace are an imperfect solution to discrimination, however. For example, although pregnancy discrimination protections have been codified in Title VII since 1978 (Matambanadzo 2016), reports by the federal Equal Employment Opportunity Commission (EEOC) indicate that pregnancy discrimination remains a persistent problem (Spiggle 2021). And documentation and recognition for transgender persons, like anti-discrimination protections, may not provide an answer to economic exclusion and social marginalization under racial capitalism (Spade 2015).

The economic conditions of expulsion that shape the lived experiences of transgender persons under racial capitalism are made more dire at the intersection of race and gender identity. According to researchers, transgender persons who are African American, Native American, Latino, or multiracial face even more discrimination (Grant et al. 2011). This brief foray into thinking about the lives of transgender persons reveals how gender and race function together under racial capitalism.

Under racial capitalism, the binary sex-gender matrix, with its exacting frameworks for intelligibility, relegates those who fail to adhere to it to expulsion. Gender shapes the realm of being and the possibilities of who counts and how we take account of them (Butler 1993). For those who run afoul of its demands, the result may be homelessness, hunger, sickness, and even death. These possibilities are made real in the lives of transgender persons. Transgender youth suffer violence, abuse, and expulsion from their homes of origin, leading to higher rates of homelessness among transgender youth. The expulsion of transgender persons from their families of origin and from the paid work economy pushes individuals into gray economy work to survive.

The gendered and raced work of care and intimacy follows the logic of expropriation and expulsion under racial capitalism. Whether explicitly commodified like sex work, house cleaning, or nannying, or implicitly commodified (and explicitly de-commodified) like marriage and child rearing, care work is organized through markets of exchange in which the value of participants is determined by race and compliance with the sex-gender binary. Transgender individuals, particularly transgender youth, are statistically overrepresented in survival sex work, which has the potential to lead to violence and expulsion. Transgender persons are also overrepresented in the prison population. Transgender persons, particularly transgender women of color, suffer from intimate partner violence at higher rates than cisgender persons (Grant et al. 2011). They are also murdered at higher rates than the general population (James et al. 2016). When it comes to the expulsion that transgender people face, gender and race under racial capitalism are co-constituting forces that lead to expulsion.

For transgender individuals, the tyranny of the cis-normative binary gender framework under racial capitalism is exacerbated by the despotism of an economic order in which the family is the dominant institution for distributing social welfare. This is made worse in a legal order in which children are treated less like free, potentially autonomous beings with their own ends to pursue, and more like property subject to their parent's will, correction, and control. The result of how these interlocking systems of subordination function for transgender persons is a life of precarity on the edge of expulsion.

Expulsion creates many paradoxes in its operation when it comes to the family. When it comes to the family, the interests of women and transgender persons seem to diverge along lines of race. Although expulsion from the family remains a damaging prospect for women, the family in much of the historical mainstream feminist literature was a site of marginalization and suffocation that must be escaped and overcome in favor of work and the public sphere (Friedan 2001). In contrast, women of color feminists have regarded the family as an imperfect but necessary site providing shelter from the attacks of white supremacy. bell hooks (1990), for example, employed the notion of "homeplace" to signify this site of nurturing and care in the Black community. And Margaret Montoya's (1994) work on the intersectional identity of Chicana women in law employs powerful narratives of home and domestic care to contrast with the work of learning law and becoming an elite lawyer.

While in a system where the family is a site of social welfare and distribution, without which transgender persons are forced into a labor and housing market that is indifferent at best and outright hostile and discriminatory at worst, the family has the potential to provide an imperfect means of shelter and defense from the cruelest aspects of market capitalism. At the same time, it is necessary to note that while gender should be understood as co-constituting racial capitalism, individuals marginalized on the axis of gender may participate and benefit from racial capitalism if they occupy the position of white subjects, particularly in the global North.

VI. Conclusion

This essay demonstrates how the co-constitutive forces of gender and race under racial capitalism operate in an interlocking fashion. Gender and race, as mutually constituting forces, designate the limits of belonging and create the threat of expulsion under racial capitalism. Focusing on the position of women and transgender people under racial capitalism, this essay provides insight into how interlocking hierarchies of systemic exclusion function through law and legal institutions. Individuals whose contributions to social reproduction are no longer needed or labeled undesirable, and

individuals who fail to comply with the rigid binary categories of sex and gender, are potentially subject to expulsion from the community of belonging. Law is one of the key technologies of racial capitalism enabling this expulsion.

REFERENCES

Arruzza, Cinzia, Tithi Bhattacharya, and Nancy Fraser. 2019. *Feminism for the 99%: A Manifesto*. Verso.

Aziz, Sahar. Forthcoming. "Legally White, Socially Brown: Racialization of Middle Eastern Americans." In *Routledge Handbook on Islam and Race*, edited by Zain Abdullah. Routledge. <http://dx.doi.org/10.2139/ssrn.3592699>.

Bach, Wendy A. 2013. "The Hyperregulatory State: Women, Race, Poverty, and Support." 25 *Yale Journal of Law and Feminism* 1.

Baynes, Leonard M. 1999. "An Investigation of the Alleged 'White Man's Burden' in the Implementation of an Affirmative Action Program in Telecommunications Ownership." 30 *Rutgers Law Journal* 731.

Benjamin, Walter. (1921) 2004. *Selected Writings Volume I*, translated by Rodney Livingstone. Belknap/ Harvard University Press.

Bhattacharyya, Gargi. 2018. *Rethinking Racial Capitalism: Question of Reproduction and Survival*. Rowman & Littlefield.

Bridges, Khiara M. 2017. *The Poverty of Privacy Rights*. Stanford University Press.

Butler, Judith. 1990. *Gender Trouble: Feminism and the Subversion of Identity*. Routledge.

Butler, Judith. 1993. *Bodies that Matter: On the Discursive Limits of Sex*. Routledge.

Butler, Judith. 2004. *Undoing Gender*. Routledge.

Cho, Sumi. (1997) 2003. "Converging Stereotypes in Racialized Sexual Harassment: Where Model Minority Meets Suzie Wong." In *Critical Race Feminism*, edited by Adrien Wing, 349. Second edition. NYU Press.

Cho, Sumi. 2014. "Post-Intersectionality: The Curious Reception of Intersectionality in Legal Scholarship." 10 *DuBois Review: Social Science Research on Race* 385. <http://dx.doi.org/10.1017/S1742058X13000362>.

Choudhury, Cyra. 2006. "Terrorists & Muslims: The Construction, Performance and Regulation of Muslim Identities in the Post-9/11 United States." 7 *Rutgers Journal of Law and Religion* 8.

Collins, Patricia Hill. 2019. *Intersectionality*. Duke University Press.

Crenshaw, Kimberlé. 1991. "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color." 43 *Stanford Law Review* 1241. <http://dx.doi.org/10.2307/1229039>.

Eichner, Maxine. 2013. *The Supportive State: Families, Government, and America's Political Ideals*. Oxford University Press.

Engels, Friedrich. (1884) 1962. "The Origin of the Family, Private Property and the State." In *Marx & Engels, Selected Works Volume 3*, 191. Progress Publishers.

Farley, Anthony Paul. 2007. "'Must Have Been Love:' The Nonaligned Future of a Warm December." In *Bandung, Global History, and International Law*, edited by Luis Eslava, Michal Fakhri, and Vasuki Nesiah, 616. Cambridge University Press.

Federici, Silvia. 2021. *Patriarchy of the Wage: Notes on Marx, Gender, and Feminism*. P.A. Press.

Federici, Silvia, and Arlen Austin. 2017. *Wages for Housework: The New York Committee 1972–1977: History, Theory Documents*. Autonomedia.

Ferguson, Susan. 2020. *Women and Work: Feminism, Labour, and Social Reproduction*. Pluto Press.

Fineman, Martha. 1995. *The Neutered Mother, The Sexual Family and Other Twentieth Century Tragedies*. Routledge.

Fraser, Nancy. 2016. "Contradictions of Capital and Care." 100 *New Left Review* 99.

Fraser, Nancy. 2018. "Roepke Lecture in Economic Geography—From Exploitation to Expropriation: Historic Geographies of Racialized Capitalism." 94 *Economic Geography* 1. <http://dx.doi.org/10.1080/00130095.2017.1398045>.

Fraser, Nancy. 2019. "Essay: Is Capitalism Necessarily Racist?" *Politics and Letters: Interviews with the New Left Review*, May 20, 2019. <http://quarterly.politicsslashletters.org/is-capitalism-necessarily-racist/>.

Freshour, Carrie. 2017. "Capitalism and the Crisis of Social Reproduction." *Society and Space*, November 7, 2017. <https://www.societyandspace.org/articles/aint-no-life-for-a-mother-racial-capitalism-and-the-crisis-of-social-reproduction>.

Friedan, Betty. 2001. *The Feminine Mystique*. W.W. Norton & Company.

Gabaldon, Theresa A. 2002. "Corporate Conscience and the White Man's Burden." 70 *George Washington Law Review* 944.

Giddings, Lisa. 2003. "But . . . Who Mows the Lawn? The Division of Labor in Same-Sex Households." In *Women, Family, and Work: Writings on the Economics of Gender*, edited by Karen S. Moe, 85. Blackwell Publishing.

Giddings, Paula. 2009. *When and Where I Enter: The Impact of Black Women on Race and Sex in America*. Harper & Collins.

Giménez, Martha E. 2019. *Marx, Women, and Capitalist Social Reproduction*. Haymarket Books.

Girvan, Erik James. 2015. "On Using the Psychological Science of Implicit Bias to Advance Anti-Discrimination Law." 26 *George Mason University Civil Rights Law Journal* 1. <http://dx.doi.org/10.2139/ssrn.2592178>.

Go, Julian. 2021. "Three Tensions in the Theory of Racial Capitalism." 39 *Sociological Theory* 38. <http://dx.doi.org/10.1177/0735275120979822>.

Goldberg, Abbie E., JuliAnna Z. Smith, and Maureen Perry-Jenkins. 2013. "The Division of Labor in Lesbian, Gay, and Heterosexual New Adopted Parents." 74 *Journal of Marriage and Family* 812. <https://doi.org/10.1111/j.1741-3737.2012.00992.x>.

Gonzalez, Carmen G., and Athena Mutua. 2022. "Mapping Racial Capitalism: Implications for Law." 2 *Journal of Law and Political Economy* 127.

Gordon, Linda. 1994. *Pitied but Not Entitled: Single Mothers and the Question of Welfare*. NY Free Press.

Gordon, Ruth. 1997. "Saving Failed States: Sometimes A Neocolonialist Notion." 12 *American University Journal of International Law & Policy* 903.

Grant, Jaime M., et al. 2011. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. National Center for Transgender Equality and National Gay and Lesbian Task Force. https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf.

Haley, Sarah. 2013. "'Like I Was a Man': Chain Gangs, Gender, and the Domestic Carceral Sphere in Jim Crow Georgia." 39 *Signs* 53. <http://dx.doi.org/10.1086/670769>.

Harris, Angela P. 1990. "Race and Essentialism in Feminist Legal Theory." 42 *Stanford Law Rev.* 581. <http://dx.doi.org/10.2307/1228886>.

Harris, Angela P. 2005. "Love and Architecture: Race, Nation, and Gender Performance Inside and Outside the State." 52 *Cleveland Law Review* 121.

Harris, Angela P. 2021. "Foreword: Racial Capitalism and Law." In *Histories of Racial Capitalism*, edited by Destin Jenkins and Justin Leroy, vii. Columbia University Press.

Hochschild, Arlie R. 2012. *The Managed Heart*. University of California Press.

Hochschild, Arlie, and Anne Machung. 1989. *The Second Shift: Working Parents and the Revolution at Home*. Penguin Books.

hooks, bell. 1990. *Yearning: Race, Gender, and Cultural Politics*. South End Press.

Jackson Sow, Marissa. 2021. "Whiteness as Contract." 78 *Washington & Lee Law Review* 1803. <http://dx.doi.org/10.2139/ssrn.3761432>.

James, Sandy, Jody Herman, Susan Rankin, Mara Keislin, and Lisa Mottett. 2016. *Report of the 2015 U.S. Transgender Survey*. National Center for Transgender Equality. May 10, 2022. <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

Kandaswamy, Priya. 2021. *Domestic Contradictions: Race and Gendered Citizenship from Reconstructions to Welfare Reform*. Duke University Press.

Kang, Jerry, and Kristin Lane. 2010. "Seeing Through Colorblindness: Implicit Bias in Law." 58 *UCLA Law Review* 465.

Kelley, Robin D.G. 2000. "Foreword." In *Black Marxism: The Making of the Radical Black Tradition*, by Cedric Robinson, xi. University of North Carolina Press.

Kelley, Robin D.G. 2017. "What Did Cedric Robinson Mean by Racial Capitalism?" *Boston Review*. May 10, 2022. <http://bostonreview.net/race/robin-d-g-kelley-what-did-cedric-robinson-mean-racial-capitalism>.

Kellner, Douglas. 1995. *Media Culture: Cultural Studies, Identity, and Politics Between Modern and Postmodern*. Routledge.

Kessler, Laura T. 2005. "Transgressive Caregiving." 33 *Florida State University Law Review* 1.

Kipling, Rudyard. 1899. "The White Man's Burden." 12 *McClure Magazine* 290. <http://dx.doi.org/10.1093/owc/9780198723431.003.0071>.

Kollontai, Alexandra. 1980. *Selected Writings of Alexandra Kollontai*. Translated by Alix Holt. W.W. Norton & Company.

Lee, Rosa. 2021. "Judith Butler's Scientific Revolution: Foundations for a Transsexual Marxism." In *Transgender Marxism*, edited by Jules Joanne Gleeson and Elle O'Rourke, 62. Pluto Press.

Le Guin, Ursula K. 1994. *The Dispossessed*. Harper Voyager.

Leong, Nancy. 2013. "Racial Capitalism." 126 *Harvard Law Review* 2151. <http://dx.doi.org/10.2139/ssrn.2009877>.

Lin, I-Fen, and Susan L. Brown. 2020. "The Economic Consequences of Gray Divorce for Women and Men." 76 *Journals of Gerontology* 2073. <https://doi.org/10.1093/geronb/gbaa157>.

Littleton, Christine A. 1987. "Reconstructing Equality." 75 *California Law Review* 1279.

Livingston, James. 2016. *No More Work: Why Full Employment is Bad Idea*. University of North Carolina Press.

- Matambanadzo, Saru M. 2006. "Engendering Sex: Birth Certificates, Biology and the Body in Anglo American Law." 13 *Cardozo Women's Law Journal* 101.
- Matambanadzo, Saru M. 2016. "Reconstructing Pregnancy." 69 *Southern Methodist University Law Review* 187.
- McCluskey, Martha T. 2003. "Caring for Workers." 55 *Maine Law Review* 313.
- Mink, Gwendolyn. 1998. *Welfare's End*. Cornell University Press.
- Mink, Gwendolyn, and Felicia Kornbluh. 2019. *Ensuring Poverty: Welfare Reform in Feminist Perspective*. University of Pennsylvania Press.
- Molton, Jordanna. 2019. "Black Masculinity Under Racial Capitalism." *Boston Review*, July 16, 2019. <http://bostonreview.net/race/jordanna-molton-black-masculinity-under-racial-capitalism>.
- Montoya, Margaret. 1994. "Máscaras, Trenzas, y Greñas: Un/Masking the Self While Unbraiding Latina Stories and Legal Discourse." 17 *Harvard Journal of Law and Gender* 185.
- Morgan, Jennifer L. 2021. *Reckoning with Slavery: Gender, Kinship, and Capitalism in the Early Black Atlantic*. Duke University Press.
- Powell, Catherine. 2021. "Color of Covid and Gender of Covid: Essential Workers, Not Disposable People." 33 *Yale Journal of Law and Feminism* 1.
- Quan, H.L.T. 2005. "Geniuses of Resistance: Feminist Consciousness and the Black Radical Tradition." 47 *Race & Class* 39. <http://dx.doi.org/10.1177/0306396805058081>.
- Quadagno, Jill. 1996. *The Color of Welfare: How Racism Undermined the War on Poverty*. Oxford University Press.
- Roberts, Dorothy, E. 1997. *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*. Vintage Books.
- Roberts, Dorothy E. 1997. "Spiritual and Menial Housework." 9 *Yale Journal of Law and Feminism* 51. <http://dx.doi.org/10.4324/9781351154208-9>.
- Roberts, Dorothy. 2002. *Shattered Bonds: The Color of Child Welfare*. Civitas Books.
- Robinson, Cedric. 2000. *Black Marxism: The Making of the Black Radical Tradition*. University of North Carolina Press.
- Roman, Ediberto. 2000. "A Race Approach to International Law (RAIL): Is There a Need for Yet Another Critique of International Law?" 33 *UC Davis Law Review* 1519.
- Rothstein, Richard. 2018. *The Color of Law: A Forgotten History of how Our Government Segregated America*. Liveright.

Sassen, Saskia. 2014. *Expulsions: Brutality and Complexity in the Global Economy*. Belknap Press of Harvard University.

Sassen, Saskia. 2016. "At the Systemic Edge: Expulsions." 24 *European Review* 89. <http://dx.doi.org/10.1017/S1062798715000472>.

Schultz, Vicki. 2000. "Life's Work." 100 *Columbia Law Review* 1881. <http://dx.doi.org/10.2307/1123593>.

Seuss, Dr. [Theodore Geisel] 1961. *The Sneetches*. Random House Books for Young Readers.

Smith, Peggy R. 2011. "Work Like Any Other, Work Like No Other: Establishing Decent Work for Domestic Workers." 51 *Employee Rights and Employment Policy Journal* 157.

Spade, Dean. 2015. *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law*. Duke University Press.

Spiggle, Tom. 2021. "Are More Women Filing Pregnancy Discrimination Lawsuits?" *Forbes*, June 20, 2021. <https://www.forbes.com/sites/tomspiggle/2021/07/20/are-more-women-filing-pregnancy-discrimination-lawsuits/?sh=3eddab226451>.

Sweeney, Shauna J. 2021. "Gendering Racial Capitalism and the Black Heretical Tradition." In *Histories of Racial Capitalism*, edited by Destin Jenkins and Justin Leroy, 53. Columbia University Press.

Starhawk. 1993. *The Fifth Sacred Thing*. Bantam Press.

Topping, Alexander, and Molly Redden. 2017. "We Are National, We Are Everywhere: Women Unite in Global Strike." *The Guardian*, March 7, 2017. <https://www.theguardian.com/world/2017/mar/08/international-womens-day-political-global-strike>.

Vasudevan, Pavithra, and Sara Smith. 2020. "The Domestic Geopolitics of Racial Capitalism." 38 *Environmental and Planning C: Politics and Space* 1160. <https://doi.org/10.1177/026399654420901567>.

West, Robin. 1999. *Caring for Justice*. NYU Press.

White, Deborah Gray. 1999. *Too Heavy a Burden: Black Women in Defense of Themselves, 1894–1994*. W.W. Norton & Company.

Williams, Jr., Robert. 1990. "The Rights and Status of Indigenous Peoples Under International Law During the Classical Era Treaty Period (1600-1840)." 5 *Law & Anthropology* 238.

Zatz, Noah. 2011. "The Impossibility of Work Law." In *The Idea of Labour Law*, edited by Guy Davidov and Brian Langille, 234. Oxford University Press.