



Shelley Cavalieri, University of Toledo College of Law
Lua Kamál Yuille, Northeastern University School of Law and D'Amore-McKim
School of Business*

The White Androcentric Disposition of Capitalist Property

Abstract: Racial capitalism provides a baseline analysis of how capitalist systems function inextricably from race. We contribute to the development of the concept of racial capitalism by arguing that as property is the lingua franca of capitalism, racialized, gendered property is the institution that undergirds racial capitalism. Even if we could eliminate the racial and gender bias of the capitalist system, the very disposition of the institution of property itself is so inherently racialized and gendered through the human interactions by which it is co-constituted that the resultant property-based capitalism is also raced and gendered. Those observations are the backdrop for a more probing set of arguments about the role of gender and race in shaping the property narrative, which we explore in a series of examples that reveal the inherently racialized and gendered nature of property in the extant capitalist system. Our engagement opens space in this era of racial and gender reckoning to call upon property to become a site of advancing new or contested social values of justice or equality for communities that exist at the margins of society.

Keywords: Property, race, gender, capitalism, feminism

I. Introduction

Outside the realm of property theory, we tend to think about property as stuff. Houses. Land. Money. Cars. Property is commonly understood to refer to the valued resources of society, the goods we exchange. Ideas or music or art or technological processes might be understood as property. Money is surely property. Indeed, in the common parlance, property is stuff, and to think about material goods as inherently gendered or raced is perhaps a perplexing

* We wrote this article under pandemic parenting duress, with one author's children intermittently quarantined and those of the other reduced to a state of feral homeschooling for their own safety. If we sound angry, it is because we are enraged at the society that has so utterly failed mothers. If you don't think we sound angry, you are reading us wrong. We thank our four daughters for being the reason we fight. We also thank Carmen Gonzalez, Angela Harris, Taja-Nia Henderson, Saru Matambanadzo, Audrey McFarlane, Athena Mutua, and the other participants in the Journal of Law and Political Economy Symposium for their generous and insightful comments. The editorial board of the *Journal* has lived its values in managing the production of this piece. All errors remain the authors' alone.

proposition. Goods themselves are neutral under this rubric, and so to claim that they reflect hierarchy makes little sense.

Yet, if we invite you into the space of property theory, where we understand property not as things themselves, not even as the rights of a person to things (Merrill and Smith 2001), but rather as the system of relationships among persons with respect to valued resources (Singer 2000), the claims we make in this paper become tenable. The central claim of this paper is that the essential disposition—the very *esprit*—of property as it is experienced in contemporary society is inherently raced and gendered because the relations among people in that society are, likewise, inherently raced and gendered. Because contemporary capitalism, which is market-centered and definitionally extractive, relies on the simple definition of property—because today’s iteration of capitalism is focused on these valued resources—we must therefore conclude that all relations under such capitalism are raced and gendered. In this paper, we explain these claims in greater detail, using examples to reveal their veracity, and connect our claims to the racial capitalism theory of Cedric Robinson. The ultimate payoff of this conversation for those invested in the project of intersectional liberation is that they must adopt a far more profound skepticism about extant systems of property in the United States; to simply add people of color, women, or folks of other historically marginalized identities does not eradicate the inequality that is baked into the property itself via the capitalist reliance on formalization of inequality.

II. What Is Property?

A. *Defining Property*

While even the definition of property is contested (Baron 2009), with serious scholarly debate raging around broadening or narrowing conceptions of property, our operating definition of property is relatively mundane: Property is the relationship among persons with respect to valued resources.¹ These resources can be tangible—land, housing, raw materials, other market goods; intangible—including any of a number of kinds of intellectual property; and even metaphysical (Yuille 2015). In this paper, we use the term property to mean the specific social relationships that are structured in reference to material and nonmaterial goods.² There is of course a more simplistic definition of property, one that focuses on the resources *qua* resources. Indeed, when most people invoke the concept of property, that is the notion of which they speak. They refer to the stuff of society without thinking about the society.

In contrast, the operating definition of property that we enlist here centers the society in which valued resources are situated, and specifically the explicit and implicit relationships among people within that society. Under this definition, valued resources without people are not

¹ We derive this definition from the “progressive property” movement, discussed in greater detail below. There is an extensive body of Marxist property theory and critique with which we do not engage. However, a similar conception animates Marxist understandings of commodities as valued based on the relationships among people, not mere market transactions (Marx [1867] 1992).

² It bears noting that we intentionally decline to limit our discussion to “private” property. Not only do we reject a public/private divide for property—which would imagine that there can be a property relationship that is not mediated by the state—but we believe the state (which is assigned decision-making authority with respect to “public” property) is as an important an actor within ostensibly private capitalist relations as it is a structurer of them.

property. In theory, a person in total isolation would not hold resources we understand as property, because that person does not exist in relationship with others. Yet in the modern world, because people exist in complex states of interrelationship, once people interact with valued resources, property is constituted due to the relationality of human existence. Resources become propertized by being brought under the ambit of relationships in society and the rules that govern those relationships with regard to the resources. Property is about the shifting, social dynamics among people as they relate to the “stuff” of society.

This distinction between the stuff itself and the relationships that constitute what we call property is central to our claims in this paper. To use a simple example, envision a tree. The only reasonable response in a conversation about property rights related to the tree is to interrogate the social meaning of the tree: Who owns it? Who uses it? Who is forbidden from using it? What uses may be made of the tree, and which uses are prohibited? Who owns the land on which it is situated? What is the legal status of the tree and that land? The tree only becomes property once it intersects with at least one person, who is situated within a set of social rules and relationships.

This understanding of property as based in relationships does not require normativization of a specific *kind* of relationship among people. For example, Gregory Alexander’s treatment of the competing visions of property in the United States sets out a market-oriented conception of property, as distinct from property as the basis of social order (Alexander 1997). Alexander appears to think of his conception of property as proprietary, meaning related to the social order, as somehow more relational than the common, market-oriented conception of property. But even within this approach, we consider the market itself to be a relationally constituted regulatory technology; the market is defined by law but instantiated by people engaged in commerce and exchange. That Alexander posits competing property norms to exist due to this bifurcated nature of market meanings versus social meanings does not undermine the underlying claim that the property itself is constituted by the relationships among people with regard to the valued resources (Cavalieri 2017). Alexander provides an example of how from our perspective, competing visions of the meaning of property all essentially return to property as rooted in the relationality among persons with respect to valued resources.

What this also means is that we are deeply agnostic about the expansive range of relationships that might constitute property.³ Property could be governed by any variety of social norms, rules, and relationships. As a result, we further understand this idea of property as the relationship among persons with respect to things as one that predates capitalism. The complexity of capitalist practices is not necessary for bartering markets, for example, in which vendors’ social identities are partly based upon the nature of the goods they sell. As a result, to interrogate the status of resources as property necessitates a set of social questions, questions that do not require capitalist conclusions. Practices of sharing, collaboration, and mutuality could be fully embedded in the social relationships that mediate valued resources. To claim that property is a set of social relationships among people with regard to valued resources tells us nothing about the specific contours, values, principles, or norms—the law—governing those relationships.

³ One of the present authors has argued that the relationships within street gangs are best understood as alternative, extralegal property arrangements, and that the external relationships of street gangs constitute capitalist market interactions (Yuille 2015).

Our project here, however, is rooted in a critique of the dominant set of capitalist property practices, which are characterized by extraction and accumulation. While we will say more about extraction and accumulation below, we remain deeply invested in the aspirational idea that property could be constituted in other ways. Property does not need to be capitalist, extractive, or accumulative in orientation. Norms of sharing, collaboration, and mutuality could be embedded in property, even if they are not strongly evidenced in the extant property system (Dyal-Chand 2018). Our work as critical theorists of property law is rooted in the fervent hope for another kind of property to become regnant in society.

To be clear, we recognize that this article is focused entirely on hegemonic definitions of property; we are talking about the dominant legal conversation in the dominant socio-political economic context. Indigenous legal systems and other marginalized communities often have co-existing property traditions, but these are not the model of property of the controlling legal regimes in operation today. These communities may have institutionalized unique property dynamics, which we hazard are inflected by race and gender (Cavalieri 2015; Yuille 2015; Saito 2020). However, we do not attempt here to trace the racialized or gendered aspects of those models of property. Because such Indigenous and outsider properties are not determining capitalism, they are extrinsic to our present intervention. At the margins, these subaltern discourses on property can deeply influence the dominant meaning of capitalist property, but they are not determining or co-constituting it.

The understanding of property on which we rely is grounded in “progressive property,” a tradition that recognizes that property is embedded within society and bears meanings constituted by social relationships (Alexander, Peñalver, Singer, and Underkuffler 2008). Progressive property portrays the institution of property as a site for expressing the values and priorities of the society in which it operates (Cavalieri 2017).⁴ But we argue here that social relationships remain obscured within the institution of private property because property norms are sticky—meaning that property ownership endures over long periods of time and results in the continuation of older values within property doctrine, even as values have evolved elsewhere in society. Because property norms do not shift as rapidly as other social norms, their origin and justification become lost to memory. The project of property scholars invested in advancing social equity, therefore, is to identify and disaggregate the inequality that hides within the institution of property.

The normative claims of progressive property about the goals and uses of property largely exceed the scope of this paper, but the key descriptive insight of progressive property that has become dominant in property circles over the last decade—that property is socially constituted—provides a necessary foundation for the discussion that follows. Property, as constituted through relationships mediated by valued resources, is the key technology by which capitalism exists. Critics of capitalism think of the market as an inherently suspect site of labor extraction, while supporters of capitalism consider it a social good that facilitates transfer and exchange. Both conceptions require the “propertization” of goods, labor, and

⁴ As an example, the doctrine of “adverse possession,” which allows nonowners to obtain title to property owned by others, relies on the policy goals of punishing those who “sleep on their rights” and rewarding productive uses of land. The first goal reflects a deeper social value of condemning those who over-rely on the state: Actors who expect the state to protect property rights that they themselves refuse to protect may find themselves losing title to their land. The second goal, creating economic value, is broadly regnant in the Anglo-American legal tradition.

other valued resources, through the formalization of social relationships with respect to those resources.

Property thus prefigures both the market and the contract, serving as their institutional catalyst. Contracts are only useful to capitalism if there is ownership about which parties may make promises; markets facilitate and organize contracting and the exchange of objects of property. Without propertizing valued resources via the formulation and formalization of human relationships with respect to those resources, there could be no contracts or markets. We therefore understand the market and the contract to be secondary and derivative of property relations; capitalism—understood as an institution structured by markets and contract—rests upon property.

B. *The Capitalist Iteration of Property*

While we do not believe that capitalism necessarily follows from the institution of property, as mentioned above, we do believe that capitalist economic systems structure a particular set of relationships constituted through property. Two characteristics of capitalist property warrant particular attention: extraction and accumulation. While these will require additional discussion in terms of their relationships to race and gender, in this section we explain these concepts and how they are foundational to capitalist property.

Extraction has two key facets for purposes of this discussion. First, and central to our consideration of race and gender, is the extraction of labor from one person by another. While our discussion thus far has not centered on labor as a kind of property, labor might be the only kind of property to which certain marginalized people have a cognizable claim. Extraction as a form of human relationship is a technology that permits privileged people to concretize their social and economic position by taking labor from others.

Second and less obviously, although of equal importance, is the extraction of raw materials from the earth. To the extent that the sites of raw material extraction are also constituted as property through human relationships with Indigenous groups or longtime denizens of a particular area, legal sanctioning of such extraction likewise involves a social permission structure through which powerful or privileged groups legitimize their claims to resources to which others have a closer connection.

Beyond extraction, capitalism's focus on endlessly increasing production and profit also requires the normalization of accumulation (Melamed 2015). We define accumulation simply as the acquisition of goods beyond that needed for subsistence or consumption in the short or medium term. Without accumulation as a norm of capitalist economic systems, only population growth would generate the consumer demand that results in ever-increasing production. Capitalism's fundamental logic away from subsistence and towards acquisition justifies accumulation and conspicuous consumption as normalized relationships, both with the valued resources themselves and among persons as a symbol of status.

Accumulation and extraction are interdependent. Arguably, accumulation assumes extraction: the ability to legitimately take labor or raw materials from others is the process by which accumulation occurs. Conversely, the drive to accumulate constitutes a strong justification for extraction.

C. *The Relationship Between Power and Property*

In capitalist political economy, the accumulation of property is a form of power. While this claim might offend the sensibilities of political philosophers such as Michael Walzer (1983), who argues that power does not transfer across social spheres, we tend to be more sympathetic to the Rawlsian approach that understands primary social goods as leverageable across sites (Rawls 1971). Adopting the Rawlsian approach to property as a meta-resource that can be transmuted into other kinds of social goods permits us to recognize that property is the basis for most other kinds of inequality.⁵ The key payoff here is that property—especially in its simplest, liquid, and most fungible form of money—can be used to acquire power throughout a capitalist society. (This is a descriptive statement, not one with which we normatively agree, but it reflects the nature of extant capitalism.) Property’s ability to be deployed to obtain primary social goods, or capabilities, or resilience, results in the same outcome: Those with property have the ability to obtain power that is inaccessible to those without property.

III. Capitalist Property Is Inherently Raced and Gendered

Thus far, we have considered the nature of property itself, specifically the work it performs within capitalist political economy. We are now ready to articulate our central argument: Capitalist property is inherently raced and gendered. This is not, as previously mentioned, to say that all possible property systems, or even all possible capitalist systems, are inherently raced and gendered. The claim is broad but specific: The current iteration of capitalist property is inherently raced and gendered precisely because the social relationships that constitute property currently reflect racialized and gendered hierarchy. To be more precise, because property constitutes social power in capitalism, we argue that property itself is white and androcentric. Race and gender are not mere descriptive categories, they are technologies of dominance. Therefore, without grasping the inherent and hidden inequalities embedded within property, as based on extant social structures, real change will not be possible.

A. *What Kind of Whiteness . . .*

The whiteness inherent in capitalist property depends on racialized hierarchy and is thus rooted in racism. Acceding to Fanon’s (1967) exhortation, we do not consider racism as a “mental quirk” that is to be analyzed and addressed as an individual-level phenomenon. Rather, racism is a structural and dynamic organizational technology for producing, reproducing, and maintaining hierarchy, independent of racial prejudice or animus (Bonilla-Silva 2006; Bonilla-Silva 1997). We find compelling Ruth Wilson Gilmore’s description of racism as “the state-sanctioned and/or extra-legal production and exploitation of group-differentiated vulnerabilities to premature death, in distinct yet densely interconnected political geographies” (Gilmore 2020).

We are careful to distinguish the whiteness to which we refer from mere association with, or lineal descent from, European and Eurocentric cultural practices and values. The cultural

⁵ In this regard, we consider the capabilities approach of Martha Nussbaum and Amartya Sen and the vulnerability theory of Martha Fineman to bear profound and important resonance with the property claims we are making. Within capitalism, property can be deployed to obtain the capabilities that Nussbaum and Sen theorize, or to achieve the resilience that Fineman contemplates (Fineman 2017; Nussbaum 2000; Sen 1999).

aspects of whiteness that exist internal, say, to private spaces are not implicated in the relational aspects of racialized property within society that we define here. What makes property white in our conception is its role in structuring and maintaining power allocations according to a racialized hierarchy of human value.

When we define property as playing a central role in racialized hierarchy, property becomes at least partially constitutive of racialized power. It follows that, based on the progressive property conception we articulated above, the relations among persons with respect to valued resources are also racialized. Once our definition of property is accepted, its racialization as white is inherent in its fundamental nature and disposition.

B. . . . and Which Masculinity

Our claim that property is likewise androcentric tracks this articulation of whiteness. When we speak of property being gendered in an androcentric way, we mean that property is centered on a gendered hierarchy that favors men in a society shaped by binary and essentialist conceptions of sex and gender. This androcentricity is not inclusive but encompasses only an idealized man who reflects normativized masculinity (Valdes 1995). We refer to a specific kind of masculinity that perpetuates and defends structural patriarchy—without regard to individual sexism or misogyny or gendered identity.⁶ This is a masculinity that enforces a gendered social hierarchy and the continued maintenance of inequality in the distribution of power and privilege between normative men and feminized subjects (primarily, though not exclusively, women). This version of masculinity is competitive, violent, and aggressive, operating on norms of scarcity and dominance.⁷

C. Integral to Property

Using these formulations of racism and androcentricity, pernicious whiteness and toxic masculinity are “interrelated, mutually supporting systems of domination” (see Roberts 1993). Given the conclusions we reached in Part II, that property is socially constituted and therefore reflective of extant social relations, these systems of domination drive and are driven by property. In this section, we will demonstrate how intersectional social hierarchies of race and gender are integral to the operation of the extant form of capitalist property. They co-constitute one another; capitalist property derives from the exploitative power of intersecting hierarchies that position some people to exploit others—namely, people of color, femmes, and most especially women of color, whose status is doubly determined by inequality.

⁶ That is, we recognize that masculinity (which we will describe as toxic to distinguish it from potential notions of masculinity that are benign) does not depend on active or conscious bias (sexism), malice (misogyny), or affinity (gender identity) on the part of its ostensible beneficiaries. We are intentionally explicit about the different vectors through which toxic masculinity is distributed.

⁷ We do not mean to disregard alternative masculinities, such as the masculinities of gay, trans, and nonbinary persons, or to ignore new iterations of cishet masculinities that reject the perpetuation of patriarchal power. That the institution of property reflects historical, indeed ancient, constructions of masculinity and has not been altered to embrace new masculinities does not seem to us to be surprising given the stickiness of property norms. Our project is to reveal these patriarchal roots so that new models of gender equity can pervade property law, as in other legal spaces where equity is being advanced.

Race and gender function ontologically, epistemologically, and even vocationally to situate people within, define their access to, and determine their benefit from property (Yuille 2015). As Brenna Bhandar (2018, 2) explains, “property laws and racial subjectivity developed in relation to each other,” valuing some people, places, and uses over others. We see this as an ongoing, nonlinear process which evolves to reflect changing notions of identity, ownership, and value. In the nineteenth century, “land [became] property when lived on by some people but not others; without Whiteness, it is not property” (Saito 2015, 50). Indeed, race and gender were credentials that determined whether one was the object or subject of property, whether the context was chattel slavery, coverture, or Indian land title. In the twentieth century, race and gender influenced on which side of a property interaction a person would more likely find themselves: the rights-asserting, power-enforcing side, or the side that bore duties and liabilities and enjoyed no such rights or power (Baron 2010).

Race and gender are social signals that indicate whether a resource has value and should, therefore, be afforded the heightened protection of property. There is no more famous example than whiteness itself, which Cheryl Harris (1993) shows (almost irrefutably) the law has propertized. Whiteness shares key characteristics of the kind of resources that are typically the objects of property; it fits broad historical and theoretical conceptions of property; and the law has established and protected property-type interests in whiteness itself.

But property is replete with mundane examples. In the early twentieth century, homeowners’ associations and planned communities emerged, and the system of real covenants and equitable servitudes evolved to enforce and protect segregation in favor of white supremacy (Rose 2016). The expansive American version of the “castle doctrine,” which permits the use of lethal force in defense of a place that is lawfully occupied, and other property defense rules find their motivation in the protection of White men’s interests, formerly defended with explicit ideologies of colonialism, slavery, and coverture (Light 2017). As women exercised greater agency in their intimate relationships, engagement rings (more precisely, gifts in contemplation of marriage) were transformed from property into what are today effectively revocable executory contracts. Depending on where she lives, a bride-to-be’s engagement ring is not, in fact, “hers.”

Because of the ways that property expresses extant social relationships, property relationships are also mediated by other norms of hierarchy and power. Property systems replicate heteronormativity.⁸ Ostensibly neutral rules of property law are used to further marginalize religious minorities.⁹ Property systems advance the class interests of the powerful and wealthy over the needs of impoverished citizens.¹⁰ But because of the necessarily limited scope of the present discussion, we focus our analysis here on race and gender, while recognizing the need to engage more fully with the role of property in other systems of domination.

⁸ To wit, legal doctrine barred intestate property succession between same-sex couples until the recent judicial approval of same-sex marriage in the United States.

⁹ For example, zoning laws have been used as a tool to prevent Muslim communities from building mosques and Islamic centers in cities throughout the United States (Schnabel 2021).

¹⁰ United States federal subsidies privilege homeownership through tax advantages for homeowners via the mortgage interest deduction (Mann 2000), yet cap the availability of subsidies for low-income renters through very limited Section 8 funds (Rosen 2020).

D. *White Androcentric Property and Capitalism*

In the preceding discussion, we sketched a raced and gendered notion of property in the contemporary context of capitalism. More precisely, we highlighted the ways that race and gender, as anti-relational,¹¹ social technologies of dominance, are produced and reproduced within the institution of property. We do not claim that the picture we have presented is complete, definitive, or natural.¹² And, while we are convinced that it is universal in its generality, we know that its particulars are open to the signification, requirements, and exigencies of specific spaces, cultures, and contexts. Nevertheless, this working conceptualization of the white androcentricity of property provides sufficient grounding to turn our attention more directly to the synergistic relationship between property (as we have recast it) and capitalism.

Although we have used the term liberally and identified extraction and accumulation as core characteristics, we have not yet explained what we mean by capitalism. Is it coterminous with property? Is it market economy? Is it corporatism? Is it a mode of production? Is it a historical process? As with property, what capitalism *is*—its few quintessential elements—is contested (Heilbroner 1985).

In this discussion, we use capitalism to describe the prevailing “institutionalized social order” (Fraser 2014, n.p.), a socio-political economic regime designed to produce and protect wealth by means of individually mediated exchange of property. It is prudent to reiterate that we take no position on whether the capitalism on which we focus constitutes the definitive or necessary version of capitalism. We do not address physical, human, or industrial geographies of capitalism that render instantiations of it culturally distinctive. Nor do we take up whether other varieties of capitalism may exist alongside or even within hegemonic capitalism (Dyal-Chand 2018; Hall and Soskice 2001; Baumol, Litan, and Schramm 2007). Rather, we observe capitalism, as we cast it, as the endemic paradigm.

As such, we do not deny that the nature, purpose, and commitments—what we will call the disposition—even of this paradigmatic capitalism are variably approached and experienced. Our core claim—that there is a synergistic and mutually constitutive interplay among race, gender, property, and capitalism—does not demand we adopt any particular elaboration of capitalism. Therefore, we present and take up, in turn, several perspectives: capitalism (in its (neo)classical understanding, which recognizes no need for descriptors or modifiers); racial capitalism, the framework to which we are most amenable; Black capitalism; and feminist capitalism. Regardless of which understanding of capitalism is adopted, we reveal that capitalist property’s inherent gender and racial biases are endemic to capitalism itself as currently constituted.

¹¹ We use the term “anti-relational” to describe a disjunct or negation of the interrelation between race and gender. The use of these categories as parallel rather than intersecting creates competition among people of historically marginalized status. Conversely, use of the term “intersectionality” (Crenshaw 1989) has been a contemporary effort to honor the multiple ways that such statuses define individuals. We suggest that capitalism relies upon this competition to prevent actions of solidarity.

¹² Do not mistake this caveat as an admission of weakness. Rather, we recognize that knowledge is contingent, malleable, and socially constructed. Articulating and reiterating this position is, we believe, fundamental to the femcrit perspective we offer here.

1. Unmodified Capitalism and Property

Like dominant articulations of property, the dominant vision of capitalism purports to be race- and gender-blind. It is the approach “taught in economics courses, assumed in business, and enshrined in common sense” (Fraser 2019, n.p.). It is dictionary capitalism, defined in Merriam-Webster’s as “an economic system characterized by private or corporate ownership of capital goods, by investments that are determined by private decision, and by prices, production, and the distribution of goods that are determined mainly by competition in a free market.” Karl Marx mapped this idea as a “never-ending cycle” in the M–C–M’ formula, but it is also the system that Adam Smith framed, in which the needs of society are met “not from the benevolence of the butcher, the brewer, or the baker” (Smith 1776, 27), but rather through the tools of private property, production for profit (self-interest), specialization and wage labor, and a market mechanism. In this disposition, the purpose of capitalism is accumulation; its primary commitment is “free” markets (for labor, commodities, and most other valued resources); and its key technology is property.

This is a stylized model of capitalism, in which humans, social relations, and power are not holistically contemplated but essentialized. At one extreme, the inhabitant of capitalism is the aracial, agender *homo economicus*, rational and self-interested in all operative contexts. As Fraser explains:

Seen this way, capitalism can only be indifferent to color. Absent interference and left to follow its own economizing logic, the system would dissolve any pre-existing racial hierarchies and avoid generating any new ones. . . . it delinks capitalism from racism by definitional fiat. . . . [T]he exchange-centered view relegates any racializing impulses to forces external to the market, which distort the latter’s operation. The culprit is, therefore, not . . . capitalism, but the larger society that surrounds it. Racism comes from history, politics, and culture, all of which are viewed as external to capitalism and as only contingently connected to it. (Fraser 2019, n.p.)

At the other extreme, the subject of capitalism is the capitalist and its object is the wage laborer. Again, the result is a race- and gender-blind capitalism by definitional fiat. “Racism, like heteropatriarchy . . . is not constitutive of capitalism but operates alongside capitalism—an added irritant, as it were—to oppress particular subgroups and divide the working class” (Kelley 2021, xiv).

Notwithstanding this purported neutrality, this framing of capitalism is unremittingly characterized by white androcentricity. This is because, for adherents and critics alike, property—raced and gendered as it is—is the core institution of this system. Marx provides a property view of capital itself. And capitalism was realized through, and develops within, property. “[Capitalism] enclosed the commons, abrogated the customary use rights of the majority and transformed shared resources into the private property of a small minority” (Fraser 2014, n.p.).

Capitalism is, furthermore, the primary currency of contemporary economic thought. Heilbroner (1999) described economics as capitalism’s explanatory system; it has, likewise, been described as its “operating manual” (Milberg 2019). In turn, property is the language of

that field, and it has been at the center of economic thought since the advent of capitalism (Forstater 2007a). What is, after all, Adam Smith's core agenda in *The Wealth of Nations*, if not to illustrate the transformative power of a free market supported by robust property institutions as its pillars? Moreover, mainstream economic perspectives invariably agree that an ample and secure system of property is the basic requirement of capitalism. The notion of real property as a source of capital has, for example, been one of the strongest contemporary justifications for a robust titling system, so owners can borrow against their real property to obtain capital for financing other ventures (de Soto 1989; de Soto 2000).

The centrality of property in the economic thought of capitalism should be unsurprising. Conventional definitions of economics—for example, as “the process of providing for the material well-being of society” (Heilbroner and Milberg, 2011, 1) or as “social provisioning” (Lee 2011)—center property. That is, economics is the study of the activities and organizational structures that societies use to allocate and generate resources and necessities to provide for the sustenance and well-being of their people. Our relational view of property creates the frameworks and constitutes the infrastructure within which the allocation of those resources and necessities takes place.

Recognizing this interdependence, Alchian even defines economics in explicitly property terms:

In essence, economics is the study of property rights over scarce resources. . . . The allocation of scarce resources in a society is the assignment of rights to uses of resources . . . the question of economics, or of how prices should be determined, the question of how property rights should be defined and exchanged, and on what terms. (Alchian 1965, 2-3)

Marx and Engels ([1848] 1969, 22) take this same property-centric approach to capitalism, explaining in the *Communist Manifesto* that “modern bourgeois private property is the final and most complete expression of the system of producing and appropriating products, that is based on class antagonisms, on the exploitation of the many by the few.”

Were we persuaded by this (neo)classical understanding of capitalism, our work would be done. The treatment of racism and misogyny/patriarchy as outside capitalism would be an easily correctable symptom of the tendency within dominant and even Marxist discourse to treat property itself as “endowment,” leaving structuring and articulating the contents of property—and thus its racing and gendering—to the law.¹³

However, we are not persuaded by this neutralist conception of capitalism for two reasons. The first is largely pragmatic. Capitalism is a real, observable phenomenon. Following Hodgson (2015), we recognize that the stylized definition of capitalism as essentially a combination of property and markets would mean that capitalism has been the dominant mode of production since antiquity. That property and markets predate capitalism is not, however, seriously contested. The second reason is descriptive: Since property and markets have, indeed, existed for thousands of years and capitalism is not merely a rhetorical fiction,

¹³ Property rights economics, transaction cost economics, and new institutionalist economics reflected in the work of Armen Alchian, Ronald Coase, Harold Demsetz, Steven Cheung, Elinor Ostrom, Douglass North, Steven Pejovich, Yoram Barzel, and others constitute notable exceptions to this tendency.

capitalism must be more than the marriage of property and markets. With its thickly descriptive and grounded accounts of racism (which provide a heuristic for treating patriarchy), we find that “racial capitalism” provides a more complete and accurate account of the system of nested and networked institutions and technologies we experience as capitalism.

2. Racial Capitalism and Property

As articulated by Cedric Robinson (2021), racial capitalism rejects the race- and gender-neutral framing reflected in the (neo)classical position to posit the mutual interdependence of race and capitalism.¹⁴ Capitalism did not create race,¹⁵ nor was it created to support already-racialized modes of production. Rather, it emerged from systems already deeply raced and gendered; it integrated, adapted, and built on those existing structures. And, since “the development, organization, and expansion of capitalist society pursued essentially racial directions” (Robinson 2021, 2), “it could be expected that racialism would inevitably permeate the social structures emergent from capitalism” (ibid., 2). There is, then, no unmodified capitalism. No reasonable account of extant capitalism can “consign[] race, gender, culture and history to the dustbin” (Kelley, 2021, xxix). Racial capitalism is capitalism, and (like its operational technology—markets (Polanyi 2001)—and its institutional structure—property), it is necessarily embedded in social relations.

Within this understanding, race and gender operate as “technologies of anti-relationality” (Melamed, 2015, 78). Capitalism requires inequality and racism, like patriarchy, enshrines it (Gilmore 2020). Melamed (2015) explains the relationship Robinson identified like this:

Capital can only be capital when it is accumulating, and it can only accumulate by producing and moving through relations of severe inequality among human groups—capitalists with the means of production/workers without the means of subsistence, creditors/debtors, conquerors of land made property/the dispossessed and removed. These antinomies of accumulation require loss, disposability, and the unequal differentiation of human value, and racism enshrines the inequalities that capitalism requires (77).

This symbiotic, synergistic evolution is reflected and replicated in the interplay between property and capitalism.

a. White Androcentricity in Capitalism and Property: Two Examples

A robust and systematic account of the myriad ways that property reflects white androcentrism through its rules and practices is far beyond the scope of the present meditation. However, we

¹⁴ Robinson was not, however, in conversation with capitalists, but with Marxist anti-capitalists. *Black Marxism* is a rejection of specifically Marxist Eurocentrism: Robinson critiques and corrects Marx’s failure to (1) appreciate the relevance and potential of radical social movements outside of Europe and (2) adequately account for the racialized commitments of capitalism. The book thus reiterates our own recognition and appreciation of the property traditions that prevail or operate in some Indigenous cultures and other subaltern spaces.

¹⁵ We do not need to engage the precise contours of Robinson’s historiography suggesting that racism predates capitalism (specifically, that feudal categorization in Europe constituted racialization) to rely on his recognition of the creation of a proto-racist caste system as central to the socio-political economic regime preceding capitalism.

hope to concretize the theoretical position we have set forth by outlining two examples. First, we look at the care economy and how capitalist extraction of labor from primarily (though not exclusively) women of color enables others to engage in the market. Second, we look at an array of real property norms in the United States, identifying how both state action and private market ordering solidify and perpetuate racism through the use of property.

(i) Care labor as property

“Accumulation under capitalism is necessarily expropriation of labor, land, and resources” (Melamed 2015, 78), which are allocated and distributed through property. In such cases, the institution of private property structures the race and gender commitments of capitalism.

The caregiving economy reveals how Black, Brown, and female people are most commonly the members of the body politic from whom labor extraction is the easiest.¹⁶ Multiple factors make this true. First, occupying lower rungs in the economic hierarchy, their economic desperation makes them most vulnerable to labor exploitation, especially in the US, which lacks meaningful social safety nets to provide economic support to those who are vulnerable. If such support were available—as was seen during the era of COVID subsidies for unemployed workers—workers would have the freedom to refuse jobs that threaten their very lives or that pay wages inadequate for survival. Second, the refusal to value feminized labor appropriately within the labor market means that even when employed, low wages prevent such women from gaining economic stability through their own savings. Labor extraction, as described above, results in these women selling their labor at low prices as a means of subsistence. While labor might not seem initially amenable to categorization as property, as we discuss above, labor as a valued resource can be framed through the same narrative—property as the relation among caregivers with respect to the valued resource of caregiving labor (Matambanadzo 2022).

The field of feminist economics is, in no small part, occupied with the examination, elaboration, and proof of the subordination of feminized subjects through and in capitalism (for example, Feber and Nelson 2020). But this is an intersectional story of how whiteness and gender subordination are mutually reinforcing, because it is women of higher social classes, who of course within a racist society are predominantly White women, who extract the reproductive labor of primarily Black and Brown women. In many instances this is so privileged women can engage in wage labor of their own. But it is necessary to also note that much of this labor serves to provide such women the space to live an idealized life of dependent leisure. In this fashion, the androcentric nature of property gets reinforced not only by men, but also by privileged women whose lifestyle preferences turn on extracting the reproductive labor of other women. These women’s lives are facilitated by the gendered and raced extraction of labor from other women. They have a stake in the maintenance of the capitalist patriarchy. Caregiving labor is thus properly described as androcentric property because it is performed almost entirely by women. Patriarchy structures who performs this socially undesired labor.

¹⁶ The precarity of intersecting “otherizing” identities and statuses, including immigration, religion, and queerness, among myriad others, exacerbates susceptibility to capitalist predation.

White women's enforcement of racist patriarchy through the caregiving economy also rests upon capitalist maternalism. The idealization of maternity provides a pivotal justification for patriarchy's continuation, with its reliance on women's willingness to undertake largely devalued, socially marginalized maternal roles as a necessity in the perpetuation of capitalism. Population maintenance, or preferably growth, creates the necessary conditions for continued increases in GDP. Without new workers and new consumers, capitalism as it exists would fall; the production of workers and consumers remains a feminized obligation in the capitalist economy. Capitalist maternalism delegates the performance of necessary reproductive labor to women; capitalist white supremacy permits further delegation of that labor to subaltern female workers by labor extraction.

Though the contemporary era and women's gains in the labor market have perhaps altered some of these pressures, the history of anti-feminist women's political activism designed to stop the provision of socialized childcare facilities in the United States provides further evidence of this claim. During the 1970s, as the women's movement generated political energy to support both the Equal Rights Amendment and specific policy interventions such as federally subsidized childcare centers, STOP ERA arose as a conservative women's social movement opposed to equal rights for women. Rooted in separate spheres and maternalist ideology, women who performed traditional roles politically engaged to attempt to prevent the marketization (and concomitant devaluing) of their labor (while many continued to outsource undesired portions of caregiving to others).

The care economy reveals how the accumulative drive within capitalism uses property to structure its racial and gender commitments. Reliance on subaltern and largely feminine worker populations, from which labor can be cheaply extracted to enable more remunerative market work, highlights how racialized and gendered hierarchy is essential to the functioning of the capitalist system. That women, primarily White ones, themselves engage in the perpetuation of this hierarchy does not inoculate it against its patriarchal force. "In patriarchal culture women are as violent as men toward the groups that they have power over and can dominate freely; usually that group is children or weaker females" (hooks 2004, 63). Indeed, one of the most insidious realities of patriarchy is the way that heteronormative relationships create private incentives for women to protect its continuation, because of the status it affords them derivatively through intimate associations, particularly marriage.

(ii) Racialized relative status in real estate transactions

In other cases, the institution of private property is used to maintain a racialized capitalist social ordering. This happens by state action and by ostensibly private market ordering, both of which perpetuate the performance of racial hierarchy in the property system. Single family housing provides a particularly salient example—occupying as it does a revered space within (American) capitalism, constituting the self and the family, and structuring social stability by ensuring that a sufficient share of the population perceives itself as having a stake in the perpetuation of the extant social order (Dickerson 2020). The rules of access to the single-family home require engagement with the capitalist market and with individual players who serve various roles in its maintenance.

The state has structured myriad legal regimes to facilitate White people's access to the single-family home while denying it to people of color (Trounstine 2019; Rothstein 2017).¹⁷ State policies such as subsidized lending, insurance policies, and others, often grouped under the category of "redlining," ultimately advantaged White market actors by reducing prices, facilitating lending, and otherwise creating a racially uneven playing field. Through these policies, the state played a foundational role in shaping racialized rules to bar or permit different groups of people from gaining access to the most basic form of capital accumulation: the single-family house. Note that the idealization of the (ever-expanding) single-family home was also a state mechanism to purchase the compliance of the Whites who became the middle class due to homeownership—specifically those Whites who lacked transformational capital—as a form of shoring up their separation from the subaltern classes. Racialized policy preferences advanced these capitalist goals of increasing homeownership, while entrenching hierarchical distributive injustice according to racial caste.

The state need not directly manage these processes of racialized property accumulation to serve capitalist social ordering. The stickiness of property norms we describe above means that the racialization of the housing market continues even without official state involvement. For example, despite the capitalist determination to enforce the ruse that all property has an objectively ascertainable fair-market valuation, appraisals represent a site where unconscious and conscious bias can express the ideology of racism in the language of financial capital (Howell and Korver-Glenn 2018). Accounts suggest that, where evidence of an owner's racial minority status is removed, the presumption of whiteness applies to property, causing appraisals to rise (Mock 2021).

The history of American mortgage foreclosure, from its colonial beginning (Park 2021; Priest 2006) to its most recent crisis (McFarlane 2011), provides another clear and enduring example of the market instantiation of racialized property—in this case, dispossession. Colonists, forging private debt markets, transformed the English land-as-natural-resource (protected from the reach of debtors), into land-as-liquid-capital through the medium of Indigenous land foreclosure (Park 2021). The dispossession of Indigenous people for the purpose of securing white wealth accumulation eased a radical property evolution. This pattern—property rules evolving to dispossess and disqualify nonwhite owners—proceeded to repeat itself into the present; for example, subprime mortgages were fed into Black communities, which then became disproportionate victims of the foreclosure wave prompted by the 2007 financial crisis (McFarlane 2011).

Appraisals and foreclosures reveal that the state does not always directly structure the racialized property transaction. But examples of this dynamic abound. Indeed, the effect is so complete that the racialization of property shapes property relations without regard to race (Berger 2021). Regardless of whether the state's role in market transactions is explicit or direct, individuals acting within the market replicate structural racism.

¹⁷ While this conversation primarily focuses on race rather than gender, sex discrimination in lending was only outlawed in 1974 by the passage of the Equal Credit Opportunity Act; access to single-family housing was gendered as a result, though the heteronormative nuclear family often mitigated these impacts for married white women.

These practices—whether intentional and state sanctioned, or the result of ambivalent “private” market ordering—reveal that, as embedded in property, the valued resource of housing formalizes racially hierarchical relationships within the society. The most privileged homeownership spaces have been traditionally reserved for White people; legal frameworks, like subsidized lending, have been designed to make homeownership accessible to less affluent White people who would have otherwise lacked access to the kinds of capital needed to purchase a home. This toehold in ownership gave White families the ability to accumulate wealth, contributing to the racialized wealth gap that persists today. The suite of practices that turned whiteness into a key (though by no means a guarantee) to property accumulation simultaneously made Blackness a barrier.

The nested, networked system of racial capitalism makes clear the conditions of race and gender justice under capitalism. Capitalism will remain raced and gendered unless and until property ceases to be so. For capitalism to cease to be raced and gendered would require an alteration of the fundamental power relations in which property is socially produced. To de-racialize and de-gender property would result in a fundamental alteration of the economic ordering of society. In other words, property will reproduce race and gender stratification until capitalism ceases to do so.

b. Other Formulations of Racial Capitalism and Property

Robinson’s racial-capitalism-as-capitalism is not the only popular or useful meditation on the relationship between race and capitalism. Many (though not all) other deployments tend to do what we have described above as the (neo)classical lens—through which capitalism is mostly a system of economic ordering through “efficient” operation of markets for property—and view economic relations involving racialized groups and individuals through that lens.¹⁸ Black capitalism (discussed further below), which describes various programs, drives, and projects designed to promote Black capital accumulation and economic self-determination through entrepreneurship and intra-community investment, treats capitalism this way: as a system to which Black people need access, not a system which determines and produces the status of Blackness (Rogers 2013). Likewise, feminist capitalism, in which the tools and logic of capitalism are deployed for the feminist aims of gender equality and liberation, can be best understood through this lens. From such perspectives, racial capitalism is a strategy to resist the persistent and violent racial subjugation and exploitation observed in capitalism (Ralph and Singhal 2019, 854).

Nancy Leong, for example, uses the term racial capitalism, without reference to Robinson, as “the process of deriving social or economic value from the racial identity of another person” (Leong 2013, 2153). In her view, race—specifically nonwhite identity—is capitalized and appropriated to the benefit of white institutions. Leong essentially retells the Marxist critique of the exploitation of the wage laborer and the expropriation of the surplus value they produce, casting nonwhite people as sellers not of wage labor but of social identity labor.¹⁹

¹⁸ We would characterize most of these interventions as at least (contingently) critical of capitalism. A noted exception is the discourse on Black capitalism, which is distinctly mixed.

¹⁹ Leong characterizes nonwhite players as owning social capital, but that framing obscures her central observations and critiques about power.

Long before Leong adopted the term, this usage of “racial capitalism”—in which racial identity is an object of capitalist exploitation—had gained considerable traction within critical legal discourse (although it is rarely framed in these terms).²⁰ Cheryl Harris’s seminal analysis, demonstrating that whiteness had been accorded the powers, privileges, and immunities associated with property (Harris 1993), spawned a generation of scholarship conceptualizing the propertization of racial identity as capital. These perspectives trace the ways that racial identity operates as the property at the center of capitalist market interactions. That dynamic, for example, occupies George Lipsitz’s exploration of what he calls the “possessive investment in whiteness,” which is aimed at satisfying the accumulative drive of capitalism through propertized whiteness (Lipsitz 2006). Mitchell F. Crusto (2005) redirected Harris’s primary gaze from whiteness to Blackness, arguing it, too, is fundamentally propertized with its benefits inuring to White people and institutions.²¹ Taja-Nia Henderson and Jamila Jefferson-Jones (2020) take up the focus on the disvalue of Blackness in a wider array of transactions. As space and place are racialized white, they explain, property protects itself as the value center of capitalism by expelling Blackness (and literally Black people). Harris, Lipsitz, Crusto, Henderson and Jefferson-Jones all elucidate ways property is fundamentally raced, while providing a link between racialized property and core capitalist functions.

Jim Chen (1997) rejected the notion of a static disvalue of non-white racial identity, suggesting that the emergence of race-based benefits allocated to non-whites had crystalized non-whiteness into a species of Reichian new property. Chen’s more complicated race-as-capital notion has been taken up by others. For example, Sheldon Bernard Lyke (2013) conceptualizes the value of non-white identity as a commons problem. Although she does not use such terms, Osamudia James (2017) argues that Blackness has propertizable protective, curative, and restorative value. It is this dialectical notion of the value/disvalue of race-as-capital that undergirds Leong’s racial capitalism discourse. All these engagements of race, property, and capitalism, however framed, reveal a robust tradition that recognizes racialized property as an object of capitalism. In each treatment, property is inextricably bound up with race, and capitalism is, fundamentally, bound up with property.

Two reflections are important to the present discussion: First, all these accounts operate with mainstream understandings of capitalism, in which race (and ostensibly gender) exists outside of capitalism. They may reinforce and perpetuate systems of privilege and subordination, but they are separate—not mutually constituting—spheres. They reflect what we could describe as racial (neo)liberal capitalism. Second, as with unmodified capitalism, property remains fundamental to these accounts, shaping and being shaped by the reproduction of race, racism, and white supremacy.

²⁰ While we take the strong position that race is fundamentally an economic technology, we reject just as strongly the notion that it is *solely* economic. Nonetheless, the following discussion confines itself to literature that engages race, at least implicitly, in distinctly economic modes.

²¹ Leong’s race entrepreneurship advances this same claim, departing from Crusto’s observation by siting the agency of the market exchange within the nonwhite seller of racial identity. Crusto’s Blackness is the object of a property relationship external to the Black person, while for Leong, racial identity provides nonwhites with entrance into capitalist exchange, even if they are in the subordinate position.

(i) Black capitalism and property

We feel it prudent to reflect briefly on the relationship between property and Black capitalism, which offers another prominent (and, perhaps, the dominant) language to engage the relationship between race and capitalism. Black capitalism is not racial capitalism. It does not seek to explain either capitalism itself, or racialized exploitation under capitalism. Instead, Black capitalism observes that the economic performance of Black people, which seems obdurately depressed relative to Whites (Forstater 2007b), suggests that Black people are the objects rather than subjects of economics. They are parts *in* the capitalist machinery, not part *of* capitalism (Tolson 1975, citing Al Bell of Stax Records). Black capitalism is offered as a normative ideal or an incremental curative to such exploitation and *unremunerated* expropriation. Black capitalism is the promise of liberation by building economic power within the confines of capitalism; it is the economic ideology of Black neoliberalism, respectability politics, and movements to “Buy Black” or “bank Black” or “buy back the block.” It does not frame capitalism *per se* as a tool of racialized oppression; rather it sees racialized exclusion from the bounties and freedoms available within and through capitalism as political and social oppression.

While often associated with the segregationist collaborations of Booker T. Washington, who advocated “thrift, industry, and Christian morality” as the path for Black advancement, or its disingenuous co-optation by Richard Nixon,²² the broad-spectrum appeal of Black capitalism is intuitive.

To the black militant, it is appealing because it promises community ownership of property and an end to “exploitation” by merchants. At the other extreme, the strategy is appealing to White conservatives because it stresses the virtues of private enterprise capitalism as the path to economic independence instead of reliance on public expenditures, especially for public welfare (Brimmer and Terrell 1969, 1).

W.E.B. DuBois, who railed against Washington’s self-reliance campaign, argued nevertheless that Black people needed to engage in it:

[M]y growing conviction has been . . . that the fundamental problem facing American Negroes is securing a place in American industrial life. I am certain that if they simply wait to get their share in any change of plan and reorganization of economic life in America the so-called race problem will show itself by making their entrance into this economy late and uncertain For that reason I want Negroes to begin intelligent planning for themselves, not of course, for a separate economy but for the purpose of seeing how far their own efforts can help them toward economic security. (Quoted in Haynes 2018, 130)

Malcolm X also called for entrepreneurial capitalism, arguing that “we should own and operate and control the economy of our community . . . [by] going into business”(X [1964] 2010, 6).

²² Nixon’s Black capitalism was a critical component of the “Southern Strategy,” which co-opted and capitalized on Black identity politics to exclude Black communities from basic socioeconomic structures (Weems and Randolph 2001).

Even Huey P. Newton, who once proclaimed it to be a “hoax,”²³ “encouraged indigenous Black financial enterprise” (Newton 1980, 21).

However it is ideologically framed, Black capitalism is primarily a movement about property. Roy Innis, the head of the Congress of Racial Equality, once explained that property is, indeed, the point of Black capitalism: “A modern nation becomes viable through the creation of capital instruments. We can’t make money through jobs. You make money through owning capital instruments: land and other properties” (quoted in Robinson 2010, 199). The fundamental equivalence of Black capitalism and racialized, androcentric property also makes clear the fallacy of the promise of Black capitalism. The capitalist success and achievement of the storied “Talented Tenth” in the upper echelons of capitalist hierarchy does not alter the structure, logic, or function of the system based on racialized and gendered extraction. It simply changes who profits from extraction. Pursuit of androcentric white property—which operates to situate people in racialized and gendered terms within the relations of capitalism—cannot liberate those who are subordinated by it. On the contrary, Black capitalism serves to legitimate and entrench the underlying settlements of capitalism. It is a Lordeian knot.²⁴

(ii) Feminist capitalism and property

For our purposes, what we will call feminist capitalism reflects the same tension, futility, and property dynamics we observe in Black capitalism. As a caveat, we must note that there does not, to our knowledge, exist any cogent socio-political action that might rightly be described as an explicit movement for feminist capitalism, whether academic or grass roots. Indeed, academic feminism, specifically in economics, has largely taken capitalist critique to be among its motivating goals. Nonetheless, we do observe a distinct social turn and a more subtle intellectual drift into pro-capitalist understandings of feminism.²⁵

Like Black capitalism, feminist capitalism “leans in” to the capitalist mystique. Uncritically adopting the unmodified account, Ann Cudd (2014) describes capitalism as “as a system in which there are non-discriminatory, legal protections of decentralized, private ownership of resources, cooperative, social production for all citizens, and free and open competitive markets for exchange of goods, labor, services, and material and financial capital” (763).

²³ “Black capitalism is a hoax. Black capitalism is represented as a great step toward black liberation. It isn’t. It is a giant stride away from liberation. No black capitalists can function unless they play the white man’s game. Worse still, while the black capitalist wants to think he functions on his own terms, he doesn’t. He is always subject to the whims of the white capitalist. The rules of black capitalism, and the limits of black capitalism are set by the white power structure” (quoted in Hughey 2007, 214).

²⁴ This term is introduced as a play on the phrase “Gordian knot,” replacing the Phrygian king Gordias with Audre Lorde, the Black lesbian feminist who once admonished a conference of feminists that “[t]he master’s tools will never dismantle the master’s house.” It describes a problem that will remain intractable, so long as “the master’s tools” are used to solve it.

²⁵ We do not, in our cursory treatment, presume to “gatekeep” feminism or otherwise challenge the feminist credentials of any person who adopts or engages in capitalism. However, we take the position that “feminist capitalism” is not simply women (or, even feminists) embracing capitalism or directing capitalist production in the role of capitalism. Iconic women-founded, -led, or -oriented businesses (Madam C. J. Walker Manufacturing Company, Avon Products, Spanx, LuLaRoe), might be paradigmatic of this idea, but the phenomenon boasts too many examples to catalog. To be a truly feminist capitalism, as we understand the concept, means it must be oriented toward more than mere capitalist money-making, and instead must advance the fundamental liberatory principles of feminism. We do not assert whether these specific businesses accomplish that ideal.

Acknowledging that inequality, which she sites outside capitalism, is bad, she argues that capitalism's utopian alchemy produces innovation, "in particular the destruction of harmful, patriarchal traditions." Women, she claims, are liberated by capitalist accumulation.

Cudd is not the first to take the capitalism-as-liberation position. In the 1970s, a small, short-lived group of lesbian feminists, The Furies, set out a separatist notion of radical lesbian feminism: "Lesbianism is not a matter of sexual preference, but rather one of political choice which every woman must make if she is to become woman-identified and thereby end male supremacy" (Valk, 2010, 229). However, a key to the strategy they envisioned for reaching their aim was what they described as feminist business—complete and full-throated capitalist engagement—which they claimed would empower and fund their movement for women's liberation. The Furies explained that feminist capitalism "offered a solution to women's economic dependence upon men and could dissolve the material barriers to women-identified consciousness" (Echols 1983, 43).²⁶

Cudd gives the capitalism-as-feminist-liberation scholarly legitimacy. The Furies gave it an activist valence. In both contexts, where capitalism is a separate phenomenon from race and gender, property remains its central tool and primary aim. However, the capitalism-as-feminist-liberation idea probably has the most traction in popular culture. Facebook chief operations officer and director Sheryl Sandberg's book *Lean In* (2015), is emblematic. Her "sort-of feminist manifesto," which can be read as formalizing a new neoliberal feminism and a new neoliberal feminist subject in popular consciousness (Rottenberg 2014), offers a simple solution to the harms of patriarchy: Women need to work harder and assert themselves more. In this utopian account, both the home and the workplace are perfectly rational and structurally fair. The problem for women is that they are doing it wrong. Sandberg imagines that, through committed capitalist engagement, she is fully realized as a feminist. Again, this image puts property—specifically the accumulation of identity property, which is the property that co-constitutes a person's rank, status, and position in society (Yuille 2020)—at the center of feminist capitalism's liberatory potential.

What these examples show is that the current iteration of neoliberal feminism is specifically and inherently a capitalist one. Incorporating female leadership into existing power structures, with no additional interrogation of the intersectionally misogynistic practices of these institutions, has generated a capitalist feminism-lite in which women's mere incorporation into institutions qualifies as a feminist accomplishment. Yet power appears to corrupt in these moments as well; the achievement of status within society too often prevents women who achieve these positions from critiquing their norms and operational practices. We see this with universities and corporations vaunting their inclusionary practices but not improving the working conditions for women, people of color, and other historically marginalized groups. This overly simplistic version of feminism accepts at its core that capitalism will remain, that extraction is natural, and that the institution will be fine after diversity hires occur but with no further changes needed.

²⁶ The Furies were, we note, self-consciously (though not necessarily through deliberate exclusion) white. Although exploring the point is far beyond the scope of this discussion, we find it instructive that the Combahee River Collective—a corollary radical, Black, lesbian feminist collective—was explicitly anti-capitalist.

This neoliberal feminism departs from more radical iterations of feminism because it presumes that the status structures and power allocations accomplished within neoliberal economic institutions are inherently legitimate on their own. Lest we look too far from our own institutions, we see these hierarchies replicated in critical legal scholarship circles that legitimate law school rankings but fail to problematize the social privilege and hierarchies inherent in such practices. None of us is immune from the delusional appeal of capitalist hierarchy.

IV. Conclusion: Where Do We Go from Here?

Our project is primarily theoretical and explanatory in nature, but we believe it is a necessary precursor to the kind of critical legal reform work that will accomplish social change. Without grasping how extant property systems inherently reflect, produce, and reproduce hierarchy, any intervention that simply broadens participation in capitalism without addressing the inequalities baked into its foundational structures will fail to accomplish meaningful justice reforms. Altering these systems requires state engagement in rectifying the state's own historical role in structuring racialized hierarchy. This will require the state, not merely to generate neutral rules today, but also to remediate property allocations that resulted from prior rules. Because we believe that too many reforms ignore this step of remediation, our hope is that this exposition of the hierarchical roots of institutionalized property will accomplish something closer to true equality via opportunities for meaningful economic engagement for all persons, without regard for assumptions about their status-based susceptibility to extraction.

REFERENCES

- Alchian, Armen. 1965. "Some Economics of Property Rights." 30 *Il Politico* 816.
- Alexander, Gregory S. 1997. *Commodity and Propriety: Competing Visions of Property in American Legal Thought, 1776-1970*. University of Chicago Press.
- Alexander, Gregory S., Eduardo M. Peñalver, Joseph William Singer, and Laura S. Underkuffler. 2008. "A Statement of Progressive Property." 94 *Cornell Law Review* 743.
- Baron, Jane B. 2010. "The Contested Commitments of Property." 61 *Hastings Law Journal* 917.
- Baumol, William J., Robert E. Litan, and Carl J. Schramm. 2007. *Good Capitalism, Bad Capitalism, and the Economics of Growth and Prosperity*. Yale University Press.
- Berger, Bethany R. 2021. "Property to Race/Race to Property." Social Science Research Network. <https://dx.doi.org/10.2139/ssrn.3825124>.
- Bhandar, Brenna. 2018. *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership*. Duke University Press.

- Bhattacharyya, Gargi. 2018. *Rethinking Racial Capitalism: Questions of Reproduction and Survival*. Rowan & Littlefield.
- Bonilla-Silva, Eduardo. 1997. "Rethinking Racism: Toward a Structural Interpretation." 62 *American Sociological Review* 465.
- Bonilla-Silva, Eduardo. 2006. *Racism Without Racists: Color-Blind Racism and the Persistence of Racial Inequality in the United States*. Rowan & Littlefield.
- Brimmer, Andrew F., and Henry S. Terrell. 1969. "The Economic Potential of Black Capitalism." Paper presented before the 82nd annual meeting of the American Economic Association, New York Hilton Hotel, December 29, 1969.
<https://fraser.stlouisfed.org/title/statements-speeches-andrew-f-brimmer-463/economic-potential-black-capitalism-10372>.
- Cavaliere, Shelley. 2015. "Grounding Land Reform." 89 *St. John's Law Review* 1.
- Cavaliere, Shelley. 2017. "Back to the Basics: Lessons from US Property Law for Land Reform." 95 *Denver Law Review* 73.
- Chen, Jim. 1997. "Embryonic Thoughts on Racial Identity as New Property." 68 *University of Colorado Law Review* 1123.
- Crenshaw, Kimberlé W. 1989. "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics." 1989 *University of Chicago Legal Forum* 140.
- Crusto, Mitchell F. 2005. "Blackness as Property: Sex, Race, Status, and Wealth." 1 *Stanford Journal of Civil Rights & Civil Liberties* 51.
- Cudd, Ann E. 2014. "Is Capitalism Good for Women?" 4 *Journal of Business Ethics* 761.
- de Soto, Hernando. 1989. *The Other Path*. Basic Books.
- de Soto, Hernando. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. Basic Books.
- Dickerson, A. Mechele. 2020. "Systemic Racism and Housing." 70 *Emory Law Journal* 1535.
- Dyal-Chand, Rashmi. 2018. *Collaborative Capitalism in American Cities: Reforming Urban Market Regulations*. Cambridge University Press.
- Echols, Alice. 1983. "Cultural Feminism: Feminist Capitalism and the Anti-Pornography Movement." 7 *Social Text* 34.
- Fanon, Frantz. 1967. *Black Skin, White Masks*. Grove Press.
- Fineman, Martha Albertson. 2017. "Vulnerability and Inevitable Inequality." 4 *Oslo Law Review* 133.
- Forstater, Mathew. 2007a. "Economics and the Economy." In *The Little Book of Big Ideas: Economics*, 18. Chicago Review Press.
- Forstater, Mathew. 2007b. "From Civil Rights to Economic Security: Bayard Rustin and the African American Struggle for Full Employment, 1945-1978." 36 *International Journal of Political Economy* 63.

- Fraser, Nancy. 2014. "Behind Marx's Hidden Abode: For an Expanded Conception of Capitalism." *New Left Review*, March-April 2014. <https://newleftreview.org/issues/ii86/articles/nancy-fraser-behind-marx-s-hidden-abode>.
- Fraser, Nancy. 2019. "Is Capitalism Necessarily Racist?" *Politics/Letters*, May 20, 2019. <http://quarterly.politicsslashletters.org/is-capitalism-necessarily-racist/>.
- Gilmore, Ruth Wilson. 2020. *Geographies of Racial Capitalism with Ruth Wilson Gilmore: An Antipode Foundation Film*. <https://www.youtube.com/watch 2>.
- Hall, Peter A., and David W. Soskice. 2001. *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. Oxford University Press.
- Harris, Cheryl I. 1993. "Whiteness as Property." *Harvard Law Review* 1707.
- Haynes, Curtis. 2018. "From Philanthropic Black Capitalism to Socialism: Cooperativism in Du Bois's Economic Thought." 32 *Socialism and Democracy* 125.
- Heilbroner, Robert L. 1985. *The Nature and Logic of Capitalism*. W.W. Norton & Company.
- Heilbroner, Robert L. 1999. *The Worldly Philosophers: The Lives, Times, and Ideas of the Great Economic Thinkers*. Seventh edition. Touchstone.
- Heilbroner, Robert L., and William Milberg. 2011. *The Making of the Economic Society*. Thirteenth edition. Pearson.
- Henderson, Taja-Nia Y., and Jamila Jefferson-Jones. 2020. "#LivingWhileBlack: Blackness as Nuisance." 69 *American University Law Review* 863.
- Hodgson, Geoffrey M. 2015. *Conceptualizing Capitalism*. University of Chicago Press.
- hooks, bell. 2004. *The Will to Change: Men, Masculinity, and Love*. Atria Books.
- Howell, Junia, and Elizabeth Korver-Glenn. 2018. "Neighborhoods, Race, and the Twenty-First-Century Housing Appraisal Industry." 4 *Sociology of Race and Ethnicity* 473. <https://doi.org/10.1177%2F2332649218755178>.
- Hughey, Matthew W. 2007. "The Pedagogy of Huey P. Newton: Critical Reflections on Education in His Writings and Speeches." 38 *Journal of Black Studies* 209.
- James, Osamudia R. 2017. "Valuing Identity." 102 *Minnesota Law Review* 127.
- Kelley, Robin D. G. 2017. "What Did Cedric Robinson Mean by Racial Capitalism?" *Boston Review*, January 12, 2017. <https://bostonreview.net/articles/robin-d-g-kelley-introduction-race-capitalism-justice/>.
- Kelley, Robin D. G. 2021. "Foreword: Why Black Capitalism? Why Now?" In *Black Marxism: The Making of a Radical Tradition*. Third edition. University of North Carolina Press.
- Lee, Frederic. 2011. "The Making of Heterodox Microeconomics." MPRA Paper 30907, University Library of Munich, Germany. <https://ideas.repec.org/p/pramprapa/30907.html>.
- Leong, Nancy. 2013. "Racial Capitalism." 126 *Harvard Law Review* 2151.
- Light, Caroline E. 2017. *Stand Your Ground: A History of America's Love Affair with Lethal Self-Defense*. Beacon Press.

Lipsitz, George. 2006. *The Possessive Investment in Whiteness: How White People Profit from Identity Politics*. Temple University Press.

Lyke, Sheldon Bernard. 2013. "Diversity as Commons." 88 *Tulane Law Review* 317.

Mann, Roberta F. "The (Not So) Little House on the Prairie: The Hidden Costs of the Home Mortgage Interest Deduction." 32 *Arizona State Law Journal* 1352.

Marx, Karl. (1867) 1992. *Capital: Volume 1: A Critique of Political Economy*, translated by B. Fowkes. Penguin Classics.

Marx, Karl, and Friedrich Engels. (1848) 1969. "Manifesto of the Communist Party." In *Marx/Engels Selected Works*, volume 1. Moscow.

Matambanadzo, Saru M. 2022. "Gender, Expulsion, and Law Under Racial Capitalism." 2 *Journal of Law and Political Economy* 202.

McFarlane, Audrey G. 2011. "Properties of Instability: Markets, Predation, Racialized Geography, and Property Law." 2011 *Wisconsin Law Review* 855.

Melamed, Jodi. 2015. "Racial Capitalism." 1 *Critical Ethnic Studies* 76.

Merrill, Thomas W., and Henry E. Smith. 2001. "What Happened to Property in Law and Economics?" 111 *Yale Law Journal* 357.

Millberg, William. 2019. "The Return of 'Capitalism' and the Limits of Economics." *Public Seminar*, September 20, 2019. <https://publicseminar.org/essays/the-return-of-capitalism/>.

Mock, Brentin. 2021. "What It Will Take to Close the Race Gap in Home Appraisals." *Bloomberg CityLab*, March 3, 2021. <https://www.bloomberg.com/news/articles/2021-03-03/appraisers-acknowledge-bias-in-home-valuations>.

Newton, Huey P. 1980. *War Against the Panthers: A Study of Repression in America*. <http://ouleft.org/wp-content/uploads/Huey-WATP.pdf>.

Nussbaum, Martha. 2000. *Women and Human Development: The Capabilities Approach*. Cambridge University Press.

Park, K-Sue. 2021. "Race, Innovation, and Financial Growth: The Example of Foreclosure." In *Histories of Racial Capitalism*, edited by Destin Jenkins and Justin Leroy, 27. Columbia University Press.

Polanyi, Karl. 2001. *The Great Transformation: The Political and Economic Origins of Our Time*. Beacon Press.

Priest, Claire. 2006. "Creating an American Property Law: Alienability and Its Limits in American History." 120 *Harvard Law Review* 385.

Ralph, Michael, and Maya Singhal. 2019. "Racial Capitalism." 48 *Theory and Society* 851.

Rawls, John. 1971. *A Theory of Justice*. Belknap Press.

Roberts, Dorothy E. 1993. "Racism and Patriarchy in the Meaning of Motherhood." 1 *American University Journal of Gender & Law* 3.

Robinson, Cedric J. 2021. *Black Marxism: The Making of the Black Radical Tradition*. Third edition. University of North Carolina Press.

- Robinson, Dean E. 2010. "Black Power Nationalism as Ethnic Pluralism: Postwar Liberalism's Ethnic Paradigm in Black Radicalism." In *Renewing Black Intellectual History: The Ideological and Material Foundations of African American Thought*, edited by Adolph Reed and Kenneth W. Warren. Routledge.
- Rogers, Ibram H. 2013. "Acquiring 'A Piece of the Action': The Rise and Fall of the Black Capitalism Movement." In *The Economic Civil Rights Movement: African Americans and the Struggle for Economic Power*, edited by Michael Ezra, 172. Routledge.
- Rose, Carol M. 2016. "Racially Restrictive Covenants—Were They Dignity Takings?" 41 *Law & Social Inquiry* 939.
- Rosen, Eva. 2020. *The Voucher Promise: "Section 8" and the Fate of an American Neighborhood*. Princeton University Press.
- Rothstein, Richard. 2017. *The Color of Law: A Forgotten History of How Our Government Segregated America*. Liveright Publishing.
- Rottenberg, Catherine. 2014. "The Rise of Neoliberal Feminism." 28 *Cultural Studies* 418.
- Saito, Natsu Taylor. 2015. "Race and Decolonization: Whiteness as Property in the American Settler Colonial Project." 31 *Harvard Journal of Racial & Ethnic Justice* 31.
- Saito, Natsu Taylor. 2020. *Settler Colonialism, Race, and the Law: Why Structural Racism Persists. Citizenship and Migration in the Americas*. New York University Press.
- Sandberg, Sheryl. 2015. *Lean In*. W.H. Allen.
- Schnabel, Eliska. 2021. "Local Rebels: How Local Governments Get Around Federal and State Laws to Resist New Mosques." *Journal of Urban Affairs*, published ahead of print January 22, 2021. <https://doi.org/10.1080/07352166.2020.1854613>.
- Sen, Amartya. 1999. *Development as Freedom*. Knopf.
- Singer, Joseph William. 2000. "Property and Social Relations: From Title to Entitlement." In *Property and Values: Alternatives to Public and Private Ownership*, edited by Charles Geisler and Gail Daneker. Island Press.
- Smith, Adam. 1776. *An Inquiry Into the Nature and Causes of the Wealth of Nations*, volume 1. Liberty Classics (1981).
- Tolson, Arthur L. 1975. "Historical and Modern Trends in Black Capitalism." 6 *The Black Scholar* 8.
- Trounstine, Jessica. 2019. *Segregation by Design: Local Politics and Inequality*. Cambridge University Press.
- Valdes, Francisco. 1995. "Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of 'Sex,' 'Gender,' and 'Sexual Orientation' in Euro-American Law and Society." 83 *California Law Review* 3.
- Valk, Ann M. 2010. "Living a Feminist Lifestyle: The Intersection of Theory and Action in a Lesbian Feminist Collective." In *No Permanent Waves: Recasting Histories of U.S. Feminism*, edited by Nancy A. Hewitt. Rutgers University Press.
- Walzer, Michael. 1983. *Spheres of Justice: A Defense of Pluralism and Equality*. Basic Books.

Weems, Robert E., and Lewis A. Randolph. 2001. "The Ideological Origins of Richard M. Nixon's 'Black Capitalism' Initiative." 29 *Review of Black Political Economy* 49.

Yuille, Lua Kamál. 2015. "Blood In, Buyout: A Property and Economic Approach to Street Gangs." 2015 *Wisconsin Law Review* 1049.

Yuille, Lua Kamál. 2020. "Corporations, Property, and Personhood." 97 *Denver Law Review* 557.

X, Malcolm. (1964) 2010. "The Ballot or the Bullet." In *Say It Loud! Great Speeches on Civil Rights and African American Identity*, edited by Catherine Ellis and Stephen Drury Smith. The New Press.