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### Mapping Racial Capitalism: Implications for Law


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## Mapping Racial Capitalism: Implications for Law

*Abstract:* The theory of racial capitalism offers insights into the relationship between class and race, providing both a structural and a historical account of the ways in which the two are linked in the global economy. Law plays an important role in this. This article sketches what we believe are two key structural features of racial capitalism: *profit-making* and *race-making* for the purpose of accumulating wealth and power. We understand profit-making as the extraction of surplus value or profits through processes of exploitation, expropriation, and expulsion, which are grounded in a politics of race-making. We understand race-making as including racial stratification, racial segregation, and the creation of sacrifice zones, which reflect the strategies and outcomes of profit-making. The structural features of racial capitalism thus are mutually constitutive: profit-making processes create and reinforce the making of racial meaning, while race-making, underwritten by white supremacy, structures and facilitates the economic processes of profit-making. Together, they constitute a global system dependent on the unbridled extraction of wealth from both humans and nature.

*Keywords:* racial capitalism, race, labor, nature, law, segregation, markets, exploitation, expropriation, expulsion, sacrifice zones

### I. Introduction

*Land is valuable beyond what it offers to production... “lack of respect for growing, living things soon led to lack of respect for humans too.”*

—Cara Nguyen (2020, 12; quoting Robert Bunge, an Indigenous Lakota Sioux scholar)

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*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 ... [I]t does this by displacing the uneven life chances that are inescapably part of capitalist social relations onto fictions of differing human capacities.*

—Jodi Melamed (2015, 77)

The concept of racial capitalism provides a structural and historical account of the ways in which race and class are linked in the global economy, including how they shape other oppressive structures such as patriarchy. Law plays an important role in racial capitalism, structuring its social, epistemic, and economic practices and hierarchies. As a systemic analysis, racial capitalism invites legal scholars to not only explore these underlying forces, which we believe significantly construct the problems of inequality, oppression, and injustice, but also to respond to these directly in imaginative, transformative ways through what activists are calling non-reformist reforms (Akbar 2020).

This article sketches what we believe to be two key structural features of racial capitalism: *profit-making* and *race-making*. By profit-making, we mean capturing, as well as securing and expanding, surplus value, economic profits or wealth, and political power through processes of exploitation, expropriation, and expulsion. These processes are significantly grounded in race-making. By race-making, we mean the processes by which “races” and racial hierarchies are created and perpetuated, including through practices of differential dispossession, discrimination, segregation, and the creation of “sacrifice zones”—spaces where degraded nature, land, and humans deemed unprofitable are abandoned and left to die. These race-making processes reflect the strategies and outcomes of profit-making. In other words, profit-making and race-making are mutually constitutive: Profit-making creates or reinforces race-making, and race-making structures and facilitates profit-making. Together, they form a structured web of racialized extraction that make possible the central goal of racial capitalism—the accumulation of wealth and power.

Race-making is a “sociohistorical process by which racial identities are created, lived out, transformed, and destroyed” (Omi and Winant 2015, 109). It refers to the processes of dividing humanity into a social hierarchy of different, superior and inferior “races.” Race is not biological, cultural, or even a set of fixed traits consistently assigned to groups. Rather, race is an organizing principle of social stratification and extraction—a social construction.

Race-making, we contend, creates differentiated vulnerability to exploitation versus expropriation. It structures, facilitates, and naturalizes the injustices profit-making processes create, with expropriation often serving as a fount for nonwhite racialization. In doing so, race-making reinforces a global system of Euro/white supremacy and domination, which assigns and distributes the benefits and burdens of society along the lines of racial hierarchy.

While all workers and their families are impacted by the unjust social relations and maldistribution of human and non-human resources imposed by racial capitalism, persons racialized as white (as superior) have been and remain predominantly subject to exploitation in the market (paid a “living wage”), while the people who comprise the global majority (those racialized as inferior or nonwhite) are disproportionately vulnerable to the (uncompensated or undercompensated) expropriation of their lands, labor, and productive assets. This leads not only to their impoverishment but, in some cases, to their expulsion to the margins of society as expendable surplus populations. Although persons racialized as nonwhite are also exploited, they are usually paid less than white people, and are

disproportionately concentrated in low-wage occupations that blur the line between exploitation and expropriation.

<b>THE LOGIC OF RACIAL CAPITALISM</b>	
<b>Accumulation of Economic Wealth and Power</b>	
<i>Processes</i>	
<b>Profit-making</b> <ul style="list-style-type: none"> <li>• Exploitation</li> <li>• Expropriation</li> <li>• Expulsion</li> </ul>	<b>Race-making</b> <ul style="list-style-type: none"> <li>• (Racial) Stratification</li> <li>• Segregation</li> <li>• Sacrifice Zones</li> </ul>

The term “racial capitalism” was first coined by South African scholars (Kundnani 2020), who argued that capitalism strengthened racism in apartheid-era South Africa because it operated through a racialized division of labor. This division enabled South African capitalists to reap enormous profits by grossly undercompensating Africans who resided in rural areas and migrated to urban areas for daily work. Their movement strictly controlled by work-only pass laws, African workers survived on starvation wages because their needs were partially met through the subsistence economy of the rural areas, while their urban-based labor in white-controlled industries generated super-profits for the white minority (Kundnani 2020). Thus, racial differentiation of the labor force (including spatial segregation) was a key structural feature of capitalism in South Africa, not an irrational prejudice that would eventually wither away due to economic growth.

The American scholar Cedric Robinson ([1983] 2000) adopted and further developed the concept of racial capitalism. He argued that all capitalisms were racial—racial capitalism was the rule of capitalist development, not the exception, as the South African example might imply (Kundnani 2020). Robinson grounded this idea in the insights of what he called the Black Radical tradition, in which he included scholars such as W.E.B. Du Bois, Oliver Cromwell Cox, C.L.R. James, and Eric Williams. Each, he suggested, had argued that white supremacy and its technology of race were historically and structurally linked to capitalism.

Thus, while the liberal tradition portrays capitalism as a fair and productive system, providing a plethora of goods and services and spurring innovation through the profit motive, the concept of racial capitalism suggests that in doing so, the system requires the ongoing confiscation of the unpaid or underpaid labor of subordinated groups, the ongoing plunder of their resources (including the lands they occupy), and the ongoing pillage of nature (which, as we explain in the expropriation section, is itself infused with racial meaning). This uncompensated or undercompensated extraction of wealth and profit is rationalized through constructs of race and gender, among other social identities. As such, the capitalist system at its *core* depends on denying the principle of equal human value and dignity across populations, and denying the interdependence of humans and nature.

Scholarly engagement with racial capitalism has resurfaced and intensified in recent years, now including work in Black studies, cultural studies, education, public health, history, philosophy, political

economy, political science, political ecology, and sociology.<sup>1</sup> Much of the recent scholarship draws, at least in part, on classic works of the Black Radical tradition.<sup>2</sup> Legal scholars, too, have begun to engage the concept.<sup>3</sup>

Peter Hudis suggests that recent waves of activism against police violence, mass incarceration, and the criminalization of migration have sparked a re-examination of “theoretical perspectives that conceptualise race and racism as integral to capitalism,” including renewed interest in the work of Frantz Fanon (Hudis 2018, 200). He argues that the resurgence of right-wing authoritarian populism in the US, Europe, and elsewhere has made it imperative to distinguish reactionary critiques of neoliberalism that scapegoat its most vulnerable victims from genuine critiques that question the inner logic of capitalism, recognizing that neoliberalism is merely its latest manifestation.

Our analysis of racial capitalism draws on a wide range of this work. However, we focus on a few key authors in sketching the structures and processes of racial capitalism and their interactions. Further, given the vast literature across multiple disciplines exploring each of the processes we describe (segregation, for instance), we can provide only a short outline of each. Finally, taking our lead from Hudis (2018), our analysis focuses on profit-making through production and thus on nature, land, and labor (people), instead of the processes that dominate neoliberal profit-making, such as financial speculation, rent, and debt. We do, however refer to these practices and use historic and contemporary examples of their outcomes as further evidence of racial capitalist extraction, its underlying logic, and its devastating impacts.

Having touched on our understandings of profit-making and race-making, we briefly turn to defining the processes that constitute them.

The three processes of profit-making, through which racial capitalism produces economic wealth and political power for elites, are distinct but overlapping. *Exploitation* involves the commodification of labor and its “free” exchange on markets for incomes that are less than the value produced, but nonetheless sufficient to meet life’s basic needs (partially captured, perhaps, in the concept of “a living wage”). *Expropriation*, an intensification of exploitation, involves dispossessing and/or commandeering human, non-human, material, and natural resources for the purpose of creating and expanding economic profits—but doing so without paying for them, without paying enough to cover the cost of their replenishment and reproduction, or without ensuring their regeneration (for example, enslaved labor and logging leading to deforestation). *Expulsion* is the process of discarding as “waste” persons who come to be viewed as “surplus humanity.” Expulsion often results in a new process of capital accumulation through the commodification of this “waste,” as in the gentrification of blighted urban neighborhoods or mass incarceration in for-profit prisons.

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<sup>1</sup> See, for example, Jenkins and Leroy 2021; Go 2020; Virdee 2019; Pulido 2017; Kelley 2017; Ralph and Singhai 2019; Bhattacharya and Selfa 2015; Johnson and Lubin 2017; Lowe 2015; M. Dawson 2016; Byrd et al. 2018; Saldanha 2020; Chakravarty and Ferreira da Silva 2012; Davis et al. 2019; Johnson 2018.

<sup>2</sup> See, for example, James 1938; Du Bois 1935; Williams 1944; Fanon 1952; Césaire 1955; Fanon 1963; Hall [1980] 2018; Rodney 1972; Davis 1982; Fields 1990; Kelley 1990; Kelley 1996; West 1999; Marable 1999.

<sup>3</sup> See, for example, Brito, Sabbeth, Steinberg, and Sudeall 2022; Park 2022; Knox 2021; Knox 2016; Gonzalez 2021a; Gonzalez 2020a; Mutua 2021; Torkelson 2021; Tzouvala 2020; Liebman, Rhiney, and Wallace 2020; Baradaran 2019; Bhandar 2018; Pierce 2017; Park 2016; Roithmayr 2014; Farley 2008.

Racial stratification is the process of dividing humanity into a hierarchy of “races” by reference to perceived differences in human bodies. Race and racial stratification naturalize the injustices of exploitation, expropriation, and expulsion, with race marking who is or has been vulnerable to one or another of these profit-making modes. Racial stratification, as Du Bois ([1935] 1998) famously suggested, stabilizes capitalism by dividing the working class, allowing non-elite white workers to perceive their interests as aligned with those of white owners of capital. Race-making also divides the earth among racialized groups through legal concepts of property and sovereignty, and facilitates the commodification of nature.

Segregation is a central tool of spatial race-making, which facilitates profit-making by enabling one mode of profit-making to predominate in one space and not another, at both the global and national levels. Here we draw on David Harvey’s concept of the spatial fix (Harvey 2004; Harvey 2001). For example, spatial segregation determines in large part which groups are disproportionately vulnerable to the expropriation of their wealth through predatory lending—most often, persons in neighborhoods and states racialized as nonwhite, as illustrated by the subprime mortgage crisis in the United States and the sovereign debt crisis in the global South. Spatial segregation also facilitates the political-economic abandonment of people and spaces discarded as waste, including the creation of sacrifice zones, where degraded nature, land, and humans have been abandoned by capital and left to die because they are unlikely to be profitably reclaimed or commodified in the near future.

While grounded in many of Marx’s insights about capitalism, the theory of racial capitalism rejects the notion that the exploitation of wage labor is the *sine qua non* of capitalism. Rather, the theory of racial capitalism highlights the ongoing dependence of global capitalism on the dispossession and expropriation of land and resources of those populations racialized as inferior; on the unfree, unpaid, or grossly underpaid labor of these same groups; on the caregiving work performed predominately by women across groups; and on the expropriation of nature, constructed as an inert “free gift” (Moore 2016b, 112). Racial capitalism, we believe, is the linchpin of our complex global social formation, one which could currently be described as a “white supremacist capitalist patriarchy” (hooks 2013, 4). It extracts wealth from the world’s racially marginalized (and gendered) human and non-human resources to increase the wealth and power of the white (male) few, often through the deployment of legal and extra-legal violence.

Crucially, law plays a role in structuring and maintaining racial capitalism in both material and discursive ways. Drawing on the work of other legal scholars, we provide brief examples to illustrate how the law provides the scaffolding and legitimation for racial capitalism’s processes. However, our central goal is to sketch a framework for understanding the logic and structure of racial capitalism and its mutually reinforcing processes of race-making and profit-making. We do so with the hope that legal scholars and scholars in other disciplines will not only correct our omissions and mistakes, but further inform the ongoing development of the theory of racial capitalism, including its relationship to law. In addition, we believe legal scholars will find ways to disrupt the legal support and justifications for the profit-making and race-making processes which, we attempt to show, underlie inequality, oppression, and injustice and threaten the future of life on the planet.

The article proceeds in four parts. Part II provides an overview of the birth of racial capitalism, highlighting the emergence of its core structural characteristics and features. Part III examines racial capitalism’s processes of profit-making: exploitation, expropriation, and expulsion, and some of the ways that law supports these. Part IV focuses on race-making as the other arm of accumulation and

the ways that racial stratification, segregated space, and sacrifice zones, supported in part by law, structure, facilitate, and reinforce the injustices racial capitalism creates. We conclude with suggestions for further inquiry.

## II. Sketching the Historical Foundations of Racial Capitalism

Scholars debate the origins of racism. Some argue that proto-racial ideas had already emerged in European societies by the late medieval period (Robinson [1983] 2000; Heng 2018; Hochman 2019; Fredrickson 2015). These ideas sought to make sense of the existing social orders of hierarchy and stratification based on an array of differences such as those related to religion, culture, or political community. Race legitimated social hierarchies as inevitable and natural, by first suggesting that differences in social power result from differences that inhere in the body (Hochman 2019; Makalami 2021), and later attributing these power differentials to cultural differences attached to the body (Fredrickson 2015; McCarthy 2009). However, most scholars agree that the development of modern racism, and what has later come to be characterized as processes of race-making, was fueled by the European colonization of the Americas and the enslavement of Africans (Quijano 2000; Omi and Winant 2015; Fredrickson 2015, 112-115; Mills 2003, 180-181), marking the genesis of global racial capitalism (Quijano 2000; Hudis 2018).

The roots of capitalism are also contested. In fact, a host of new historical accounts abound (Jenkins and Leroy 2021; Flandreau 2019). Some have located the roots of capitalism in war-making (Beckert 2014) or in changes in the development of money (Desan 2015). Some of these histories contradict the conventional Marxian account of capitalism's development, but others can be read as adding nuance to it, providing support and explanations for why it survived in and expanded from England (for example, Desan 2015).

Yet, one of the central debates in the conventional story of capitalism's origins remains. It concerns whether the transition from feudalism to capitalism was driven by the expansion of trade and markets (the market theory), or by increasing direct "entrepreneurial" control over the production process, which grew out of feudalism's disintegration in the English countryside (the production theory) (for example, Oakes 2016; Wood 2016; Heller 2011; Banaji 2007). According to the production theory, as Heller (2011) notes, it took *several hundred years* before processes initiated in the 16th century culminated in the English Industrial Revolution. Direct entrepreneurial control over the production of goods in England resulted in part from the enclosure movement, which brutally dispossessed peasants of shared land central to subsistence living (the commons). Forcing the peasants off the land pushed them into the nascent waged labor market. These developments were accompanied by the criminalization of "vagabondage," and by changes in the laws of property and contract, backed by violence, to cement these relations (Marx [1867] 1990; Heller 2011).

Ultimately, we agree with Heller, who, in his survey of some of the key scholars in this debate, argues that both the development and expansion of the global market and the increasing entrepreneurial control over the production process were essential to capitalist development (Heller 2011, 10-11). In addition, Heller emphasizes, and we agree, that the existence of a territorial state with a fairly integrated national market on the one hand, and the willingness to engage in practices of enclosure and colonization on the other, were each crucial to capitalist development and expansion. Thus, capitalism and modern racism were conjoined at birth, both premised on conquest, dispossession, and slavery.



While acknowledging the burgeoning “histories of capitalism” literature (see Jenkins and Leroy 2021), we have found helpful—in addition to Heller’s work and the work of political theorists such as Nancy Fraser—the work of political ecologists such as Jason Moore (2015; 2016a; 2016b; 2018), and decolonial scholars such as Aníbal Quijano (2000; 2007). We also rely on Omi and Winant’s (2015) work on race and the work of a hosts of scholars working in the critical race theory and related scholarly traditions. Based on these and similar sources, we provide a brief account of racial capitalism’s global history and key structural features.

### A. *Expropriating Nature*

We suggest that capitalism advances by commandeering the energy, labor and “work” of nature as a “free gift” (Moore 2016b, 112), altering human lives, destabilizing ecosystems, and transforming the earth itself. It does so by refusing to acknowledge the value of this “work” and refusing to provide for the reproduction, repair, and replenishment of the ecosystems that it depletes and pollutes. This refusal is facilitated by a range of legal concepts and practices, including property, contract, and corporate law, among others. And, although humans are part of nature and nature is the foundation of human and non-human life, profit-seeking incentivizes capital, the owners of the means of production, to continually maximize profits by plundering and degrading “nature.”<sup>4</sup>

The expropriation of nature was justified by new modes of thought accompanying the birth of capitalism, which reinforced the dichotomy between humans and nature inherited from Greek philosophy and Christianity and the obligation of humans to dominate nature (Fraser and Jaeggi 2018). By the seventeenth century, the scientific revolution had firmly implanted a worldview premised on the nature/society dichotomy, which facilitates capitalist profit-making by licensing the expropriation or looting of nature (Moore 2018; Merchant 1990). As Maria Mies observes:

The rise of modern science, a mechanistic and physical world-view, was based on the killing of nature as a living organism and its transformation into a huge reservoir of “natural resources” or “matter,” which could be analysed and synthesized by Man into his new machines by which he could make himself independent of Mother Nature. (Mies 1986, 75)

Guided by this philosophy, Europe industrialized rapidly, despite the constraints posed by its limited land mass and growing population, by expropriating the natural wealth of the Americas (including timber, sugar, cotton, and grain) to feed its labor force and provide industrial inputs, and by making use of its ample coal deposits (Pomeranz 2000).

However, the parts of “nature” that capital expropriates “are virtually always the life-conditions of some human group—their habitat and meaning-laden place of social interaction; their means of livelihood and material basis of social reproduction” (Fraser 2021, 122-123). When capital expropriates nature, it also disrupts communities whose land is confiscated or polluted, whose means of subsistence are thereby undermined, whose livelihoods are destroyed, and/or whose labor is conscripted into capitalist processes of profit-making. Furthermore, the human groups in question are often

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<sup>4</sup> The concept of nature remains contested. While plants, animals, mountains, and rivers exist independently of human consciousness, ideas about the relationship of humans to the non-human world vary across cultures (see Escobar 2008, 120-145). Moore, for example, rejects the nature/society binary and emphasizes that human and extra-human nature are interconnected in the web of life. Capitalism, he asserts, is not simply a system destructive of external nature, but rather a historically contingent manner of organizing human and extra-human nature (Moore 2015, 5).

categorized as nonwhite, their persons and lands (when not white-occupied) “marked as racialized spaces excluded from or ignored by the regulatory protection of the state” (Voyles 2015, 9).

### B. *Indigenous Land Dispossession*

In describing the origins of capitalism, Marx ([1867] 1990, 926) famously observed that “capital comes dripping from head to toe, from every pore, with blood and dirt.” The emergence of capitalism in the mercantilist age in the sixteenth through eighteenth centuries was based on a series of violent expropriations. It created the European proletariat—free waged labor—and incorporated the land and labor of colonized and enslaved human beings into mechanisms of profit-making. Marx notes:

The discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the aboriginal population, the beginning of the conquest and looting of the East Indies, the turning of Africa into a warren for the commercial hunting of black-skins, signalized the rosy dawn of the era of capitalist production. (Marx [1867] 1990, 915)

Dunbar-Ortiz (2014) argues that European invasions of the Americas were primed by the crusades of the eleventh through the thirteenth centuries and the English colonization of Ireland, projects which, while partially motivated by religion, were also motivated by wealth-seeking. The Spanish and Portuguese invasion of the Americas, like much of the later European colonial expansion, imposed relations of domination for the purpose of extracting natural resources, initially gold and silver (Galeano [1973] 1997). The English, however, arriving late to the colonial project, prioritized yet another goal: colonial settlement. The settler colonial project is ongoing, requiring the removal and erasure of Indigenous societies—as peoples, not individuals—from their land for the benefit of European settlers and the colonial state (first England and then the US).

The Spanish, Portuguese, and English colonializations decimated Indigenous populations and dispossessed them of their land (Dunbar-Ortiz 2014). Created upon this land were registry systems and markets that divided land into pieces and enclosed it, in a process of “turning land into property” (Jones 2019; Connolly 2014). Using these technologies, colonial states profited by transferring land to white settlers and enslaving African labor to increase its commercial value (Park 2020). In doing so, they entrenched racialized capitalist relations and processes.

While colonialization and enslavement were accomplished primarily through violence, they were putatively authorized and guided by what K-Sue Park calls the “racialized framework” of the Doctrine of Discovery. The Doctrine was grounded first in the papal bulls *Dum Diversas* (1452) and *Romanus Pontifex* (1455), “which authorized the Portuguese to enter lands in West Africa and build their slave trade” (Park 2020, 9). It was further elaborated in the papal bull *Inter Caetera* (1493), and the subsequent Treaty of Tordesillas (1494), “which demarcated the zones of the Atlantic that Spain and Portugal could invade without interference from one another” (Park 2020, 9). Park argues that the Discovery Doctrine “relied on a fundamental racial distinction between Europeans and non-Europeans” (ibid.), which guided the conquistadors’ and settlers’ interactions with Indigenous and enslaved African peoples. It was later entrenched in legal property regimes (Park 2020; Waggoner 2015; Williams 1990, discussing the US Supreme Court case of *Johnson v. M’Intosh*, 21 U.S. 543 (1823)).

The Doctrine elevated the sovereignty of European nations, while denying sovereignty to non-European peoples (including Indigenous peoples in the Americas and Africa). Colonialism was thus

central to the emergence of international law, which subordinated non-European peoples through what Anghie calls the “dynamic of difference”—the construction of non-European peoples as primitive, backward, violent, and therefore non-sovereign, and the authorization of European interventions to “transform the uncivilized” (Anghie 2005, 311).

Embodied in the practices used to dispossess Indigenous peoples were many racialized myths that justified Indigenous dispossession. These included the myth that Indigenous peoples were warlike savages (because they resisted foreign governance and the expropriation of their land and resources); that they had failed to “improve” the land through cultivation and commercialization and therefore were not deserving of it; and that the land was empty before European colonization (represented in law by the concept of *terra nullius*) (Saito 2020).

However, when Europeans invaded the Americas at the end of the fifteenth century, approximately 100 million Indigenous people lived there, as compared to a European population stretching east to the Ural Mountains of about 50 million (Dunbar-Ortiz 2014, 17). The majority of Native peoples were farmers and lived in towns. They had “left an indelible imprint on the land with systems of roads that tied nations and communities together” (*ibid.*, 8) across the entire landmass of the Americas, including extensive trade networks. Their varied civilizations had, like those on other continents, represented the ebbs and flow of human development. However, the invaders’ colonizing efforts radically reduced the American Indigenous population to a mere 10 million.

Despite the genocidal violence, the Indigenous peoples of the Americas resisted. They remain; and their presence and resistance form an ongoing challenge to settler colonialism. African and other peoples’ challenges to the various forms of colonialism are also ongoing.

### C. *Dual Structures: Race and Labor Control*

The brutal colonization of the Americas and the enslavement of Africans set in motion, as Quijano explains, the development of two fundamental axes of political-economic power that operate today as socially constituting forces: the development of *European or white supremacy* and *capitalist labor control* (Quijano 2000). First, Europeans codified the differences between conquerors and conquered as superior and inferior “races.” (In colonial Latin America, for example, this was accomplished through the state-based *casta* system, which racially categorized different groups for legal and administrative purposes (Loveman 2014).) White supremacy, with its hierarchy of “races,” eventually emerged as a worldwide socio-political system of domination (Mills 2003). This system rendered race the “fundamental criterion for the distribution of the world population into ranks, places, and roles in the new society’s structure of power” (Quijano 2000, 535).

Second, Europeans reoriented systems of labor control toward the production of commodities for a world market, in service of European capitalists (Quijano 2000, 534-5). These systems of labor control included slavery, Indigenous bondage, Chinese and Indian indentured “coolie” labor, and small commodity production in colonial India, as well as European waged labor. In short, different people, subject to ongoing racialization, performed different work in different locations, all geared toward the production of commodities for a world market, with the profits channeled back to ruling elites concentrated in Europe and across its colonies (Quijano 2000, 534-5). The result was *a racialized division of labor*, marking one of the key structural convergences of white supremacy and capitalism. This racialized division of labor, we suggest, determined over time which workers would be

disproportionately subject to exploitation versus expropriation or expulsion. It would also shape the global distribution of goods, services, and capital.

Racial capitalism later expanded beyond its Atlantic origins through the European colonization of Asia and Africa. A new imperialism emerged in the nineteenth century, marked by fierce rivalry among capitalist nations for control of territory (Chimni 2017). As Luxemburg ([1913] 2015, 446) explains, “Imperialism is the political expression of the accumulation of capital in its competitive struggle for what remains still open of the non-capitalist environment.” This rivalry resulted in escalating levels of violence, “both in aggression against the non-capitalist world and in ever more serious conflicts among competing capitalist countries” (ibid., 446), culminating in the twentieth century in two world wars.

This new imperialism, perhaps inspired by visions of empire but certainly pushed by capital, sought not only to extract resources from and create markets for European finished goods in the colonies, but also to increase the profits generated from the colonies by investing in infrastructure, agriculture, and industry, transforming peasants into workers, and changing governance to facilitate these goals (Knox 2014; Baars 2015). It thus sought to radically transform colonial societies into capitalist societies and states, imposing European systems of contract, property, and land tenure in order to create an environment that would facilitate further capitalist exploitation and extraction (Knox 2014; McCarthy 2015; Natarajan and Khoday 2014). This process entrenched capitalist economic links within and between the European and non-European states, while opening former colonies to capitalist penetration by other dominant capitalist states (later including the United States), once ongoing resistance in the colonies led to the defeat of direct colonialism beginning in the 1940s (Chimni 2017). Indeed, what emerged after political independence for many former colonies was a neocolonial state. As Kwame Nkrumah notes, commenting on the relationship between colonies, neocolonies, imperialism, and finance capital:

Colonialism is that aspect of imperialism which in a territory with an alien government, that government controls the social, economic and political life of the people it governs. *Neocolonialism is the granting of political independence minus economic independence, that is to say, independence that makes a State politically free but dependent upon the colonial power economically.* Imperialism is nothing but finance capital run wild in countries other than its own. (Nkrumah 1973, 172) (emphasis ours).

The states in Asia, Africa, and Latin America (known collectively today as the global South) resisted neocolonialism by using their numerical majority in the United Nations to pass a series of UN General Assembly resolutions calling for a more equitable distribution of economic and political power (Chimni 2017). While neoliberal globalization under the auspices of the International Monetary Fund (IMF), the World Bank, the World Trade Organization (WTO), and thousands of bilateral investment treaties undermined this effort (Linarelli, Salomon, and Sornarajah 2018, 100-101), social movements in the global South continue to resist (Prashad 2012; Rajagopal 2003).

#### D. *White Supremacy: Racism, the State, and Corporate Power*

Although racism is popularly understood as “prejudice and attitudes at the individual and group levels” (Adu-Febiri 1993, 195), the state and state-based international arrangements play central roles in structuring and instituting the racial hierarchies that shape these attitudes. They do so through coercion, law, policies, and racist ideologies. The ideology of white supremacy is hegemonic, both in

the sense of being globally dominant and also in the Gramscian sense, in that it has garnered some measure of mass consent, such that direct dominance or violence is not always necessary.

As Goldberg (2002) argues, the rise of the modern state itself is predicated on racial differentiation—on a false sense of “ethno-racial” homogeneity (Goldberg 2002, 16; Omi and Winant 2015). In his exploration of the Eurocentric ideas of “universal history that have underwritten global white supremacy,” Thomas McCarthy (2009) agrees; he notes that the United States was the paradigmatic racial state of the nineteenth century and a hegemonic global power in the twentieth (McCarthy 2009, 18, 8-13). Charles Mills (2017) observes that the racial nature of the US polity remains today, more than six decades after the Civil Rights Movement of the 1960s, and suggests that race, racism, and the racial state are part and parcel of the socio-political system of white supremacy, a system of white domination “run by whites for white benefit” that grew out of colonization (Mills 2017, 117). Thus, as Frances Ansley explains, white supremacy is not simply a set of beliefs or an ideology, but rather a system. Ansley notes:

By “white supremacy” I do not mean to allude only to the self-conscious racism of white supremacist hate groups. I refer instead to a political, economic and cultural system in which whites overwhelmingly control power and material resources, conscious and unconscious ideas of white superiority and entitlement are widespread, and relations of white dominance and non-white subordination are daily reenacted across a broad array of institutions and social settings. (Ansley 1989, 1024n129).

White supremacy is a global, institutionalized system. Conceived in the violent expropriations of European colonization and slavery, as contended above, its features have shifted over time, consonant with the changing requirements and opportunities for profit-making in the capitalist world economy. And the system of capitalist white supremacy is ongoing. Capturing some of these insights, the San Francisco Workshop on Challenging White Supremacy defines it as:

[A] historically based, institutionally perpetuated system of exploitation and oppression of continents, nations and peoples of color by white peoples and nations of the European continent, for the purpose of maintaining and defending a system of wealth, power and privilege (Martinez 1998, 1).<sup>5</sup>

Racial capitalism—the conjoined, imbricated systems of white supremacy and capitalism—tends to concentrate wealth in the hands of the few through processes of race-making and profit-making. As such, it has fueled and continues to fuel the prosperity, and thus the political power, of Euro-descendent/white capitalist states, their elites, and today the (often nonwhite) elite classes of neocolonial states. This wealth, gained through territorial control, taxes, and resources generated by the mutually constitutive processes of profit-making and race-making, allows these states to augment their various mechanisms of power and domination, including the ideological and technological means of violence exercised over their citizens and others (Adu-Febiri 1993, 207).

One of the central legal instrumentalities and agents of the racial state for wealth generation has been the corporation. Baars (2015) reminds us that the colonial confrontation of putative European

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<sup>5</sup> This is a good popular definition of global white supremacy. However, it sees white supremacy and race-making as the same thing. We differ. We see the techniques of race-making as separate and usable by different groups, including nonwhite neocolonial elites.

sovereigns with others in the Americas, Asia, and Africa did not occur through a meeting of “heads of states.” Rather (particularly later with regard to the Dutch and British), these encounters were often mediated by joint-stock corporations such as the British and Dutch East India companies. These companies were armed with royal charters, trade monopolies, and often the power to conduct wars for trade and territory, as well as to grant titles to land. This “legal-economic form of the corporation allowed the assertion of political power” (Baars 2015, 9), but was flexible enough to be viewed as something distinct from the state, although formed by it. Baars suggests that the ideological view that the public realm is separate from the private realm and the political realm separate from the economy became increasingly grounded in law and in different types of corporate charters with the decline of the old trading companies, and later as European domination shifted from direct colonial rule to indirect economic control.

Today, the distinction between the economic and political is widely accepted, and corporate charters are the norm. However, the distinction is largely ideological (Simons 2012). For example, research demonstrates that in the United States, economic elites and organized groups representing business interests, particularly large corporations, “have substantial independent impacts on US government policy, while mass-based interest groups and average citizens” have very little (Page and Gilens 2014, 566; Page and Gilens 2017). At the international level, transnational corporations working in tandem with powerful states drove neoliberal globalization, undermining the global South’s organized anti-imperial opposition in the decades following decolonization (Linarelli, Salomon, and Sornarajah 2018, 102-109) and perpetuating white capitalist minority rule over a global majority racialized as nonwhite (Prashad 2007).

While white supremacy is the system, race-making is a technology that renders socially acceptable the unequal relations and distributions that racial capitalism generates through the racialized profit-making practices of exploitation, expropriation, and expulsion.

States, for their part, employ physical coercion, law, policies, and ideologies to enact race-making. Racist state policies are often legally enshrined and institutionalized “in the areas of marriage, employment, housing/residence, education, sports, etc.,” and “ideological propaganda, [which] gives substance to ‘popular’ racism” (Adu-Febiri 1993, 195), is also often institutionalized. It is institutionalized through “state owned or controlled school system[s], textbooks and magazines,” as well as through the mass media, private religious institutions, and even the family. Through these mechanisms, Adu-Febiri argues, whites and other dominant groups are primed to “endorse state racism and adopt racist ideology which negatively shapes their day to day dealings with nonwhites” (ibid., 199). The promotion of racist ideologies and policies also brings certain material privileges, such as access to better jobs, housing, education, and social mobility, as well as the construction of whites as the “race-less” and “superior” universal human within the racialized hierarchy of human groups. These material privileges, in turn, reinforce the belief in white superiority.

Although race-making occurs through marking bodies as superior and inferior, this marking does not only involve a color hierarchy (Quijano 2000, 572), despite the widespread and ongoing virulence of anti-Black racism. Rather, “[d]epending on the varying colonial histories in a number of world regions, the hierarchy of human superiority/inferiority can be constructed through various racial markers,” including ethnicity, indigeneity, language, culture, and religion, among others (Grosfoguel, Oso, and Christou 2014, 636). For instance, in the colonial history of Ireland, “the British constructed their racial superiority over the Irish, not through the marker of skin color, but rather through a religious

marker” (Grosfoguel 2016, 11). In the US, Irish and Italian immigrants, Latinos, and most recently Muslims, have been racialized through religion, ethnicity, and language.

Further, although race-making is a technology of white supremacy that structures relationships between whites and nonwhites in the global economy, it can be and is used by others. Nonwhite neocolonial elites often deploy racial hierarchies (based on caste, ethnicity, religion, language, nationality, indigeneity, and other markers of identity) to maintain their dominant positions and extract wealth from subaltern populations. For example, in the oil-rich states of Saudi Arabia, Qatar, Bahrain, Kuwait, Oman, and the United Arab Emirates, ruling classes exploit and expropriate an imported labor force of racialized migrant workers. These workers are underpaid, forced to work long hours in dangerous conditions, and subjected to physical and sexual violence. In India, Myanmar, and the Dominican Republic, national elites have utilized various forms of race-making (including ethno-nationalism and Islamophobia) to render specific groups (including Muslims, the Rohingya, and persons of Haitian descent) vulnerable to violence, dispossession, and expulsion (Walia 2021). However, these racialized extractions operate within a global regime of race-making and profit-making dominated by Euro-descendent/white capitalist states and their elites.

Finally, racism as a technology can also be used by those outside the direct realm of white supremacy (that is, Western Europe and Euro-descendent settler colonies, including Israel). For instance, China is deploying Han nationalism and racialized Islamophobia against its mostly Muslim Uyghur population in Xinjiang province, labeling the Uyghurs “terrorists” in order to justify their detention and imprisonment (BBC News 2021). The Chinese state’s race-making is accompanied by profit-making, visible in the extraction of cheap Uyghur labor, the expropriation of their lands and resources, and the development of lucrative surveillance technologies to repress their resistance (Wong 2022). In addition, there is documented evidence of the persistence of racism under so-called state socialism (for example, in Cuba and the former Soviet Union) (Law 2012). However, given the limited relevance of state socialist regimes to the contemporary capitalist global economy, an analysis of how race is constructed and mobilized by states and social forces in these regimes is beyond the scope of this article.

We now turn to a more detailed explanation of these processes.

### III. The Logics of Profit-Making

*Everybody wants to be rich, and every business wants to be a monopoly.*  
—Inspired by comments of Syed (2021)

Proponents of capitalism frequently depict it as a system grounded in freedom—free markets, freedom of contract, and freedom from state interference (Friedman [1962] 2020). This belief is particularly prevalent in a society like the United States, where capitalist markets, especially under the current neoliberal regime, are not seen as simply a tool for organizing productive activity, but as a way of life and a governing rationality (Sandel 2012; Brown 2015).

This section argues, drawing in part on Marxist theory, that racial capitalism’s profit-making imperatives constrain human freedom, undermine human well-being, perpetuate human hierarchies, and destabilize the earth system processes that support human and non-human life. The state is deeply implicated in this. Through law, the state creates or adopts the rules that constitute and structure

markets, govern market transactions, and determine which interests enjoy special protection (for example, through property rights and the corporate form), as well as which interests are rendered vulnerable and left unprotected (for example, low-wage workers) (Grewal and Purdy 2015).

The primary goal of racial capitalism is accumulation: the ceaseless drive for profits. Racial capitalism's logics of profit-making subordinate the well-being of humans and ecosystems to what Syed (2021) refers to as generalized markets and their vertical forces of hierarchy and horizontal forces of competition and trade. These logics dictate that (1) the vast majority of people must either work for someone else for unfair wages or starve (the vertical/hierarchical social relations of domination); and (2) businesses must either compete and profit or die (the horizontal social relations of competition and trade).

Taking the horizontal first, many businesses would love to be monopolies or monopsonies, so that they might escape the capitalist market imperative to compete and profit or die. This imperative involves expanding, reinvesting, and innovating products, among other strategies (such as planned obsolescence) in order to continuously maximize profits (Syed 2021; Fraser and Jaeggi 2018). In fact, competitive pressures constrain even those who strive to charge what they consider a "fair price" and/or pay a "fair wage," because competitors may undercut them. Monopoly or monopsony power is an exit from the imperative of profit-or-die, allowing businesses to profit from charging premiums for goods where limited competition exists. However, monopoly power must be sustained and, in the context of globally linked markets, may only provide a local or regional shield from competition. For instance, although Facebook has monopolistic power, it aggressively sustains and expands its position by purchasing smaller companies such as WhatsApp and Instagram (McLaughlin 2022; Rodriguez 2020).

Law is deeply implicated in this. For example, antitrust law shapes, at least in part, the tools available to businesses to escape the rat race of competition by favoring some types of economic coordination and disfavoring others. As Paul (2020) explains, antitrust law facilitates the concentration of economic power in large corporations by exempting intra-firm economic coordination from antitrust scrutiny. In addition, government agencies responsible for antitrust enforcement have facilitated corporate concentration (and wage suppression) by failing to scrutinize the impact of corporate mergers on labor markets (Naidu, Posner, and Weyl 2018).

Competition among businesses in pursuit of profit compels them to engage in a host of practices with detrimental outcomes, including commodifying food, water, and other human necessities; driving down the cost of labor by racializing and otherwise differentiating workers (full-time, part-time, contract, undocumented); over-producing goods deemed profitable and generating massive amounts of waste; depleting, polluting, and destabilizing the ecosystems that support human and non-human life; and under-producing essential social goods deemed unprofitable (such as low-income housing and medications to treat diseases prevalent in poor countries, including malaria, dengue, and yellow fever). This illustrative but by no means exhaustive list is not a moral condemnation of specific "bad actors," but a description of the logical consequences of capitalism's horizontal relations of competition and trade in which profit-making is prioritized. The systemic drivers of capitalism compel businesses to extract more and more profits through processes of exploitation, expropriation, and expulsion.



Just as businesses seek to free themselves from capitalism's horizontal (market) imperative to profit or die, workers would like to escape the vertical (market) imperative to work for someone else for unfair wages or starve. That is, workers would like to be rich to avoid the economic compulsion of having to work for someone else to acquire the money with which to access the basic necessities of life. At the same time, most people work under conditions in which employers control, under threat of termination, not only the workplace (deciding what is produced and how), but also aspects of workers' off-duty lives. Those to whom we sell our labor control not only the products of our labor (alienating us from them), but also control large swathes of our time on and off the job, including our work schedules, vacation time, access to health care and medical leave, and the ability to relax at home during non-work hours without being "on call" (Anderson 2017). We refer to these conditions as social relations of domination. Here again, law structures the employer-employee relationship, privileging employers by favoring at-will employment with narrow exceptions, while providing limited workplace protections through laws governing minimum wage, health and safety, fringe benefits, discrimination, labor union activity, and family and medical leave.

The remainder of this section sketches the operation of racial capitalism's profit-making processes: exploitation, expropriation, and expulsion. It explores the racial (and gender) hierarchies that these processes shape and perpetuate, and the way that these processes structure the relations between human and non-human nature.

### A. *Exploitation*

Exploitation entails the commodification of labor and its "free" exchange on markets for incomes that are less than the value produced, but nevertheless sufficient to satisfy the worker's basic needs (Fraser and Jaeggi 2018).<sup>6</sup> Lacking independent access to the means of subsistence, most workers must exchange their ability to work (labor power) for wages on a market, pursuant to wage contracts or at-will conditions, under which capitalists are entitled to legally appropriate the lion's share of the wealth the workers produce (surplus value and/or profits). Unlike expropriated workers (such as the migrant workers discussed in the next section), exploited workers earn enough to support themselves and their families without having to work multiple jobs, rely on state assistance (such as food stamps), reside in substandard housing, share housing with family, friends and roommates, work in the informal economy, or supplement their incomes through self-provisioning (hunting, fishing, dumpster diving) (Fraser and Jaeggi 2018).

The existence of "free wage labor," compelled by economic necessity rather than by extra-economic coercion or violence (such as in slavery), is one of capitalism's key defining features under orthodox Marxist theory (Marx [1867] 1990; Banaji 2003). Economic necessity—compulsion—facilitates exploitation and capitalist expansion. The term "exploitation" is often seen as problematic because it implies a "moral judgment as opposed to simply a neutral description" of the linked but structurally opposed social relations between capitalists and workers (Wright 2015, 9). We believe the term correctly captures a key aspect of the class relations between capitalists and workers. Capitalists are allowed to dictate what goods and services are produced, and the time, place, and manner of

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<sup>6</sup> Whether capitalism "exploits" nature in a manner analogous to its exploitation of workers (through the extraction of surplus value) is beyond the scope of this article. We argue that capitalism *expropriates* nature, and point the reader to the wide-ranging debates on nature and value theory (for example, Huber 2017; Collard and Dempsey 2017; Smith 2007; O'Connor 1993).

production. They may terminate recalcitrant workers. And, they are entitled to appropriate the bulk of the wealth that workers socially and collectively create. In the absence of regulations, redistributive legislation, social contestation, or other constraints, these processes result in the continuous upward movement of wealth and resources into the hands of capital, creating inequality and the maldistribution of resources.

Additionally, capitalists are entitled to reinvest these profits—this socially-produced wealth—as they please, generally for their own private purposes. The richest among them also buy up other natural and socially produced resources. For example, Bill Gates of Microsoft is now the largest private owner of farmland in the United States (Estes 2021). Private equity firms, like the Blackstone Group, are buying up housing as a commodity for profit, pushing up housing prices and raising rents, and making it difficult for young people to buy homes and low-income renters to stay in them (UNHRC 2017; Leijten and de Bel 2020; Aalbers, Rolnik, and Krijnen 2020). And the wealthy, from Gates to Koch, are involved in privatizing and potentially profiting from public goods such as K-12 education, with problematic results for students, teachers, and the educational system as a whole (Freeman 2021; Ravitch 2020).

Although the horizontal (competition) and vertical (domination) logics of racial capitalism drive its accumulative processes and create its self-perpetuating dynamic, the state constructs markets (such as markets in land), and defines the rules that partially determine the extent to which market logics and imperatives control people's lives. For instance, states that use their accumulated wealth to provide housing and health care for their residents limit the compulsion of market imperatives that the lack of independent means to secure these necessities imposes. As Erik Olin Wright explains, it is “power relations and legal rules which give people effective control over economic resources” (Wright 2015, 6 in figure 1.2), particularly over productive property (the means of production), to the exclusion of others (ibid.; see also Pistor 2019). Law does so by defining the rules of property, contracts, business organizations, creditor-debtor relations, and international trade and investment. It also defines whether there is a minimum wage and who is entitled to it, and who is entitled to union participation, education, citizenship, clean air and water, and access to health care.

The COVID-19 pandemic highlighted the extent of legally sanctioned exploitation and control in US labor markets. As the virus spread, fearful workers soon discovered that their employers could force them to go back to in-person work. Those who refused stood to lose not only their jobs, but also their health care and related benefits tied to their jobs. Though government-mandated business closings provided many workers with a temporary reprieve from in-person work, business interests quickly urged governments to reopen the economy despite the health risks to employees (Sonnemaker 2020; Cunningham 2020). At the same time, these businesses sought the enactment of laws that would shield them from liability if those workers forced to return to work became sick on the job (Swanson and Rappeport 2020; Freeman 2021, 26). In doing so, “they put profits over people and sought power without responsibility” (Mutua 2020, 336).

Nevertheless, millions of workers lost their jobs and their health care along with it, with women disproportionately affected (Boesch and Phadke 2021; Ro 2020). The real dilemma of “work for others or starve” was made clear. Hunger and the threat of starvation doubled, both in the United States and across the world, with children most affected (Brown and Lowcock 2021). It thus became apparent that most people were dependent on jobs, and without them would lose all access to basic necessities, including food.

Workers racialized as nonwhite were overrepresented among those compelled by economic necessity to continue working in-person to provide essential goods and services. Consigned to dangerous low-wage jobs that blur the line between exploitation and expropriation (such as custodial, meatpacking, warehouse, and nursing home jobs), these workers experienced higher rates of COVID-19 cases and deaths. The pandemic thereby exposed and exacerbated the disparities in wages and working conditions that enable employers to extract greater surplus value from workers racialized as nonwhite (Edwards 2021). Wall Street and large corporations, particularly in the technology industry, in contrast to workers, made billions during the pandemic (Francis, Gryta, Trentmann 2022; Abelson 2021).

Race is often embedded in the legal definitions that structure work and the conditions that make it possible. For example, farm workers and domestic workers were excluded from New Deal legislation guaranteeing fundamental workplace rights, including the right to unionize, precisely because African Americans were overrepresented in these occupations (Perea 2011). These same African Americans, while being denied the right to negotiate their working conditions, were also denied the right to vote, limiting their opportunity to construct the rules that bound them. The rights to negotiate work conditions, strike, and vote were predominantly the preserve of white workers. Today, a bevy of laws seek to suppress voting by African Americans, and to hide the history and ongoing operation of racial oppression (through banning critical race theory, for example) even while re-enacting it (Brownstein 2022).

Meanwhile, the racial gaps in salary and wages between exploited white workers and exploited nonwhite workers in the United States persist at all income levels (Kochhar and Cilluffo 2018).<sup>7</sup> Although discrimination and the non-enforcement of antidiscrimination laws play a role in driving some of these wage gaps (Kochhar and Cilluffo 2018; Rodgers 2019), law is enmeshed in racialized systems, such as the immigration and criminal justice systems, which shape labor markets, their access, and the wages assigned within them. In the United States, for example, the immigration system “has the greatest effect on the relative wages of Asians and Latinos” (Parks 2012, 702; Kochhar and Cilluffo 2018), structuring both the growth of these populations generally and often their earnings and occupations through work-related visas. The criminal justice system, which became more punitive in the 1980s and contributed to the disproportionate mass incarceration of Black people and Latinos, has depressed the wages of Black and Latino workers because “wage returns to work experience after incarceration are about 40 percent lower” than they would otherwise have been (Rodgers 2019, 210; see also Parks 2012).

Law also plays a role in creating distinct (segmented) labor markets—some with higher wages, better working conditions, and greater job security, and others with lower wages, bad working conditions, and high worker turnover. Law defines who is an employee as opposed to an independent contractor;

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<sup>7</sup> For example, in 2016 the median Black worker earned 65% and the median Latino worker 63% of the median white worker, or 65 and 63 cents for every dollar earned by white workers in the middle of the income distribution. The lowest-income Black and Latino workers earned 54% and 66% of the lowest-income white workers. Asian/Asian Americans earned slightly more than white workers at the median level, but earned 83% of the earnings of white workers at the lowest income level (Kochhar and Cilluffo 2018, n.p.). Women of color experienced the largest wage gaps. In 2020, for example, Black women and Latinas earned 64% and 57%, respectively, of the median white male worker. Asian/Asian-American women earned 85% of the median white male worker, but this figure varied significantly among subpopulations, with some groups earning as little as 54% of the median white male worker (Bleiweis, Frye, and Khattar 2021, n.p.). No one explanation captures the complex causes of these wage gaps, as they are affected by differences in hiring, pay practices, education, experience, industry, availability, and union participation (Kochhar and Cilluffo 2018; Rodgers 2019).

which workers are excluded from employer-provided health benefits (usually part-time and temporary workers); who is protected from unfair dismissal; which workers have access to collective bargaining; and who is covered by equal pay and antidiscrimination laws (Deakin 2013; Ashiagbor 2021; Scharenaker and Schneider 2019).

Labor market segmentation is perhaps even more apparent on the global scale. For example, transnational corporations headquartered in the global North increasingly outsource manufacturing to the global South, often through complex chains of subcontractors and suppliers whose competition to offer the cheapest possible prices drives down the wages of workers racialized as nonwhite. This labor market segmentation maintains wage inequality, subjecting those at the bottom of race, gender, and other hierarchies to higher levels of exploitation than their white male counterparts in the global North (Bonacich, Alimahomed, and Wilson 2008).

In sum, status hierarchies created and maintained by power relations and legal rules contribute to disparities in wages and working conditions that relegate exploited workers racialized as nonwhite to more dangerous low-wage jobs and industries. This topic may be a fruitful avenue for further research by legal scholars who specialize in labor and employment law, immigration law, and related fields.

These hierarchies also render persons racialized as nonwhite disproportionately vulnerable to expropriation and expulsion (Fraser 2019; Fraser and Jaeggi 2018b; Wright 2015). We turn to these processes next.

### B. *Expropriation: Nature, Land, and Labor*

*Capital ceases to be capital without the ongoing differentiation of free labor and slavery, waged labor and unpaid labor as its general creative basis.*

—Nikhil Pal Singh (2017, 88)

The theory of racial capitalism rejects conventional definitions of capitalism that treat the exploitation of free waged labor as the *sine qua non* of capitalism. Instead, it recognizes that capitalism has always depended on “free nature” on the one hand, and the unfree, unpaid, or grossly underpaid labor of women and those racialized as inferior, on the other. These resources become inputs of capitalist production through expropriation.

Expropriation entails dispossession and/or the commandeering (often brutally) of human, non-human, material, and natural resources, for the purpose of creating and expanding economic profits—but doing so without paying for them, without paying enough to cover the cost of their reproduction, or without ensuring their regeneration and replenishment (Fraser and Jaeggi 2018; Moore 2016b). These takings can be conceived of as “appropriations without exchange” (Foster and Clark 2018), or the absence of negotiated exchanges under usual rules of contract. They also include takings that simply have a legal or commercial façade (Fraser and Jaeggi 2018), such as grossly undercompensated employment, excessive rent, and usury.<sup>8</sup> Where some form of recompense is provided, what makes

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<sup>8</sup> Fraser notes:

[M]any contemporary forms of expropriation are tricked out with a façade of legality. Think of for-profit prisons and foreclosures on predatory debt, including the subprime mortgages marketed specifically to people of color

the transaction an expropriation is that the recompense is insufficient to ensure the reproduction of the resources (ibid.; Foster and Clark 2018).<sup>9</sup>

While the state, politics, and law are implicated in the *exploitation* of workers, the most visible compulsion on workers is economic need. By contrast, *expropriation* frequently relies on the application of extra-economic coercion, including physical violence, resource wars, compulsory prison labor, and threats of deportation, discussed further below. Race-making animates and structures each of these coercive practices. It racially stigmatizes (or acts on the stigmatization of) the people involved, thereby removing them from the realm of moral concern. In doing so, it renders these practices and the deleterious impacts they have on certain communities socially acceptable.

Because the drive for accumulation relies on two tracks (exploitation and expropriation), race-making is both an outcome of their operation and the primary tool for rendering groups disproportionately subject to one process rather than the other. Further, groups subject to past expropriation are more vulnerable to its repetition and continuation (Fraser 2018.) We more fully discuss the processes by which groups become racialized in Part IV.

Finally, without the expropriation of nature, land, and labor, the profitable exploitation of free wage labor would not be possible. The emergence of free wage labor, in the first instance, was made possible by the expropriation of peasant and Indigenous land and resources and the enslavement of Africans. The continued reproduction of wage workers is subsidized by the energy, food, and raw materials extracted from nature and other expropriated workers.

### 1. Background: Expropriation as an Ongoing Feature of Capitalism

Building on Rosa Luxemburg's ([1913] 2015) work, Nancy Fraser (2018), along with scholars such as Tayyab Mahmud (2015) and David Harvey (2004), argues that the process of expropriation did not end with what Marx called "primitive accumulation," the capital made possible by European and Indigenous dispossession and African slavery. Rather, expropriation is a fundamental and *ongoing* feature of capitalism. Every phase of capitalism has been marked by expropriation of nature, labor, and socially created wealth on multiple continents, including dispossession through "the continuous expulsion of farmers from the land, war and plunder on a world scale, and the degradation of women" (Federici 2004, 12). Contemporary examples of expropriation include human trafficking, wage theft of undocumented migrant labor, asset-stripping through predatory lending, land grabbing, and the arrogation of the unpaid or underpaid domestic and care work of women in the global South and

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in the United States. Think also of the new forms of precarious, low-paid service work, the so-called McJobs, largely assigned to racialized minorities and immigrants, which pay less than the socially necessary costs of the workers' reproduction. These too involve an expropriative element, despite the contractual façade. They permit accumulation through processes distinct from, although imbricated with, exploitation. (Fraser and Jaeggi 2018, 47)

<sup>9</sup> Foster and Clark provide what might be seen as a distinction between the expropriation of people and that of nature:

[W]e can distinguish two general forms of expropriation: (1) expropriation in the form of private property, involving appropriation without exchange, and (2) expropriation in a more general sense, manifested in alienated human relations with the material world as a whole (the realm of use values or real wealth and what Marx called the "natural economy") characterized by appropriation without reciprocity. Here, "the conditions of reproduction" are not maintained, and expropriation takes the form of running down of the entire world outside the narrow realm of capital accumulation. (Foster and Clark 2018, 44)

North. What unites these examples, as Fraser emphasizes, “is that the commandeered capacities get incorporated into the value-expanding process that defines capital. Simple theft is not enough” (Fraser 2018, 4-5).

The expropriation of nature (such as the extraction of “free” oil from the earth (Moore 2016b)) and “cheap labor” (such as the racialized labor of enslaved, enserfed, colonized, migrant, or trafficked workers) reduces the costs of production and increases profit margins. For example, slave-produced sugar cultivated on lands stolen from Indigenous peoples added calories to English workers’ diets, allowing capitalists to pay them less while still ensuring their survival (Fraser and Jaeggi 2018, 45). Capitalists thereby earned greater surplus value from exploited workers (Moore 2015). For a more current example, Apple’s purchase of “cheap” cobalt hand-mined by expropriated workers in the brutal Congolese mines enables the production of cell phones by exploited workers in China, which are then sold at a handsome profit in the United States and elsewhere (Aleem 2017; Chutel 2018).

In the subsections that follow, we explain the logic of expropriation in greater detail, examining first the expropriation of nature and then the expropriation of unfree, unpaid, and underpaid human labor through the examples of prison, care, and migrant work.

## 2. Expropriation of “Free Nature”

Nature is the foundation of human and non-human life, but racial capitalism treats nature as a gift, and expropriates the “work” of nature (Moore 2016b) in its relentless quest for profit—destabilizing the planet’s ecosystems and undermining the ecological conditions that sustain life. And it does this without acknowledging the value of this work, or ensuring the reproduction, repair, and replenishment of the ecosystems that it depletes and pollutes.

The colonial encounter and the Enlightenment shaped European concepts of nature, race, sovereignty, and the obligation of nation-states to dominate and commodify nature in pursuit of wealth and power. These concepts, embodied in law, legitimated and structured racial capitalism’s territorial demarcation of the planet and its ongoing plunder of nature. We examine these concepts and their history in the subsections that follow.

### a. Racialized Nature

Racial capitalism’s expropriation of nature and of the labor, land, and resources of persons racialized as nonwhite have generally operated in tandem. For example, the seventeenth-century scientific revolution that transformed nature from a living organism into an inert reservoir of natural resources for commodification and profit-making (Mies 1996; Merchant 1990) also gave birth to scientific racism (Hochman 2019; Fredrickson 2015). European scientists and colonizers constructed nature as humanity’s inferior “other” (Godden 1998). They subsumed Indigenous peoples into nature “along with the flora and fauna whose habitat they shared” (Moore, Kosek and Pandian 2003, 12), and feminized nature to justify the domination of both women and nature (Merchant 1990; Plumwood 1993). Using taxonomic methods routinely applied in botany, zoology, and chemistry, European scholars classified humans into distinct superior and inferior races (Smith 2015). In Africa and the Americas, “colonial discourses of savagery and barbarism linked understandings of natural history and racial essence” (Moore, Kosek, and Pandian 2003, 12).

The racialization of nature and the naturalization of race shaped and legitimated the violent dispossession of “natives” and the imposition of European property and sovereignty regimes as a means of taming, managing, and transforming both “primitive” humans and “wild” nature (Godden 1998, 726-727; Moore, Kosek, and Pandian 2003, 19). Persons who did not “improve” the land through cultivation for commercial sale were racialized as inferior and uncivilized, and were brutally subjugated, expropriated, and displaced (Bhandar 2016). “Mastery of nature came to be seen as the unmistakable hallmark of civilization” (Argyrou 2005, 4), and the modern nation-state became the vehicle through which nature would be dominated and controlled to facilitate its profitable commodification (Capra and Mattei 2015; Natarajan 2012; Natarajan and Dehm forthcoming).

#### b. Territorial Sovereignty and the Commodification of Nature

The conquest of the Americas “was not only generative of Eurocentrism as an ideology of colonial legitimation, but also instrumental in mobilizing what would become modern conceptions of territorial sovereignty” (Anievas and Nişancıoğlu 2015, 135), including the obligation of sovereign states to plunder nature in order to enhance their wealth and power.

A central function of the state, according to the foundational scholars of international law, was to promote the commodification of nature and the conduct of international trade (Porras 2014). If non-European peoples restricted European access to “the lucrative new world trades, including the slave trade” (Porras 2014, 651), this would serve as a legitimate cause for war. Later, in the nineteenth century, John Westlake, a prominent British international law scholar, argued that dividing non-European lands among European powers was essential to avoid conflict among European states in their scramble for the planet’s natural resources.

The inflow of the white race cannot be stopped where there is land to cultivate, ore to be mined, commerce to be developed, sport to enjoy, curiosity to be satisfied. If any fanatical admirer of savage life argued that whites ought to be kept out, he would only be driven to the same conclusion by another route, for a government on the spot would be necessary to keep them out. Accordingly, international law has to treat such natives as uncivilized. (Westlake 1894, 142-143)

The doctrine of sovereignty transformed living and interconnected ecosystems into linearly demarcated territories, infused with racial meaning and ripe for commodification. European states partitioned the lands they colonized with little concern for pre-existing cultural divisions among the people who resided in these territories. For example, the 1884 Berlin Conference partitioned Africa into European zones of influence without regard for existing ethnic or geographic boundaries (El-Gendi 2016). After the collapse of the Ottoman Empire at the end of World War I, the French and the British created the borders of their so-called protectorates (which would later become the modern states of the Middle East) by drawing state boundaries with a ruler based on the location of known oil reserves (El-Gendi 2016; Natarajan 2012). These and other artificial colonial borders laid the groundwork for the widespread ethnic and resource conflicts that plague contemporary states in the global South (Mutua 1995; Mahmud 2010).

### c. Eco-Catastrophe and Ecological Imperialism

The expropriation of nature is a direct consequence of racial capitalism's voracious demand for raw materials and waste disposal to feed its ceaseless drive for profits. "The inherent need, within capitalism, for companies to endlessly produce more and more so as to maintain profits and be competitive against rivals" creates a treadmill of overproduction and overconsumption that is inherently eco-destructive (Bell 2015, 2).

Racial capitalism's predatory, extractive relationship to nature has produced "an ever-growing mountain of eco-wreckage: an atmosphere flooded by carbon emissions; climbing temperatures, crumbling polar ice shelves, rising seas clogged with islands of plastic; mass extinctions, declining biodiversity, climate-driven migration of organisms and pathogens, increased zoonotic spillovers of deadly viruses; superstorms, megadroughts, giant locust swarms, jumbo wildfires, titanic flooding, dead zones, poisoned lands, unbreathable air" (Fraser 2021, 101).

This state of affairs exemplifies the ecological contradictions of capitalism—the tendency of capitalism to destabilize the ecological conditions on which it depends (O'Connor 1998). Capitalism does not assume responsibility for reproducing or regenerating nature. Instead, it responds to ecological crises by undertaking new rounds of plunder—expropriating the natural wealth of poor and nonwhite populations who have been left defenseless by the state (Fraser 2021). "[T]he exhaustion of one zone quickly prompts the 'discovery' of new natures that deliver untapped sources of unpaid work" (Moore, 2017, 246).

As Rodney (1972), Galeano ([1973] 1997), and others have observed, the North's "development" was fueled by the labor and resources of the global South, producing so-called "underdevelopment." And the transfer of biomass from the global South (the periphery) to the global North (the core), a form of "ecological imperialism" (Foster, Clark, and York 2010, 370), not only enabled the North to maintain levels of production and consumption far beyond the limits of its natural resource base, but also wreaked ecological havoc on the South (Ponting 2007).

The expropriation of nature in the colonies fueled the industrialization of Europe while destroying forests, dispossessing local communities, undermining subsistence-based economies, and producing dramatic alterations in the ecosystems of the colonized territories (Ponting 2007). As Fraser points out:

What made Manchester's factories hum was the massive import of "cheap natures" wrested from colonized lands by masses of unfree and dependent labor: cheap cotton to feed the mills, cheap sugar, tobacco, coffee, and tea to stimulate the "hands" who operated them. (Fraser and Jaeggi 2018, 98)

Further, European nation-states, in collaboration with the joint-stock companies they chartered, pioneered the world-historic shift to fossil energy (Fraser and Jaeggi 2018), on which we remain dangerously reliant.

In the decades following World War II, the states of the global South resisted the ongoing plunder of their lands by passing a series of UN General Assembly resolutions calling for permanent sovereignty over natural resources and a more equitable international economic order (Gordon and Sylvester



2004). However, the sovereign debt crisis of the 1980s brought these efforts to a grinding halt (Gordon 2009). In exchange for debt repayment assistance, the International Monetary Fund and the World Bank imposed on heavily indebted Southern states a series of neoliberal economic reforms, including trade liberalization, privatization of state-owned enterprises, deregulation, elimination of social safety nets, and the intensification of export production to service the foreign debt (Peet 2008). These reforms stripped Southern states of valuable assets, impoverished subaltern communities, and enabled Northern states and transnational corporations to continue to pillage nature in the global South, often in collaboration with Southern elites (Gonzalez 2015a).

The linchpin of the system was petroleum, which was secured by *coups d'état* and other political, economic, and military interventions in the global South, particularly the Middle East (Fraser and Jaeggi 2018). This stage of accumulation also “unloaded eco-‘externalities’ disproportionately onto poor communities, especially communities of colour, in the core, while ramping up extractivism and environmental-load displacement in the periphery” (Fraser 2021, 117), giving rise to transnational environmental justice movements grounded in opposition to, among other things, environmental racism and toxic colonialism (Atapattu, Gonzalez, and Seck 2021; Newell 2005; Lipman 2015; Bullard [1990] 2018).

In the contemporary neoliberal era of globalized financial capitalism, the shift of manufacturing to the global South, and the continued dependence of Northern information technology, services, and finance on material extraction in the global South, has only accelerated the expropriation of nature and the production of waste (Fraser and Jaeggi 2018). The wealthiest 20 percent of the world’s population consumes approximately 80 percent of the planet’s economic output (Rees and Westra, 2003, 110-112) and produces 90 percent of its waste, much of which is exported to the global South (Pellow 2007, 8). “Accumulation by contamination,” a term coined by Demaria (2010), aptly describes capitalism’s capacity to expand profit-making by commodifying waste and disposing of it in low-income racialized communities, frequently under the guise of (sham) recycling (as in the demolition of toxics-laden ships in South Asia).

Finally, the privatization and commodification of water, and the patenting by pharmaceutical companies of plant-based medicinals known for centuries by communities in the global South (a practice known as biopiracy) exemplify new techniques of expropriation (Fraser 2021; Smith 2007), as states, through national legislation and treaties, adopt a plethora of market-based mechanisms to profit from the commodification of nature. These practices limit access to necessities like water and essential medicines to those who have the ability to pay.

#### d. Law’s Complicity in the Destruction of Nature for Profit

International law has facilitated and justified racial capitalism’s expropriation of the lands, labor, and natural wealth of peoples racialized as inferior through foundational concepts such as property and sovereignty (discussed previously) and through the laws and institutions governing trade, investment, and finance (Linarelli, Salomon, and Sornarajah 2018).

Prominent among these is international trade law, which was shaped by powerful states and corporate actors in the aftermath of World War II. Rationalized by the theory of comparative advantage, which posits that all states benefit from economic specialization and trade (Gonzalez 2011), international trade law structures global markets in ways that benefit capital at the expense of labor; corporate

agribusiness at the expense of small farmers; pharmaceutical companies at the expense of human health; and commerce at the expense of nature (Linarelli, Salomon, and Sornarajah 2018). Even conventional economic theory recognizes that the international trade regime produces winners and losers, and that the communities devastated by the impacts of trade agreements (including peasants, workers, and racialized groups) are generally left to bear the adverse consequences without state assistance (Perrone and Shaffer 2022). In addition, “environmental damage is typically not ‘internalized’ in the costs of production, which ranges from deforestation, pollution and (most saliently) the existential risks of climate change” (Perrone and Shaffer 2022, 91).

The hegemonic ideology of development, which was introduced by Northern elites at the height of the Cold War and internalized by their counterparts in the global South, has facilitated the pillage of nature. Premised on the idea that Southern states were economically “backward” and in need of “modernization,” the concept of development posited Northern states (and their control of nature through science and technology) as the model to which all should aspire (Gordon and Sylvester 2004; Escobar 2011; Rist 2014). Development became the new “civilizing mission” that justified Northern interventions in the global South through trade, aid, investment, and finance to facilitate the efficient commodification of nature. However, each reconfiguration of development (basic needs, human development, sustainable development) increased economic inequality between and within states and failed to curb racial capitalism’s eco-destructive logic (Natarajan and Khoday 2014).

International investment law is likewise premised on the expansion of commerce at the expense of marginalized humans and life-sustaining ecosystems. It single-mindedly protects the interests of foreign investors by restricting the ability of host states to enact health and safety, environmental, labor, and human rights standards (Miles 2013). If these standards impair the economic value of the investment, they may be challenged in arbitration proceedings as indirect expropriations or breaches of fair and equitable treatment standards, potentially requiring host states to compensate foreign investors for any economic losses resulting from these measures (ibid.). International investment law thereby incentivizes Southern elites, who control the state apparatus and often benefit from foreign investment, to subordinate the well-being of nature and local populations to the interests of foreign capital (Linarelli, Salomon, and Sornarajah 2018; Perrone and Shaffer 2022).

Environmental law, both domestic and international, has failed to halt or reverse the degradation of the planet’s life-support systems. While there are many reasons for this failure, we highlight a few. First, environmental law’s fragmentation undermines its effectiveness. Environmental statutes and treaties typically define acceptable levels of pollution and proper standards for the management of toxic chemicals, waste, and natural resources through distinct bodies of law focused on specific environmental problems, rather than protecting the environment as a unified and interconnected whole (Laitos and Wolongevicz 2014; Bosselman 2010). Second, international environmental law has been compromised by North-South conflicts that have brought negotiations to an impasse or resulted in vague, aspirational standards and weak enforcement mechanisms (Atapattu and Gonzalez 2015). Third, environmental law generally refuses to challenge the profit-making practices that incentivize ecological harm, including overproduction, overconsumption, planned obsolescence, and fossil fuel dependency (Gonzalez 2015a). Finally, environmental law, both domestic and international, has frequently embraced technocratic and market-based solutions that treat ecological crises as new profit-making opportunities (for example, emissions trading, the commodification of forest carbon, land-grabbing for biofuels plantations, and various proposals to geoengineer the climate), thereby “solving” environmental problems using the same logic that created the problems in the first place (Gonzalez 2021b; Bonneuil and Fressoz 2016).

However, these shortcomings are merely symptoms of a deeper malaise. Whereas economic law treats nature as an external object for commodification, environmental law treats nature as an external object to be protected or preserved for the benefit of humans (Godden 1998; Bosselman 2010). In so doing, both bodies of law replicate the human/nature binary and adopt an instrumentalist approach to nature premised on human mastery. They thereby obscure the interdependence of humans and nature, and marginalize alternative epistemologies and legal traditions essential to imagining post-capitalist futures. There are more just and sustainable ways of living on the planet, and a growing body of work examines these actually existing alternatives that resist the logic of racial capitalism (see, for example, Gibson-Graham 2006; Bledsoe, McCreary, and Wright 2022).

### 3. Expropriation of Human Labor

The expropriation of human labor generally requires extra-economic coercion. To commandeer the unpaid or underpaid work of others typically requires a credible threat of more immediate harm than the simple possibility of starving over time for refusing to work for others. This extra-economic coercion is usually justified by racially (and gendered) stigmatizing rationales. And, where outright violence is not employed, the threat is often accomplished through legal mechanisms and arrangements of the state, or its failure to protect workers. Finally, while expropriated labor may contribute directly to profitmaking, it more often fuels or creates the conditions for its possibility.

#### a. Expropriation of the Unfree: Enslaved and Imprisoned Labor

Enslaved, trafficked persons, and prison labor are examples of unfree labor (made unfree through private and state practices of physical violence) that is expropriated for the purpose of racialized profit-making. For example, modern slavery or trafficked labor, though “illegal,” represents a market-driven \$150 billion industry globally, involving more than 25 million victims and facilitated by complex matrices of financial, business, and legal practices (Niethammer 2020; Rioux 2014). Significant numbers of these victims reside in the global South or come from nonwhite communities in the global North (Human Rights First 2017; Human Trafficking Search 2014).

Prison labor often constitutes legally forced work or unfree labor, and is practiced in several countries (Reuters 2019; Freedom United 2021; ACLU and GHRC 2022). “The United States and China have the world’s largest prison populations—estimated at 2.1 million and 1.65 million respectively [and] some of the biggest jail labor systems” (Reuters 2019). It is doubtful that either country complies with international guidelines such as the non-binding United Nations’ minimum rules for the treatment of prisoners. And while China’s various practices of forced labor historically have not been harnessed to the profit-expanding forces of capitalism, there is increasing evidence that they are doing so today (Huchet 2006; Wong 2022).

In contrast, the United States (and the Euro-descendent states of the global North more generally) has a long history of expropriating the labor of unfree persons for private and public capitalist profit-making, primarily through racial slavery. Moreover, after emancipation, the United States continued its expropriation of labor through the criminalization and imprisonment of racialized groups. It imprisoned and expropriated the labor of African Americans, first through convict leasing and today through mass incarceration. It currently uses some of these same tools to expropriate the labor of Latinos, who are incarcerated pursuant to both the immigration and criminal justice systems. In

addition, Latinos are often rendered vulnerable to expropriation in the waged labor force due to their immigration status, as discussed below.

Slavery in the Americas not only fueled English industrialization, as suggested previously, but also financed the explosive industrialization of the US economy, with slavery's expansion into the lucrative cotton industry after independence (Beckert 2014; Baptist 2014; Johnson 2013). This violent system of labor expropriation (and commodification and control of human bodies) stigmatized persons of African descent by classifying them as black, inferior, and presumptively enslaved and enslaveable, while categorizing those of European descent as white and free. Cheryl Harris (1993) suggests that the freedom vested in those socially constructed as white is an unstable but valuable form of property—in which, George Lipsitz (2018) argues, whites have a possessive interest (see also Lopez 2010).

When the “Civil War broke the slave economy of the South” (Lopez 2010, 1041), Black people, who exited enslavement with little to nothing, nonetheless established autonomous institutions, spaces, and livelihoods, and elected black government officials, pursuant to the adoption of the Fourteenth and Fifteenth Amendments to the US Constitution, which granted them citizenship and voting rights, respectively. In response, the proslavery South sought to crush this activity, as it “threatened to upend [the] white-over-black racial hierarchy” (ibid.). Specifically, southern state and local governments passed statutes and ordinances restricting Black people to agricultural or domestic employment, and criminalized vagrancy, “as well as ‘disrespect’ of White people” (Saito 2020, 98). Local governments then leased African Americans who were convicted under these and other laws to private individuals to perform back-breaking labor under conditions that replicated those of slavery, a system known as convict leasing (Saito 2020, Blackmon 2008). This violent expropriation of Black labor through criminalization took place with the complicity of northern industrialists, whose profit-making was linked to southern industries (Darity and Mullen 2020), as well as various organs of the state, including the US Supreme Court.<sup>10</sup>

Convict leasing was made possible by the enduring pro-slavery interpretation of the Thirteenth Amendment to the US Constitution, which exempted punishment for criminal convictions from its provisions prohibiting slavery and involuntary servitude (Pope 2019).<sup>11</sup> However, this system was animated and structured both by economics and race (Lopez 2010). First, through it, Black workers were forced to rebuild the infrastructure and farms of the war-torn South (Foner 2014) and labor in the country's expanding industries. But the incentives under convict leasing were different from those of slavery. As white people no longer paid for and owned the bodies of Black people (many now socially transformed into imprisoned “criminals”), they could be worked to death. If a Black worker died, the white employer could simply go back to jail and get another.

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<sup>10</sup> One example of the Supreme Court's complicity with the expropriation of Black labor is the case of *United States v. Cruikshank*, 92 U.S. 542 (1876), which reversed the federal criminal convictions for civil rights violations of three white men involved in a massacre of African Americans in Colfax, Louisiana. The Court held in that case that the Fourteenth Amendment to the US Constitution applied to “state action” only, and not to private action (Pope 2014). Another example is *Plessy v. Ferguson*, 163 U.S. 537 (1896), which established the racial doctrine of separate but equal; this case was later overruled by the decision in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). A third example is the *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873). This decision eviscerated a constitutional provision meant to protect the civil rights of the formerly enslaved, the Privileges or Immunities Clause of the Fourteenth Amendment to the US Constitution.

<sup>11</sup> Under this interpretation, Pope (2019) argues, the exemption completely strips those convicted of crimes from the Amendment's protections.

Convict leasing thus became a brutal system comparable to or worse than slavery, and the fear of it facilitated another system, that of debt peonage. Debt peonage tied the newly freed Black workers to farms (that some had worked during slavery) through debt undertaken to purchase sharecropping supplies from the farm/company stores. Through fear and debt, white owners of large farms were re-supplied with a stable and profitable labor force (Foner 2014; Lopez 2010). Together, these systems facilitated the re-imposition in the South of racial capitalist relations operating in part through expropriation.

Second, Lopez suggests that although the racialized brutality in this system exceeded the threatened and executed harm imposed in coercing and extracting value from unfree Black labor, the dehumanizing and deeply stigmatizing practices appeased the slavery-induced and habituated anti-Black racism of whites. “Group terror and oppression,” he argues, “rivaled profits as central goals of convict leasing” (Lopez 2010, 1044). Yet even this was not enough. Rather, the practice of lynching complemented the convict leasing and debt peonage systems. Through the “public torture” of lynching, Dorothy Roberts explains, whites proclaimed “dominion over black people, repudiated blacks’ citizenship status, and literally reinstated black bodies as the property of whites that could be chopped to pieces for their entertainment” (Roberts 2019, 39; internal cites omitted). In doing so, lynching, together with convict leasing and debt peonage, perpetuated the racial stratification through which uncompensated extraction operated.

Expropriation of prison labor in the United States continues through mass incarceration, with more than 2 million people imprisoned today (Roberts 2019, 12). Most of those imprisoned are from marginalized communities. A disproportionate number are Black (as in convict leasing), but also Latino, including those held in immigrant detention centers (Roberts 2019; ACLU and GHRC 2022). Like convict leasing, mass incarceration is animated and structured by both race and economics. It arose, as Alexander (2010) and others argue, partially in backlash to the economic egalitarian and black empowerment goals of the 1960s Civil Rights Movement (Omi and Winant 2015). But it was also fueled by a host of interrelated racially tinged policies, including those implemented in pursuit of the “war on crime” and the “war on drugs” (Alexander 2010; Lopez 2010; Lopez 2010). These policies, Roberts (2019) argues, sought to control and address through punitive measures the growing socioeconomic inequality created by neoliberalism.

Mass incarceration is a regime of governing through crime and punishment. While ostensibly “colorblind,” it is nonetheless racialized in terms of the communities policed, what gets coded as criminal, and the sentences that attach. One infamous example is the much harsher sentences imposed for the use of crack cocaine versus powder cocaine, the former cheaper and used in communities of color. Another example is the criminalization of undocumented status, with the term “illegal” disproportionately attaching to Latinos. However, unlike convict leasing, in which commandeering and extracting the value from coerced labor was the central profit-making goal, mass incarceration, while facilitating the expropriation of prison labor, centers on control of the body, which garners profits in a variety of ways. As Pope explains:

The present-day prison has become the ultimate company town, where management can force inmates to work, unilaterally set their wages (at zero, if desired), unilaterally set rent, force inmates to buy necessities from the company store, compel inmates to work beyond their normal release dates by driving them into debt, and use them to obtain public money for housing, punishing, and rehabilitating them. (Pope 2019, 1530)

While mass incarceration is alive and well in the United States, new forms of unfree labor, in which African Americans are disproportionately represented, are emerging as public criticism of mass incarceration grows. Depicted as alternatives to incarceration, these new forms of coerced labor include grossly undercompensated labor to pay off child support obligations and criminal debt (such as the costs of court-appointed legal counsel); uncompensated court-ordered community service; and sub-minimum wage jobs that supposedly “help” formerly incarcerated persons re-enter the labor market (Zatz 2021).

In sum, expropriation, in which extra-economic coercion is embedded, operates not just as a process of profit-making, but also of race-making.

#### b. Expropriation of the Unpaid: Indispensable Care Labor

Quijano (2000) suggests that the rise of the racialized division of labor (racial capitalism) reoriented older systems of labor control. Consonant with this, Fraser argues that capitalism reoriented the patriarchal sex-gender system in Europe that predated its rise (Fraser and Jaeggi 2018; Williams 2000). While the extra-economic compulsion of women’s unpaid care work appears more rooted in hegemonic ideology, Federici (2004) lays bare the violence against women that marked capitalism’s development. This included the criminalization of contraception and forms of sexuality deemed “unproductive” (including homosexuality); the imposition of sex-gender norms (through law and social custom) that deprived women of bodily and economic autonomy; and the European witch-hunts and campaign of terror against women who resisted (Federici 2004). These witch-hunts intensified during periods of peasant revolts against enclosures, because women formed the backbone of these revolts and continued to struggle after men were murdered or imprisoned. The witch-hunts were also deployed by the Spanish in the New World to overcome Indigenous resistance to conquest, religious conversion, and expropriation.

Racial capitalism also reoriented the sex-gender system by rendering care work invisible (Fraser and Jaeggi 2018). Prior to it, almost all work was home-based. While women may have been subordinated, consistent with patriarchal orderings, women’s work was nonetheless both visible and valued. However, as industrial capitalism drew primarily men out of the home and into the factory, women’s work was rendered private, invisible, and devalued (ibid.; Welter 1966; Williams 2000). In addition, racial capitalism racialized the kinship groups and nations within which women as people are embedded—facilitating the division of women, like the broad class of workers, by race (Williams 2000).

Racial capitalism is deeply dependent on the work assigned to women, particularly their reproductive and socially assigned care work. As the socialist feminist tradition notes, care work—housework, provisioning, preparing meals, and caring for disabled, ill, or elderly family members—reproduces the labor force and networks upon which capitalists rely but do not produce. Care work also socializes children to prepare them for the social and work worlds, while sustaining, as Fraser notes, “ties among friends, family, and community. This sort of activity is absolutely essential to society” (Leonard 2016; see also Bhattacharya 2017). Yet this “work” is generally absent from conventional measures of economic production, such as gross domestic product (GDP). Arguably, this work subsidizes racial capitalism because it reproduces the workforce for free, thereby reducing the wages that capitalists must pay workers, and in some cases contributes directly to the realization of profits (Bellamy and Clark 2018). Oxfam (2020) calculated the unpaid work done by women globally in 2019 at almost \$11

trillion, a grossly underestimated figure yet one greater than the GDP of all but four countries. In fact, this work is conventionally not seen as labor at all, but as “love,” the “natural” biological role of women, or a form of religious obligation, across a host of societies (Folbre 2002; Williams 2000). These ideologies are supported both by state action (such as laws restricting women’s autonomy) and state inaction (such as the failure to enforce laws against domestic violence and sexual assault), with the effect of permitting everyday violence against women by individual men—husbands, boyfriends, fathers, and strangers. Together, these legal frameworks and social practices operate to keep women in their “place” as subordinated and expropriated workers. Indeed, even when women move into the exploited waged labor market, their work is typically underpaid relative to its social worth (Bleiweis, Frye, and Khattar 2021).

Today, the reproductive and economic autonomy of women continues to be curtailed around the globe through laws that prohibit abortion; restrict the ability of women to sign contracts, register businesses, or work outside the home; limit the right of women to own or manage land; and bar women from working in traditionally male industries, such as mining and construction (World Bank 2021). In the US, second-wave feminists succeeded in opening up formerly male-only professions and waged jobs under the framework of sex equality. Yet this move from expropriated to exploited labor left a host of problems unresolved.<sup>12</sup> And women racialized as inferior who work as nannies, cooks, and housekeepers are generally expropriated (paid less than a living wage), even though their labor subsidizes affluent households and enables more privileged women to enter elite labor markets (Bhattacharyya 2018).

In addition to serving the economic function of sustaining wage labor, the gendered work of social reproduction serves important political functions. Women’s bodies and women’s reproductive capacities often feature in ideological representations of the nation (Enloe 2014; Collins 2006). Because such representations are simultaneously raced, women racialized as inferior are often subjected to punitive social policies, including involuntary sterilization (Schoen 2005; Bruinius 2007; Solinger 2019; Gustafson 2012; Goodwin 2020).

Meanwhile, those who refuse to cooperate with the current logic of heterosexual gender and family formation may be severely penalized. For example, persons who are transgender have often been abandoned by their families, expelled from the labor force, relegated to sex work and homelessness, and rendered vulnerable to police and vigilante violence, as well as incarceration (Spade 2015; Canaday 2009; Valdes 1995).

### c. Expropriation of the Underpaid: Essential Migrant Labor

Underpaid labor, even where the exchange has a legal or commercial façade, receives a wage that generally is insufficient for workers’ social reproduction. This is the case for many of those who work in low and minimum wage jobs. For example, in the US, the National Low-Income Housing Coalition reported in 2019 (before the pandemic), that a “worker earning the federal minimum wage. . . must

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<sup>12</sup> For example, women continue to be underpaid relative to men for a host of reasons, including the devaluation and poor remuneration of jobs labeled “feminine” (nursing, teaching, childcare); the inequitable allocation of housework (the “second shift”); the need to work part-time or temporarily leave the waged labor force to care for children due to the unavailability or unaffordability of childcare; and the persistent belief among some employers that the earnings of women are supplemental to those of the (white) male “breadwinner” (Hochschild and Machung 2012; Ehrenreich and Hochschild 2002; Williams 2000).

work 103 hours per week (more than 2.5 full-time jobs) to afford a one-bedroom rental home at the national average fair market rent without spending more than 30% of their income solely on housing” (NLIHC 2019, 1). In order to sustain themselves, therefore, these workers must work long hours and multiple jobs, rely on state assistance (such as food stamps), reside in substandard housing (often sharing housing with extended family, friends or roommates), supplement their incomes through work in the informal economy,<sup>13</sup> and/or engage in self-provisioning (hunting, fishing, or consuming food discarded as waste by markets and restaurants) (Fraser and Jaeggi 2018). In failing to provide adequate compensation for these workers’ social reproduction, expropriation subsidizes profit-making by relying on these workers’ survival mechanisms.

The expropriation of migrant labor,<sup>14</sup> which the COVID-19 pandemic exposed as “essential” to the social and economic functioning of the global North, provides another good example of this phenomenon (Anderson, Poeschel, and Ruhs 2021; Reid, Ronda-Perez, and Schenker 2021). Here the variety of extra-economic pressures that render migrants vulnerable to expropriation is more apparent. Migrant labor is disproportionately concentrated in “sectors such as agriculture and food production, health services, and social care, as well as key digital and non-digital infrastructures such as transport and logistics;” it is often low-wage and viewed as unskilled (Anderson, Poeschel, and Ruhs 2021, 45). In the global North, migrants represent a substantial share of the employees in these industries. For example, 90% of Italy’s and 80% of France’s agricultural workers are foreign-born; Germany relies on 300,000 seasonal foreign-born agricultural workers; and Spain issued over one million contracts to foreign workers in 2015 (Reid, Ronda-Perez, and Schenker 2021, 74). In the United States, 73% of agricultural workers are foreign-born, and approximately 50% are undocumented (FWD.us 2020; National Center for Farmworker Health 2021). In other words, migrants are the “backbone of the agricultural workforce in most developed countries” (Reid, Ronda-Perez, and Schenker 2021, 74).

Many of these migrant workers either hold temporary or seasonal visas (where, by law, their right to stay in the country is often dependent on their employer), or they are undocumented (technically running afoul of immigration law) (Reid, Ronda-Perez, and Schenker 2021). Because of their legal status, many are not entitled to workers compensation, health care, social security payments, or special payments related to the pandemic (*ibid.*, 73).

Alexander, using US poultry workers as a case study before the pandemic, explored the exemptions from US labor and employment law that allow businesses to take advantage of migrant workers. These include the independent contractor exemption, which incentivizes businesses to “contract out” their labor requirements, and the exclusion of undocumented workers from social safety nets and workplace rights, such as unemployment insurance and the right to back pay if fired in retaliation for union organizing (Alexander 2012). These workers are not only threatened with job loss if they complain

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<sup>13</sup> According to the International Labor Organization (ILO) (2018), over 60 percent of the global workforce (some two billion people aged 15 and above) works in the informal economy, most in poorly paid jobs and without decent working conditions or social protection rights at work (ILO 2018; see also IMF 2021). While concentrated in emerging and developing countries, 18 percent of North America’s economy is informal, with half of these employees working in agriculture (ILO 2018, 33). Additionally, there is low-wage work in the formal sectors of economies. For example, in the United States, low-wage workers comprise almost a third of the workforce (nearly 52 million workers), earning less than \$15 an hour (Oxfam 2022). Over two percent of them earn wages at or below the current federal minimum wage of \$7.25 an hour (Desilver 2019), which is below the poverty line set by the Department of Health and Human Services (Amadeo 2021).

<sup>14</sup> Migrant labor refers to those who cross international borders for purposes of employment and are subject to immigration regulation (Zegers De Beijl 2002).



about dangerous working conditions or insufficient or nonpayment of wages; they are also threatened with deportation. These conditions exert extra-economic pressure on migrant workers, rendering them relatively defenseless in the face of expropriative business models. Moreover, they often live in crowded accommodations, travel together to work, and receive information, including health and safety information, in the language of their host country.

These factors, combined with work that requires migrant workers and others to labor in close contact, left them extremely vulnerable to COVID-19 (Reid, Ronda-Perez, and Schenker 2021). For example, meat processing factories around the world suffered serious COVID-19 outbreaks, including in Australia, Brazil, Canada, Germany, Ireland, Spain, the United Kingdom, and the United States (*ibid.*). Finally, many of these migrants are or have been racialized. They hail from less industrialized countries or the global South, and are working in places that are increasingly hostile to them as racialized migrant “others” (PICUM 2021; Hennebry and KC 2020; Melcior et al. 2020; Georgi 2019; Gorodzeisky and Moshe 2019; European Network Against Racism 2016; Zegers De Beijl 2002; Miles 1986).

These conditions were on stark display in the US meatpacking industry during the pandemic.

The US meatpacking industry is an oligopoly—highly consolidated, with the top four companies, JBS, Tyson Foods, Cargill, and National, supplying 85% of the beef sold in the United States, 70% of the pork, and 54% of the poultry (Human Rights Watch 2019). The business consists of “slaughtering, processing, packaging, and distributing cattle, hogs, and broilers into beef, pork, and chicken” (Marks 2022, 55) in highly mechanized plants located primarily in rural areas of right-to-work (anti-union) states.

Employee turnover rates in US meatpacking plants run from 60 to 140 percent, and workers’ wages, as of July 2019, were 44 percent below the average for manufacturing jobs. And despite advances in technology, the work is still labor-intensive, dependent “on the strength of human hands,” with workers quickly “killing, cutting, deboning, . . . American-grown meat,” as the pace of production (line speeds) has steadily increased over the past 30 years (Human Rights Watch 2019). The industry has some of the highest rates of occupational injury and illness in the United States; a worker loses a body part or is sent to the hospital for inpatient treatment about every other day (*ibid.*).

The industry “has long relied upon a vulnerable population of ethnic minorities, immigrants, refugees, and undocumented laborers” for its profitability and “to fill its workforce” (Marks 2022, 57). It has also relied on prison labor, with convict leasing, ostensibly banned, making a comeback (Hunter College NYC Food Policy Center 2021; Chen 2018). Although numbers vary, approximately 80 percent of the workforce are people of color, and 51.5 percent are foreign-born (Fremstad, Brown, and Rho 2020, 4-5); Latinos (largely of Mexican origin) comprise about 45 percent of the workforce (*ibid.*, 3; see also Stuesse and Dollar 2020).

Latinos, among other marginalized groups working in the meatpacking industry, suffered the effects of the industry’s business model of low-wages, high turnover, and poor working conditions during the COVID-19 pandemic. They also suffered from racialized narratives about immigrants, particularly Latinos (and Asians), as being resilient and more willing “to work under dirty, cold, and bloody working conditions than their white counterparts” (Cruz forthcoming, 33). These narratives, Cruz argues, seek to justify poor working conditions and compensation and “give employers permission to

loosen their moral compasses and lower the standard of care that is provided to meatpacking workers” by claiming such work is natural for them (*ibid.*, 5).

Ultimately, the meat-packing industry put profit over the very lives of its workers during the pandemic. It failed to provide adequate personal protective equipment (PPE) or safe distances between workers, pressured workers to continue to work even while sick, and used its political power to keep plants open, thereby ensuring the virus’ spread. As Cruz notes:

Workers feared retaliation for speaking up about workplace safety. . . contracting a deadly virus while at work (and bringing it home to loved ones) [and] being unable to make a living, so they went to work while sick despite the consequences. (Cruz forthcoming, 4)

The government also failed the meatpacking workers. As Cruz and others note, the federal agency responsible for oversight of the industry, the Occupational Safety and Health Administration (OSHA), was vastly understaffed, manifesting “decades of underfunding, political puppeteering, and catering to employer-friendly policies” (*ibid.*, 5; see also Marks 2022; Carrillo and Ipsen 2021). But it also did little to intervene, even after receiving thousands of COVID-related workplace safety complaints. Instead, it “suggested guidance that employers could voluntarily comply with or freely reject. Without a mandate, the guidance was unenforceable” (Cruz forthcoming, 6). Meanwhile, another agency, the Department of Labor, reassured the industry that if companies complied in good faith with voluntary pandemic guides, it “would consider requests by the employer to assist [it] in litigation should a worker sue it for workplace exposure to the virus” (*ibid.*, 46).

In the end, not only did the meatpacking industry expropriate migrants’ labor; it dispossessed them of their health, their communities’ health, and many of their lives.

By July of 2020, community spread from the meat packing industry contributed to at least 8% of the COVID-19 cases (amounting to 236,000 to 310,000 cases and up to 4,300 deaths due to community spread) in the United States. As of the fall of 2021, the top five meatpacking companies in the United States reported that almost 60,000 meatpacking workers contracted COVID-19. (Cruz forthcoming, 3)

By October 2021, 269 meatpacking workers had died of COVID-19, the majority people of color, and many of them, no doubt, migrants.<sup>15</sup> But the industry’s profit margins increased by 300 percent (Shalal 2021).

### C. *Expulsion*

Expulsion refers to the exclusion of populations from political belonging and social and economic flourishing—and even from the “possibilities of exploitation and expropriation” (Bhattacharyya 2018, 37). The term was coined by sociologist Saskia Sassen to describe the plight of persons cast aside and treated as waste by contemporary systems of racial capitalism, including “the countless displaced people warehoused in formal and informal refugee camps, the minoritized groups in rich countries

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<sup>15</sup> Saitone, Schaefer, and Scheitrum note the documented “disproportionate burden of COVID-related illnesses and deaths borne by ethnic minorities in meatpacking operations; 87% of the confirmed cases have occurred among racial minorities with Hispanic, Black, and Asian workers disproportionately affected in this occupational environment” (Saitone, Schaefer, and Scheitrum 2021, 2).

who are warehoused in prisons, and the . . . unemployed men and women warehoused in ghettos and slums” (Sassen 2014, 3).

The marginalization of large groups of workers is not an entirely new phenomenon. Marx described this population as the reserve army of labor or relative surplus population (Marx [1867] 1990, chapter 25). According to Marx, one of the defining features of capitalism is the existence of a large mass of unemployed or under-employed workers who enter and leave the labor force consistent with the needs of capital. During an economic upswing, additional workers are hired; during a downturn, workers are dismissed. Marx also recognized the heterogeneity of relative surplus populations, making a distinction between workers who cycle in and out of the labor force (the latent or floating population) and those who are rarely employed and are forced to survive as paupers, vagabonds, and criminals (the stagnant population). Our concept of expulsion centers on stagnant populations, who may no longer serve as a reserve army of labor because contracting labor markets render them surplus to the requirements of capital (Bhattacharyya 2018). Sassen (2014) argues that the financial and technological innovations of the twenty-first century—including deregulated, interconnected, and electronic financial markets; complex legal instruments securitizing corporate, government, and household assets; and advanced mining techniques, such as hydraulic fracturing—have produced levels of expulsion from jobs, lands, and homes that are unprecedented in recent history.

Racialized privilege and disadvantage profoundly influence which persons racial capitalism will exploit or expropriate, and which persons will be treated as “little more than human-as-waste, excreted from the capitalist system” (Yates 2011, 1680). In the global North, workers constructed as white frequently gain privileged access to employment even during periods of economic crisis, while racialized populations generally face higher levels of unemployment as well as criminalization, incarceration, and deportation (McIntyre and Nast 2011). As Sassen explains:

Most of the people who are being incarcerated are also the people who do not have work and for whom work will not be found in our current epoch . . . [P]risoners in the United States and the United Kingdom are increasingly today’s version of the surplus laboring population common in the brutal beginnings of modern capitalism. (2014, 64)

Expulsion by criminalization and the incarceration of racialized populations is highly lucrative, blurring the line between expulsion and expropriation. The prison-industrial complex profits from the construction and staffing of prisons (McIntyre and Nast 2011, 1479). And because prisoners are regarded as little more than human rubbish, they are frequently incarcerated in facilities located in heavily polluted areas or near hazardous waste dumps; conscripted to perform dangerous labor with few health protections (such as recycling electronic waste); and exposed to contaminated water and other hazards (Pellow 2019). In recent years, the expendability of incarcerated populations has turned prisons and immigrant detention centers into coronavirus hotspots, resulting in rates of infection and death far greater than the general population (Burkhalter et al. 2021).

Further, growing numbers of working-class white people are being expelled from jobs that pay a living wage, due to automation and the outsourcing of manufacturing to the global South. Unemployed or underemployed, they have been abandoned by capital and by the state (through weak social safety nets) and are increasingly constructed as expendable, surplus populations, racialized as “white trash” (Pruitt 2016; Wray 2006). Many of these working-class whites are dying prematurely from drug overdoses, alcoholic liver disease, and suicide—what Case and Deaton (2020) describe as “deaths of

despair.” As capitalist processes concentrate wealth in fewer and fewer hands, the ranks of persons racialized and expelled continues to expand.

In the global South, accumulation by dispossession in the guise of “development” projects (such as dams, mines, and plantation agriculture) continues to displace rural populations, consigning vast swaths of humanity to precarity and informality in urban slums (Sassen 2014). Expelled from the agrarian subsistence economy and unable to obtain employment in the formal urban economy, this population survives through legal, illegal, and semi-legal activity in what Kalyan Sanyal (2007) calls a wasteland. Living on the edge of capitalism, these expelled populations include “the urban dispossessed, slum dwellers, street vendors, squatters of public land—whose very livelihood and habitation often involve violation of the law” (Sanyal 2007, 257). Racialized as inferior, abandoned by capital as workers and consumers, and constructed as expendable, these populations are “subjected to conditions of life conferring upon them the status of the living dead” (Mbembe 2003, 40). They exemplify Ruth Wilson Gilmore’s definition of racism as “state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death” (Gilmore 2007, 28). And, as explained in the next Part, these expelled populations frequently find themselves relegated to the sacrifice zones of racial capitalism—places so contaminated that they are no longer fit for human habitation.

#### **IV. The Logics of Race-Making**

Race-making consists of the racial stratification of human beings, the racial differentiation of space through segregation, and the creation of sacrifice zones, to which degraded land and people, abandoned by capital, are consigned. This section explores these related processes.

##### *A. Racial Stratification*

Racial stratification is the process through which race and races are constructed, perpetuated, and ranked in a social hierarchy (Omi and Winant 2015). Omi and Winant define race through a socio-historical lens as a “fundamental organizing principle of social stratification” (ibid., 107). Race is “a concept [and practice] that signifies and symbolizes social conflicts and interests by referring to different types of human bodies” (ibid, 106). These social conflicts and interests, as well as their outcomes, are naturalized—made to appear as if they arise from the “natural” and inevitable differences in bodies, their appearance, performance, sound, and cultural practices, rather than from the coercive, subordinating, and extractive practices and ideologies, including in law, that create them.

Stigmatization is crucial to racializing groups as inferior. Lenhardt (2004) defines stigma, relying on Erving Goffman, as widely shared social meanings associated with a trait or attribute of persons or groups that is deeply devalued, such that the bearer is viewed as less than fully human. The person or group’s humanity and individuality are masked by the imposed social identity, and the reactions to the stigmatized trait (such as dark skin) can arise both consciously and unconsciously. In short, racial stratification involves a complex social process of categorizing people by singling out certain physical traits, giving them meaning, and stigmatizing some in comparison to others, for the purpose of distributing and justifying social benefits and burdens, including roles, risks, opportunities, and resources (Lenhardt 2004; Omi and Winant 2015; powell and Menendian 2017; see also Lopez 2010).

Racism is “the practice of creating and/or reproducing structures of domination, based on racial significations and identities” (Omi and Winant 2015, 128). Law, codifying state policy, is instrumental in racially stratifying society, reproducing racial structures of domination, and creating “races.” For example, in conflicts between Chinese workers and white settlers (both elites and workers) over land, mining rights, citizenship, and other matters, the US Supreme Court justified the 19th century Chinese Exclusion Act on the ground that Chinese migrants were a distinct “race” incapable of assimilating. “The Chinese workers had, of course, been constructed as ‘strangers’ by segregated schools and housing, restrictions on landownership, anti-miscegenation laws, laws precluding naturalized citizenship, and an environment of racialized hostility” (Saito 2020, 144).

Racialization is “the extension of racial meaning to a previously racially unclassified relationship, social practice, or group” (Omi and Winant 2015, 111). For example, the stigmatization of Muslim identity has a complex and deep history involving what Sahar Aziz (2021) has characterized as the intersection of white Protestant supremacy, Orientalism, xenophobia, and American empire. However, the present-day racial meanings that associate Muslims with terrorism emerged after events such as the 1973 Organization of Petroleum Exporting Countries’ (OPEC) oil embargo against the United States (issued in protest of US support for Israel in the war between Israel and Egypt), and the September 11, 2001 attack on the World Trade Center, presumably launched from Afghanistan (Aziz 2021; Khattak 2021). And this more recent racialization, often embodied in US national security policies, has justified and facilitated the expropriation of Middle Eastern oil. In fact, some have argued that the primary goal of the US war against Iraq was to seize Iraqi oil fields and to enhance the US military presence in the region in order to exercise greater control over the world’s oil reserves (Juhasz 2013; Harvey 2003).

In sum, persons racialized as inferior are disproportionately subject to expropriation of their land, resources, and labor for the purpose of capitalist profit-making. As we discuss more fully below, racially stigmatized groups are also vulnerable to ongoing expropriation because stigma places them outside the realm of moral concern. In other words, race is not only an *outcome* of capitalist profit-making, but also an animating, structuring force that shapes new avenues for profit-making and reproduces the subjugation of those racialized as inferior.

### 1. Race, Stigma, and Profit-Making

Persons racialized as white declared themselves the superior race. Yet the irony is that today many do not see themselves as racialized, but rather as the universal human being (Mills 1997). This is the privilege of whiteness—or, at least, of the elite white males who possess the power to exploit, expropriate, and expel others by stigmatizing them as inferior.

The process of expropriating the bodies, labor, and personhood of Afro-descendent populations stigmatized them as black and thereby inferior, and stereotyped them as childlike, lazy, and presumptively enslaved and enslaveable. As Lenhardt (2004) explains, the trait or attribute that emerged as deeply socially devalued was dark skin, defined by those constructed as white (and even internalized by those constructed as Black) as a marker of less than full humanity.

Four points illuminate the relationship among race, stigma, and profit-making.

First, the stigmatized attribute is generally perceived as attached to a body (Omi and Winant 2015) and functions as the face of “race”—what makes a racialized group socially identifiable. Policies and ideologies that justify subordination, inequality, and marginalization are built around these bodies, together with stereotypes associated with them.<sup>16</sup> For example, Aziz suggests that hostility to Muslims imputes “inferior biological and cultural traits based on religious identity,” embodied in an “Arab-looking’ person” (Aziz 2021, 25-31). The process of racializing Muslims, she argues, “collapses myriad ethnic and religious groups—including Armenian, Berber, Chaldean, Afghan, Pakistani, Druze, Sikh, Muslim, Persian, and Arab—into a single racialized identity that is ‘Arab-looking’ and in the post-9/11 era looks like Osama bin Laden” (ibid., 31).

Second, racialized stigma is functional, serving different profit-making objectives depending on the group being targeted. For example, in the nineteenth century, the US government imposed blood quantum laws that defined Indigenous peoples’ status through fractions of Native American ancestry, a project that stood to reduce their numbers over successive generations and thus eliminate their collective claims to land (Kiel 2017). In contrast, in the antebellum period, US law and customs sought to maximize the number of Black people available for racialized labor extraction by adopting the hypodescent rule, whereby one drop of Black blood rendered a person Black, thus enlarging the group (Saito 2020; Hollinger 2005).

Further, the racial stereotypes associated with “different” bodies shift over time to facilitate new rounds of expropriation. For example, whereas people constructed as Black were depicted as childlike during slavery, after slavery they were stereotyped as criminal to facilitate their continued subjugation through the criminal law. Media portrayals, such as the 1915 silent film *Birth of a Nation*, influenced this shift. Similarly, Mexican migrants, who are currently stereotyped as hardworking and resilient, were constructed as “idle, thriftless people” who lacked “enterprise” (Takaki 1993, 171) at the time of the Mexican-American War, when white settlers sought to appropriate their lands.

In short, stigma and the stereotypes they inform create ongoing and new avenues for expropriation. For example, stereotypes of Muslims as “terrorists” likely made the various pretexts for the US invasion of Iraq believable, increasing popular support for it (Sides and Gross 2013; Pew Research Center 2008), even though the 9/11 attack was launched from Afghanistan. The invasion enabled the United States and its multinational corporations, among others, to expropriate Iraqi oil reserves.

Third, stigmatized groups impoverished by expropriation are rendered easy targets for further expropriation because they lack the resources to resist it, and because their status as impoverished groups reinforces their perceived “inferiority” and naturalizes their subordination—creating new avenues for expropriation. For example, Mexican farmers were expropriated through economic reforms enacted pursuant to the North American Free Trade Agreement (NAFTA) and other bodies of law, which placed them in direct competition with highly subsidized US agricultural exporters, deprived them of their traditional rural livelihoods, and forced them to migrate to the United States (Gonzalez 2011; Thomas 2010). These impoverished migrants were acutely vulnerable to further expropriation of their labor in US agricultural and meatpacking industries, especially if they were undocumented. Further, their stigmatization as a racialized group, both perpetually foreign and poor

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<sup>16</sup> This is the process of “othering,” in which stigmatization plays a central part. Powell and Menéndian (2017) suggest that othering occurs not only with race but also gender, sexuality, disability, and other social identities, and that political demagoguery often contributes to the social stratification of groups.

(Gómez 2020), placed them outside the realm of moral concern, making their continued expropriation socially acceptable.

Fourth, those stigmatized as racially inferior do not only serve as targets for ongoing and new expropriations, but also receive further abuse meant to reinforce their subordinated status within the racial hierarchy. For example, African Americans have been subject to repeated practices of expropriation, including slavery, convict leasing, imprisonment, and most recently, coercive alternatives to incarceration. However, the racial stigmatization of African Americans and the animus it nurtures also renders them targets for abuse, in the forms of lynching, mob violence, and the destruction of their economically successful towns and businesses. Examples include the 1921 mob massacre and destruction of property in the section of Tulsa, Oklahoma known as Black Wall Street (Human Rights Watch 2020; Perry, Barr, and Romer 2021; Johnson 2001); microaggressions against African Americans who have achieved economic or professional success (Sue and Spanierman 2020; Solórzano and Pérez Huber 2020); and ongoing expropriation of Black persons' labor and assets by institutions and individuals overcharging them for goods and services and underpaying them for their work (for example, Fox (2021) discusses higher banking fees; Ayres (2001) discusses overpayment for cars and other consumer goods). Stigma also informs the institutionalization of practices such as segregation, exclusions from public accommodations, harsher criminal sentences, and modern-day lynching by police for perceived insubordination to supposed police authority (Roberts 2019).

In summary, the racialization of some groups as inferior (stigmatized and expropriable) incentivizes members of the dominant group to participate in violent measures against those constructed as inferior, particularly when their sense of superiority and their privilege (often built at the expense of racialized Others) is threatened. Racialization also empowers the state to engage in raw physical violence against racially subordinated groups by constructing them as “violent” or “criminal” when they protest or resist the social order that organizes their oppression (Correia and Wall 2021). These mechanisms stabilize racial capitalism by dividing the working class and undercutting collective resistance despite racial capitalism's pervasive (but group-differentiated) harms.

## 2. Law, Race, and Stigmatization

As critical race theorists have explained, law codifies and legitimates racial hierarchies in innumerable ways (see Crenshaw et al. 1996; Delgado and Stefancic 2017; Valdes, Culp, and Harris 2002; Moran and Carbado 2008; Bridges 2018; Valdes, Bender, and Hill 2021). Law also contributes to the stigmatization of groups. For example, in the past, US law stigmatized the Chinese by excluding them from the United States, and stigmatized Black people by requiring their segregation in housing, employment, education, transportation, hospitals, prisons, and even cemeteries (Saito 2020). Today it stigmatizes persons of Mexican descent by subjecting them to racial profiling in search of undocumented immigrants (an example is Arizona's “Show Me Your Papers” law, discussed in Reznick (2020)), and stigmatizes Muslims in various ways, including by denial of entry to the United States if they come from certain countries (the so-called “Muslim ban”). Although the Muslim ban was reversed in early 2021 (Panduranga 2021), its effects are still reverberating. Not only were thousands of peoples' travel plans and very lives disrupted, but many are still unable to enter the country. Further, the stigma lives on. As one immigration lawyer noted:

Part of what was so pernicious about the ban[s] was the fact that they were intended to send as much a political message as to institute new policy. . . . And the political message was, “You are not welcome here.” (Abdalla 2022, n.p.)

That messaging has been successful. Another attorney told an interviewer that “in embassies there remains a ‘culture’ of looking with suspicion at applicants from the previously banned countries. ‘And that is actually very difficult to reverse’” (ibid.).

Law also plays a significant role in institutionalizing group-based differences. It does so by not only facilitating the mutually reinforcing practices of expropriation and stigmatized racialization, but also by facilitating opportunity hoarding by in-groups. As powell and Menendian explain:

Such laws may be explicit, such as racialized immigration and naturalization rules that prevent members of certain groups from becoming citizens or . . . exclusionary land use laws designed to keep out low-income families of color or that restrict whether a social group can move into a neighborhood or a community and allow a dominant social group to control access to community assets and social capital. (powell and Menendian 2017, 26)

Law further stigmatizes groups racialized as inferior by withholding protection from them. In the United States, for example, the government fails to protect African Americans and Latinos, among others, from racialized physical violence, including being murdered and terrorized by white mobs and the police. In the decades following the end of the Mexican-American War (in 1848) and the abolition of slavery (in 1865), white mobs carried out thousands of lynchings. Designed to traumatize and subordinate African Americans and Mexican Americans, these practices continue today in the form of government failure to hold police officers accountable for violent and often lethal abuses of power (Carrigan and Webb 2003; Cave, Albeck-Ripka, and Magra 2020).

Finally, as mentioned earlier, what makes race central to the history of capitalism (and distinguishes race from other markers of identity) is its unique connection to the nation-state and its foundational role in the development of international law. While contemporary international law has abandoned explicit references to race, the Euro-American civilizing mission nevertheless proceeds under different guises, including development, and authorizes Northern interventions “in politically weaker, poorer, and darker countries” (Gordon and Sylvester 2004, 11). Such interventions, which include trade agreements and the lending practices of international financial institutions, have impoverished Southern states and peoples while enriching Northern states and transnational corporations (ibid.; Thomas 2021). In other words, racial hierarchies are embedded, explicitly or implicitly, in international law, and they continue to circumscribe the sovereignty of non-European peoples (Anghie 2005, 267-272).<sup>17</sup> Of course, as Crenshaw (1989; 2017) and others have noted, race does not exist in isolation from gender, disability, sexuality, and other identities, but rather intersects with them to create multidimensional social hierarchies in both the global South and the global North.

## B. *Segregation*

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<sup>17</sup> In 2021, the *UCLA Law Review* published a groundbreaking symposium issue on race, empire, and international law that sought to promote dialogue among Third World Approaches to International Law (TWAAIL) scholars and Critical Race Theory (CRT) scholars. For additional insights on race and international law, including an overview of the symposium issue, see Achiume and Bâli (2021).



Segregation is a technology of race-making, embedding race in space and marking certain territories and the people who occupy them as targets for racialized profit-making. We begin with four general points.

First, segregation facilitates racial stratification within and among nations by spatially separating racialized groups. Spatial separation fosters efficient racialized profit-making by permitting exploitation, expropriation, or expulsion to operate across an entire neighborhood rather than simply on an individual basis (Powell and Menéndez 2017). Segregation has operated internationally by the demarcation of differently racialized peoples as nations, again allowing for efficient dispossession, disinvestment, and impoverishment of racialized states. Additionally, racial segregation enhances the ability of racially privileged nations and dominant groups to restrict the access of marginalized populations to the spoils of both the capitalist world economy and national economies (ibid.) by keeping subordinated groups in their designated neighborhood, national, and regional “place” through policing and border control.

Second, racial segregation, once instituted, is self-perpetuating, becoming a driver of further economic stratification and inequality. This occurs in part because some neighborhoods and nations become the beneficiaries of investment (at least temporarily), while others become the targets of ongoing expropriation. It also occurs because segregation exacerbates and concentrates poverty and other social ills, as well as structuring path dependency (Roithmayr 2014).

Third, spatial separation facilitates the efficient repression of resistance against racial capitalism, through aggressive (and violent) policing and border control. Fourth and finally, as discussed more fully in the section on sacrifice zones, segregation creates spaces where the waste (including the “surplus humanity”) created through expulsion can be dumped.

The human practice of segregation (or the splitting of cities, as Carl Nightingale (2012) sometimes refers to it), goes back some seventy centuries. However, Nightingale argues that “segregation *by race* was the first type of urban residential segregation created by representatives of a single civilization and then spread across the planet” (ibid., 19; our emphasis). That is, segregation, like caste (see Cháirez-Garza et al. 2022), has a prior history independent of race-making, but one that was adopted and perpetuated by it.

Given racial capitalism’s colonial origins, it is not surprising that segregation plays a major role in its operation. Colonialism and imperial expansion allowed colonial states to extract and monopolize resources at the expense of spatially separated and subjugated colonies. Today, the “continuing disparity between a small minority of rich (mostly white) nations . . . in [an international system meant] to further enrich the rich” on the backs of the stigmatized people it impoverishes has been referred to as “Global Apartheid” (Tandon 2010; see also Loyd, Mitchelson, and Burrige 2012)—complete with “pass laws” in the form of increasingly militarized borders (Loyd, Mitchelson, and Burrige 2012).

The seemingly permanent racialized division of space *within* states is more apparent in settler states and many European countries. However, it is also the basis of class segregation in the megacities of neocolonial states in the global South. For instance, in a recent article James Kahongeh (2021) discusses Nairobi’s continued struggle to shed its colonial legacy. Due to initially raced-based, but now class-based, urban planning, the city hosts some of the largest informal settlements in the world—a problem traceable to racial capitalism’s immiseration of the global South.

The following subsections explore the origins of segregation, its operation through real estate markets and law, and its self-perpetuating dynamics.

### 1. Racial Segregation's Beginnings

Colonialists segregated cities and designated entire regions of the world as racially distinct. However, settler colonies, contrary to what one might suspect, were *not* the first to construct racially segregated spaces; “arch-segregationists,” the architects of the extreme segregation in the Jim Crow United States and apartheid South Africa, would not emerge until the dawn of the twentieth century (Nightingale 2012). Rather, the British constructed racial residential segregation in Calcutta, the capital of British India, in the late 1700s (*ibid.*, 75-88). This segregationist move was inspired by the first legally authorized act of class segregation, the segregation of London’s West End, which was accomplished through restrictive covenants (a practice also later spread to the United States and elsewhere).

Segregation exploded after 1880 with the “largest ever burst of Western imperial expansion,” involving not only the Scramble for Africa, but the “French, British, and Dutch conquests in southeast Asia and Oceania . . . , the Europeans and Americans ever deeper interference in China” (*ibid.*, 161), as well as the near completion of the US conquest of continental North America with extended power in the Caribbean and across the Pacific to Hawaii and the Philippines. It entailed separating whites from the “Natives” in the colonies.

Critically, the outbreak of bubonic plague in Hong Kong in 1894 and its appearance in Bombay in 1896 significantly boosted the construction of segregated space across the world. It also deepened its justifying ideology, marrying “sanitation segregation” (forced health-related isolation) and residential segregation, understood as attempts to protect white people from diseased brown and black bodies (*ibid.*, 159).

Nightingale contends that three institutions and their transhemispheric connections through colonial empires aided in the construction of racialized segregated space across the planet. These were states, networks of intellectuals and professionals (health reformer professionals during the heyday of city-splitting and the plague), and land markets. While governments provided the energy for segregation, land markets, according to Nightingale, were “the one capitalist institution in which race-infused economic interests became consistently and increasingly important . . . arguably becoming the single most important segregationist force in cities today” (*ibid.*, 7). Segregation’s global expansion entailed “expanding the reach of several institutions central to modern capitalism” (*ibid.*, 6). These included:

government agencies such as property courts and title registrars’ offices; profit-making businesses such as real estate agencies, surveyors’ offices, assessment companies, land development firms, and financial institutions, and in larger settler societies, grassroots organizations of white property owners. (Nightingale 2012, 6)

Racialized real estate practices ensured possession and stability for some (white) groups while facilitating the expropriation of (nonwhite) others (Yates 2021). As Yates observes, the “role of racialized uneven development is a phenomenon that has marked cities around the world” (Yates

2021, 14-15) from Chicago to Mumbai to Rio (ibid.; see also the Displacement Research and Action Network, <http://mitdisplacement.org/>).

Law structures many of the practices of racial segregation. In the United States, for example, the role of law in the intentional segregation of US cities has been carefully documented by Rothstein (2017). Following the Great Depression, federal, state, and local governments systematically segregated US cities through a variety of mechanisms, including racially segregated public housing; subsidies to incentivize whites-only suburban residential development; zoning ordinances that segregated Black and white households; judicial enforcement of deed restrictions to prevent the sale of property to African Americans; denial of government loans and mortgage guarantees in “redlined” areas (i.e., Black neighborhoods); tax exemptions for institutions (churches, universities, neighborhood associations) that promoted residential segregation; and state-sanctioned mob violence against African Americans who moved into white neighborhoods (ibid.; see also Darity and Mullen 2020).

## 2. Self-Perpetuating Dynamics and Ongoing Racialized Extraction

Segregation perpetuates itself by racializing economic value, creating path-driven decision-making for all racialized groups, and deepening and concentrating the poverty of already marginalized groups (Krysan and Crowder 2017; Massey and Denton 1993). As Keeanga-Yamahtta Taylor observes:

Segregating African Americans into deteriorating urban neighborhoods and then starving those communities of resources and other investments greatly limited their access to better-paying jobs and well-resourced public schools, while pushing them into substandard housing. Poverty and segregation led to overcrowding in Black housing, thus hastening its deterioration. These conditions were then spun into evidence that African Americans were unfit as potential homeowners and deleterious to property values within the housing market. These were the justifications for confining African Americans to Black-only neighborhoods where they could not “infect” the larger housing market. (Taylor 2019, 9)

In the process of building racial segregation, US landlords, real estate agents, and banks made a fortune. For instance, the real estate industry engaged in the highly lucrative practice of blockbusting.

[B]lockbusting was a scheme in which speculators bought properties in borderline black-white areas; rented or sold them to African-American families at above-market prices; persuaded white families residing in these areas that their neighborhoods were turning into African-American slums and that values would soon fall precipitously; and then purchased the panicked whites’ homes for less than their worth. . . . Real estate firms then sold their newly acquired properties at inflated prices to African Americans. (Rothstein 2017, 95-96)

Further, speculators sold these homes to African Americans on installment plans known as contract sales. These contracts did not allow the accumulation of equity from monthly payments. A single late payment often resulted in eviction, and the speculator could then resell the home to a new African American contract buyer (Rothstein 2017).

For African Americans, one result of these state and non-state practices was loss of the opportunity to build wealth through home ownership. This history explains, at least in part, the persistent wealth

gaps between black and white households in the United States (Solomon, Castro, and Maxwell 2019; Jordan 2017).

Today, despite the enactment of the federal Fair Housing Act in 1968, segregation persists. This is so even though there has been significant social and economic change, including a reversal of the pattern of “white flight” away from central cities. Three dominant theories have emerged to explain the persistence of residential segregation: *economics* (people live where they can afford to live, and wealth/income disparities both affect and are created by this); *continuing discrimination* (real estate market institutions continue to discriminate against groups racialized as nonwhite); and *preferences* (whites are unwilling to live beside persons racialized as nonwhite, who, in turn, seek to avoid spaces of discrimination and possible violence). While each of these theories—economics, continuing discrimination, and preferences—together partially explain the perpetuation of segregation, Krysan and Crowder (2017) argue that segregation also itself begets segregation, by reproducing and deepening poverty and path-dependent decision-making within real estate markets.

During economic downturns, segregation deepens and increases the concentration of poverty in already distressed neighborhoods, transforming even relatively stable marginalized neighborhoods into “areas of intense socioeconomic deprivation” (Massey and Denton 1993, 118). Segregation of marginalized groups also reproduces and often increases poverty over generations because where you live matters. Persons raised in poor neighborhoods tend to attend poor schools, and have less access to adequate housing, sanitation, health care, healthy foods, job opportunities, clean air and water, transportation to jobs, and safety. These disadvantages limit opportunities for upward economic mobility (better jobs, housing) and are passed on to the next generation (powell 2008). Finally, given that residential mobility often promotes social mobility, segregation sets individuals and families searching for housing on paths that constrain mobility and reinforce segregation. As Krysan and Crowder explain:

Segregation . . . [drives] systems of economic stratification, shaping neighborhood perceptions, circumscribing social networks and systems of neighborhood knowledge by race and ethnicity, and creating patterns of mobility and immobility that differ sharply across racial and ethnic groups. In essence. . . residential moves are structurally sorted along racial lines, with individuals’ perceptions and knowledge of residential options shaped by lived experiences and social interactions within a racially segregated social system. The racialized patterns of mobility and immobility that emerge from these structural conditions continually reproduce the system’s segregated social and spatial structure. (Krysan and Crowder 2017, 4).

While these conditions are partially the product of past exploitation and expropriation, they create new opportunities for further expropriation that also reinforce segregation.

For instance, in the United States, Black people, already repeatedly expropriated, were again subjected to the expropriation of the little wealth they had previously accrued during the 2008 financial crisis. This time the vehicle was subprime lending and a subsequent massive wave of home foreclosures—what Taylor (2019) refers to as predatory inclusion.<sup>18</sup> Between 1994 and 2005, unscrupulous lenders

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<sup>18</sup> Taylor uses the term predatory inclusion to describe “how African American homebuyers were granted access to conventional real estate practices and mortgage financing, but on more expensive and comparatively unequal terms”

marketed overpriced subprime loans in the segregated neighborhoods previously targeted for redlining (Jordan 2017). These subprime loans had several features designed to make repayment difficult, including high closing costs, low “teaser” interest rates that later skyrocketed, prepayment penalties, and monthly payments that did not cover interest costs, which were tacked on to the outstanding principal (Rothstein 2017; Jordan 2017). Incentivized by high commissions, mortgage loan officers and underwriters steered even borrowers with good credit (especially African Americans), who in some cases were refinancing existing mortgages, into subprime loans (McGhee 2021). Evidence later revealed bank officers referring to targeted minority customers as “mud people” and describing the loans as “ghetto loans” (Jordan 2017, 124). Many African Americans later lost their homes to foreclosure when they were unable to make exorbitant loan payments. They became renters, moved in with relatives, or became homeless. They also became ineligible for conventional loans as a consequence of defaulting (Rothstein 2017), and as renters were subjected to higher eviction rates.

Segregated neighborhoods do not simply facilitate exploitation and expropriation through the real estate market. As Andrea Freeman (2013) notes, neighborhood-based extensions of credit through credit cards (increasingly embedded in algorithms) often result in Black, Latino, and other poor people receiving inferior rates and terms, which have become a central source of profits for credit card companies. Segregation also helps resolve political problems, as when politicians are able to cut public services (such as fire stations) in nonwhite neighborhoods during budget crises (Massey and Denton 1993).

Finally, the borders of segregated spaces are carefully patrolled, both domestically and internationally. Police are largely responsible for patrolling the borders of racially stigmatized segregated neighborhoods, constraining mobility. In the public perception, the social ills attendant to segregation, especially crime, require a heavy police presence. However, as Loyd, Mitchelson, and BurrIDGE (2012) argue, policing and the increasing criminalization of everyday life (as in police responses to jaywalking, panhandling, and schoolyard brawls) allow the state to not only surveil and repress marginalized communities, but to violently contain them within these neighborhoods when resistance to exploitation and expropriation is orchestrated (as in riots and rebellions), often expelling neighborhood members to prison.

At the international level, militarized borders constrain the mobility of racialized migrants from the global South who have been displaced by neoliberal globalization (Thomas 2016). For example, international trade law and the austerity measures imposed by the IMF and the World Bank have liberalized the flow of goods across national borders by eliminating many of the trade barriers historically maintained by Southern states, including those that once protected small farmers in the global South from direct competition with highly subsidized Northern agribusiness (Gonzalez 2004). The removal of these barriers enriched transnational agri-food corporations by opening new markets for their products, but the sudden influx of cheap imported food devastated rural livelihoods in the global South, triggering rural-to-urban and international migration (C. Gonzalez 2011; Thomas 2010). Because the agreements that facilitated the movement of goods did not liberalize the movement of people, rural dwellers displaced by neoliberal globalization who seek to migrate to the global North find themselves trapped by the sovereign power of states to exclude migrants (Thomas 2013).

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(Taylor 2019, 5). While her book examines lending practices in the 1970s, her insights apply with equal force to the practices that produced the 2008 subprime mortgage crisis.

While borders between countries may have been more porous historically (Thomas 2013), increasingly in the global North the criminalization of “illegal aliens” has become a pretext for the hardening and militarization of borders. This ensures that the wealth the global North extracted from the communities of the global South from which immigrants come, is not shared with them (Thomas 2021; Walia 2021). Nevertheless, Southern migrants continue to cross the North’s militarized borders as a form of self-determination and of resistance to colonial and neocolonial subordination (Achiume 2019; Munshi 2021).

As discussed more fully below, the borders of segregated spaces are also designed to confine persons racialized as nonwhite in the sacrifice zones of racial capitalism—the regions and neighborhoods in both the South and the North that are becoming increasingly uninhabitable due to severe environmental degradation.

### C. *Sacrifice Zones*

Sacrifice zones are contaminated and abandoned geographic locations where persons expelled as “surplus humanity” are left to sicken and die because they and the degraded lands they occupy are no longer profitable. Instead, the people and often the very earth on which they stand are sacrificed to racial capitalism’s insatiable demand for raw materials and its externalization of pollution and waste.

US government officials coined the term “sacrifice zones” to describe areas subjected to catastrophic levels of radioactive contamination and rendered unfit for human habitation, due primarily to the mining and processing of uranium for nuclear weapons (Schneider 1988). However, many of these contaminated areas are in fact inhabited—by persons racialized as nonwhite, such as members of the Navajo Nation, who suffer prodigious rates of cancer and birth defects due to radiation exposure and have been unable to secure adequate compensation for their injuries or remediation of their lands (Tsosie 2015; Voyles 2015).

While some scholars and activists have used “sacrifice zones” to refer broadly to contaminated spaces inhabited by marginalized communities (Lerner 2010), we reserve the term for places where the environmental devastation is so severe that re-development and re-use are highly unlikely—unless the pollution can be halted, the land cheaply remediated, and the current residents die, are displaced, or move away.<sup>19</sup>

In the United States, polluting industry is disproportionately located in neighborhoods populated by African Americans, Latinos, and Native Americans (Matei 2021; Cole and Foster 2000), especially historically redlined urban areas (Lane et al. 2022). In the global South, marginalized communities have long borne the brunt of mining, petroleum drilling, and other extractive and polluting industries (Natarajan 2021; Martinez-Alier 2002). The gradual poisoning of these communities inflicts chronic injury rather than immediate death. “This is not the highly visible or spectacular killing of genocide or execution but rather a slower, stealthier, and less obvious form of brutality” (Davies 2018, 1540).

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<sup>19</sup> Just as expropriation and expulsion operate on a continuum, not all segregated communities burdened by pollution necessarily become sacrifice zones. In the United States, for example, government agencies have created programs to clean up thousands of contaminated sites (known as brownfields) in order to bring abandoned properties back on the real estate market to generate tax revenues. “One of the outstanding differences between brownfields and sacrifice zones is that while abandoned properties can be decontaminated, the pollution coming from nearby industries is ongoing in sacrifice zones” (Lerner 2010, 311).

One example of a sacrifice zone is the city of Flint, Michigan, which was forced to contend with 227 environmentally noxious facilities before it achieved notoriety due to the poisoning of residents by lead-contaminated water (Dawson 2001, 367). As manufacturing facilities shifted their operations abroad, Flint residents faced not only legacy pollution from abandoned industrial sites and ongoing pollution from existing industry, but also high levels of poverty and unemployment. Residents with greater resources (such as wealth and white skin) abandoned the city, leaving behind a smaller, poorer, and majority Black population to finance city services and maintain the city's crumbling infrastructure—including its lead water pipes (Pulido 2106). Forced to borrow money as tax revenues declined, the city soon faced insolvency, and was subjected to austerity measures by a state-appointed Emergency Fiscal Manager, measures that included switching the city's water supply to the less expensive but highly polluted Flint River. The flow of corrosive water through the city's lead pipes produced high levels of lead contamination in drinking water, but government officials ignored the problem and disregarded residents' numerous complaints (Clark 2018).<sup>20</sup> Pulido argues that federal and state officials neglected to protect the health and well-being of Flint residents because the residents were "not only racially devalued but considered [because of their impoverishment] incapable of contributing to accumulation" (Pulido 2016, 2), either as producers or consumers. Flint has become a sacrifice zone because the land and the people have been devastated and abandoned by capital and treated as a repository for waste—with little likelihood of profitable redevelopment or commodification any time soon.

In the global South, Northern investments in manufacturing, extractive, and energy-intensive industries, undertaken to take advantage of cheap labor and less stringent environment standards, have imposed increasingly severe pollution burdens on marginalized communities in poor and middle-income countries (Loomis 2015). Much of the environmental degradation in the global South has been caused by export-oriented production to satisfy Northern consumers, rather than production for local consumption (Rees and Westra 2003).

The fossil fuel industry, in particular, has created some of the most egregious examples of sacrifice zones throughout the oil and gas production cycle, which involves extraction, processing, transport, combustion, and disposal of waste (Healy, Stephens, and Malin 2019). In both poor and affluent countries, the industry has subjected communities racialized as inferior to "eviction from ancestral lands; desecration of sacred sites; poisoning of air, land, and water; fires, explosions, and industrial accidents; loss of subsistence fishing and hunting rights; and exposure to significant health hazards" (Gonzalez 2020a, 116).

Furthermore, subaltern communities in the petroleum-rich regions of the global South, such as the Middle East, must contend not only with the "slow violence" (Nixon 2013) of extractive and polluting industry, but also with the bloody resource wars instigated by the global North to control fossil fuel reserves that power the capitalist world economy (Klare 2004). As one scholar observes:

Heavy metal pollution, oil spillage, landmines, mortars, rockets, white phosphorus, sniper fire and high explosives, tear gas and barbed wire constitute the landscape of extraction and pollution in the neocolonial era. Pollution weakens the possibilities of subsistence, let alone

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<sup>20</sup> Flint is not unique. Children in nearly 3000 US neighborhoods face lead poisoning rates far higher than those of Flint, Michigan (Pell and Shneyer 2016).

resistance of neocolonial peoples, whose ecologies are degraded for purposes of global transnational value extractions. Neocolonial people suffer from material pollution—such as military-industrial waste—and forms of political pollution—such as military coups and self-perpetuating corruption. (Picard and Beigi 2020, 3-4).

International law has been deeply complicit in the creation of sacrifice zones in the global South by extractive and polluting industry. First, international law does not require Northern states to regulate the overseas activities of their corporations to prevent human rights violations and environmental degradation (Simons 2015). Second, international law does not recognize the integrated nature of transnational corporations, treating parent companies, subsidiaries, and affiliates as separate entities. The corporate form (through the doctrines of separate legal personality and limited liability) shelters the parent company's assets even if a subsidiary is held liable for egregious human rights and environmental abuses (Simons 2012). Third, the corporate form incentivizes irresponsible behaviors, such as land grabbing, pollution, and human rights abuses, by imposing the fiduciary obligation to maximize shareholder return on corporate officers and managers (Baars 2019).<sup>21</sup> Finally, as discussed previously, international investment law deters Southern states from regulating the operations of foreign investors (such as extractive industries) by exposing them to costly arbitration proceedings or potential multi-million-dollar arbitral awards if national regulations diminish the value or profitability of the investment (Baars 2019; Simons 2015; Miles 2013). In sum, “powerful states have used international law and international institutions to create a globalised legal environment which protects and facilitates corporate activity” (Simons 2012, 12).

Capitalism has long damaged the planet and expelled large segments of humanity. However, the magnitude, severity, and potential irreversibility of the harm inflicted on humans and non-humans have become increasingly evident in recent decades, turning ever-growing stretches of the earth into sacrifice zones (Monbiot 2019). Indeed, the UN Special Rapporteur on the right to a clean, healthy, and sustainable environment recently issued a report describing and condemning the worldwide proliferation of sacrifice zones (UNHRC 2022).

Scientists believe that we have entered a new geologic era, known as the Anthropocene, in which capitalism's unbridled plunder of nature threatens the future of life on the planet. In its relentless quest for profit, racial capitalism has disrupted the planet's climate, destroyed its forests, polluted air and water, produced unprecedented rates of species extinction, and rendered parts of the earth so toxic that they are no longer fit for human habitation (Bonneuil and Fressoz 2016). Some scholars have proposed the term Plantationocene to underscore racial capitalism's historic and ongoing dislocation, domination, and degradation of plants, animals, ecosystems, and racialized and colonized humans to produce commodities for global markets (Haraway et al 2016; Murphy and Schroering 2020). Other scholars prefer the term Capitalocene (Malm 2016, Moore, 2016a) or Racial Capitalocene (Vergès 2017), to emphasize the Anthropocene's origins in racial capitalism and the disproportionate impact of environmental degradation on populations racialized as nonwhite.

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<sup>21</sup> The belief that corporations are legally obligated to maximize shareholder wealth is dominant, but not universal. For example, the Canada Business Corporations Act requires corporate directors to consider various stakeholders, including shareholders, employees, and the environment, in determining the corporation's best interest (Borduas 2019). Further, some US corporate law scholars question the “widespread perception” that corporate directors are legally bound to maximize return to shareholders (Stout 2012, 25).



Climate change is perhaps the most well-known example of the ways that capitalism's ecological contradictions are accelerating the process of expulsion and creating sacrifice zones. Climate change is caused primarily by the greenhouse gas emissions of the world's most affluent populations (Hickel 2020). However, those most susceptible to climate-related disasters are overwhelmingly nonwhite populations in both the North and the South who reside in locations disproportionately exposed to hurricanes, floods, drought, desertification, and rising sea levels (Intergovernmental Panel on Climate Change 2022; Gonzalez 2020a; United Nations Development Programme 2019). These communities have been rendered socially and economically vulnerable to climate change by the processes of exploitation, expropriation, and expulsion described in this article. Indeed, the UN Special Rapporteur on Extreme Poverty and Human Rights has used the term "climate apartheid" to describe the divide between the affluent (who possess the resources to protect themselves from the harms wrought by climate change) and the rest of humanity (who will be left to suffer and die) (UNHRC 2019, 14, para. 50).

Climate change is anticipated to displace as many as one billion people by 2050 (Kamal 2017). The precise number of displaced persons is difficult to predict because climate change generally magnifies the economic, social, and ecological drivers of human mobility, instead of serving as the exclusive cause of migration (IOM 2014).

The response of affluent states to current migratory flows from the global South is a harbinger of the racialized expendability that awaits climate-displaced persons as growing regions of the planet are rendered uninhabitable. Northern states have adopted increasingly aggressive measures to deter, detain, and deport racialized stigmatized migrants (Sheller 2018; Gonzalez 2020b). Many migrants returned to their countries of origin have been murdered, raped, or tortured (Lakhani 2020), and thousands have perished while attempting to cross international borders (IOM 2017), due, in part, to deterrence strategies that "abandoned [them] to the physical forces of deserts and seas" (Squire 2017, 514). By contrast, Ukrainians fleeing Russia's invasion of their country have been welcomed with open arms across Europe (because they are racialized as white). Ukraine-based students from Africa, India, and the Middle East seeking refuge in Europe have encountered barriers and hostility (because they are racialized as nonwhite) (Hinry 2022; Narea and Elidrissi 2022).

Finally, racial capitalism has produced a dramatic global decline in biodiversity, and unprecedented species extinction. This destruction threatens to disrupt and impair the ecosystems that sustain life, with disproportionate impacts on Indigenous and other subsistence-based communities that depend on healthy ecosystems for their livelihoods (IPBES 2019). This extinction is driven, in large part, by new waves of expropriation that deplete the minerals, flora, and fauna of poor nations for capital accumulation in affluent nations. As Dawson observes:

The neoliberal era has seen much of the global South become increasingly indebted, leading international agencies, such as the World Bank to force debtor nations to harvest more trees, mine more minerals, drill for more oil, and generally deplete their natural resources at exponentially greater rates. The result has been a steeply intensifying deterioration in global ecosystems, including a massive increase in the rate of extinction. (A. Dawson 2016, 61)

Deforestation to produce commodities like beef, soy, palm oil, and wood products places people in closer proximity to wildlife, thereby increasing the risk of zoonotic spillover—the transfer of pathogens from animals to humans. COVID-19 is only the latest example of zoonotic spillover; other examples include Zika, Ebola, Nipah, SARS, and MERS (Malm 2020). Moreover, as climate change forces wild animals to relocate their habitats to regions with large human populations, the risk of zoonotic spillover (and future pandemics) increases dramatically (Carlson et al. 2022).

In sum, the acceleration and intensification of capital accumulation in recent decades has consigned vast segments of humanity and huge stretches of the biosphere to the status of waste. Racial capitalism destabilizes the planet's life support systems, and threatens to inflict ecologically-induced genocide on nonwhite populations classified as surplus and expendable (Short 2016). As Bhattacharyya observes, “[t]o be rendered surplus is not to be paid less, it is to be left dying or for dead” (Bhattacharyya 2018, 20).

This racialized expendability is a harbinger of the fate that also awaits non-elites racialized as white, as the intensifying socio-ecological crises of the Anthropocene trap growing numbers of people in the sacrifice zones of racial capitalism.

## V. Conclusion

We have argued that racial capitalism is a system of racialized extraction that operates through the capitalist processes of profit-making and race-making. Profit-making includes exploitation, expropriation, and expulsion. Race-making structures and naturalizes the injustices of profit-making by appealing to social understandings of racial hierarchy. Race-making facilitates differential modes of accumulation by separating the spaces that racially marginalized groups inhabit through segregation. And it creates sacrifice zones for those viewed as no longer useful to the racial capitalist goal of profit-making.

These processes of profit-making and race-making stabilize racial capitalism in at least four ways. First, they enable capitalists to maximize profits in part by reducing the pay of exploited workers, because their reproduction is subsidized by cheap raw materials and the unpaid/underpaid or unfree labor of expropriated, often nonwhite, workers. Second, they promote capitalism's expansion by facilitating new and ongoing rounds of plunder of nature, and of the land, labor, and resources of humans racialized as inferior and therefore vulnerable. Third, they produce sacrifice zones for the disposal of surplus populations, pollution, and waste—often in marginalized communities and nations. And fourth, they contain the resistance that capitalism engenders by aligning dominant classes across race and ethnicity—dividing the working class while confining expropriated persons to segregated spaces where the use of force is routine, permitted, and exercised by the state and by dominant communities. Law is inextricably engaged in these processes. It defines, in part, what constitutes sovereignty, property and citizenship; it delineates acceptable levels of environmental degradation; and it determines who is entitled to housing, health care, clean air and water, food, child care, and a semblance of real freedom and choice (only those who can pay).

At the same time, law is a terrain of struggle. Social movements all over the world have deployed law in counter-hegemonic ways to resist the ravages of racial capitalism (see, for example, Rajagopal 2003), including transnational Indigenous rights movements, environmental and climate justice movements, and the US-based Black Lives Matter Movement—particularly in their insistence on police abolition.

These movements employ law from the perspective of their social positions—from the bottom (Matsuda 1987). They also use race. As Omi and Winant (2015) observe, inasmuch as race “is a template for the subordination and oppression of different social groups,” (ibid., 108) it is also “a template for resistance to many forms of marginalization and domination” (ibid.), and as such it comprises more than the practices of racism and racialization. “Anti-racist” resistance thus includes resistance to the extraction, marginalization, and oppression that racist expropriation and expulsion engender.

Racial capitalism is currently experiencing a period of unprecedented instability as a consequence of converging crises, including growing economic inequality, explosive authoritarian ethno-nationalism, crumbling infrastructure, austerity-induced shredding of social safety nets, the COVID-19 pandemic, and the climate and extinction crises. This instability is an opportunity to imagine and create post-racial capitalist alternatives using non-reformist legal reforms as a bridge to a more democratic, equitable, and resilient future. By unpacking racial capitalism’s intertwined processes of profit-making and race-making, this article seeks to lay the foundation for further work analyzing in greater detail the role of law in perpetuating and resisting racialized extraction.

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