

INTERROGATING DOMINION: ON POLITICAL  
THEOLOGY AND SUMMARY PROCESS  
EVICTION IN CONNECTICUT

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*The Bible, the Greeks: What is the nature of these texts' openness to the whole world? On the one hand, for [Emmanuel] Levinas, they are available to the whole world; on the other hand, they are the whole world. The whole world is in these texts and the refusal of these texts, the failure to enter into them is also a failure to enter into the world, to naturalize oneself — as it were — outside of the natural, to become a world-forming world citizen.*

— Fred Moten<sup>1</sup>

INTRODUCTION

An eviction, the legalized removal of a tenant from their home,<sup>2</sup> is a particular node in a complex web of legal, economic, and other social arrangements. It is a process that contains a few key ingredients, including a property, a tenant, a landlord, a court, and a corpus of governing statutes and case law. However, absent an eviction's legal framework and justification, expelling a tenant from their home might more closely resemble ouster, theft, trespassing, or kidnapping; the law is what creates, defines, and empowers the eviction process as legitimate and unique according to its own logic and that of its legislators, courts, and the police they mobilize. Put differently, an eviction is made possible by laws and legal gaps, and underneath this legal tapestry is a thought world, a mix of different, interacting assumptions that think and feel it into existence. Deeper than concerns about practicality, efficiency, and abstract notions of fairness, these assumptions are derived from and effectuate principles that attend to existential priorities — to the essence of personhood, its fundamental interests, what governs and defines it, and what is necessary to protect it (and those interests).

This Essay seeks to illuminate and interrogate some of these priorities and principles as they reveal themselves in the law and its regime. Specifically, I argue that the sociopolitical order of the United States, as incarnate in Connecticut eviction statutes, maintains and arises from a set of logics that constitute a discourse of veneration and metaphysical authority — in other words, a kind of theological frame. This is a kind

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\* Harvard Law School, J.D. 2021; Harvard Divinity School, M.Div. 2021. Many thanks to the editors of the *Harvard Law Review* for their generous engagement and feedback.

<sup>1</sup> FRED MOTEN, *THE UNIVERSAL MACHINE* 11 (2018).

<sup>2</sup> *Eviction*, *BLACK'S LAW DICTIONARY* (11th ed. 2019).

of discourse that goes beyond that of utilitarianism, empiricism, or rationality; as this Essay will explore, this is a discourse that attends to a higher power, not (only) as some deity or a means of consolidating material resources, but as that by which the self and others might be known at all. Indeed, knowing and recognition — of personhood, of “rights,” of a people’s way of being — are not universal or inevitable, but rather sites and stakes of power struggles, which is to say of coercion and resistance; what I’m interested in here are what (that is, who) wins and why, along with the veiled assumptions that attend to those victories. In particular, this Essay seeks to critically assess some of these contestations as they relate to deeply rooted structures of belief about the source and nature of authority and these structures’ relationship to the law in the United States. This, an engagement with our existential priorities, is what Paul Tillich argues is the essence of theological discourse:

The object of theology is what concerns us ultimately. Only those propositions are theological which deal with their object in so far as it can become a matter of ultimate concern for us. . . .

. . . .

. . . Our ultimate concern is that which determines our being or not-being. Only those statements are theological which deal with their object in so far as it can become a matter of being or not-being for us.<sup>3</sup>

Using Tillich’s framework as a point of departure (that is, a theological lens), this Essay seeks to uncover some of the contours of the “ultimate concern” gestured toward in and as the sociopolitical order of the United States. This concern implicates matters and logics of being and “the proper”; as Tillich explains, these are, among other things, logics of faith. These contours, I argue, are fundamentally set against the Black and the Native, serve capital, and simultaneously establish and are cultivated by the state.

Although this Essay focuses on these dynamics as they reveal themselves in Connecticut’s eviction statutes, these statutes are reflective of an originating, more generalized national ethos. Here, I am interested in theorizing the meaning of the eviction as a phenomenon that implicates a certain theological framework at work in the nation and this framework’s relationship to the law, using Connecticut as a kind of case study. I therefore proceed from the assumption — and, at points, demonstrate — that the Connecticut legal apparatus is rooted in national priorities, legal principles, and assumptions about the nature of government and what constitutes a proper relationship to land. While the details of any state’s eviction processes and laws have their own specific histories and characteristics, the respective legal histories of the states and the federal government are deeply intertwined, and the authority of each arises from this braiding. Put differently, Connecticut is

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<sup>3</sup> 1 PAUL TILlich, *SYSTEMATIC THEOLOGY* 12, 14 (1951) (emphases omitted).

but one participant in the nation's theological regime, its eviction statutes are but one example of this, and these statutes — with all of their state-specific potential for harm — are made possible by a national legal-ideological scaffold. My particular focus on Connecticut in this Essay is largely inspired by my experiences as a housing attorney in Connecticut. This Essay might therefore be understood as my attempt to make sense of how the law enables the eviction and to decipher the roots of a collective consciousness that can accommodate the devastation of this displacement — a horror that I witness firsthand and struggle to mitigate in my work. As I have seen, and as will be explored later, this is a kind of chaos that threatens working-class, Black, and/or brown tenants in particular.

This Essay will proceed in four main parts. First, I offer a critical reading of a 2016 article by then-attorney, now-Connecticut Housing Court Judge Cirello<sup>4</sup> that compares New Testament depictions of the crucifixion of Jesus of Nazareth to jury trials in the United States. In the State of Connecticut, housing courts serve as the first forum of contact between a tenant and the state in most issues related to their housing. In particular, they preside over eviction proceedings and apply the eviction statutes of interest in this Essay. Connecticut Housing Court judges interpret these statutes and hand down judgments according to those interpretations; in other words, they serve as the finders of fact and law in eviction cases and ultimately decide when a tenant must leave their home.<sup>5</sup> Judge Cirello is one such housing court judge,<sup>6</sup> and, as such, he wields an extraordinary amount of power over land, homes, and their residents according to the principles in and around the law, functioning as a vector of the kind of state power of concern here. This is to say that, within the jurisdiction of his court, his interpretations of testimony and law, the legacies of thought that inform such interpretations, and state power collaborate to rework space itself and who has the right to it. Although his article was published during his time as a trial lawyer and five years before he was appointed to the bench,<sup>7</sup> I argue that Judge Cirello's writing reveals subtle discursive and ideological tenets that guide such a reworking. More specifically, his article fortuitously provides a useful entry point into this Essay's meditations on the connections between theology and state power and, for

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<sup>4</sup> John Cirello, Opinion, *Jury Trials: Democracy? Or Buck-Passing?*, NEW HAVEN INDEP. (Feb. 23, 2016, 8:43 AM), [https://www.newhavenindependent.org/article/jury\\_trials\\_democracy\\_or\\_buck-passing](https://www.newhavenindependent.org/article/jury_trials_democracy_or_buck-passing) [<https://perma.cc/5ZH3-XCRN>].

<sup>5</sup> See CONN. GEN. STAT. ANN. §§ 47a-23 to 47a-26d (West 2017).

<sup>6</sup> *Superior Court Judges*, STATE OF CONN. JUD. BRANCH, <https://www.jud.ct.gov/judsearch/judsup.asp> [<https://perma.cc/YW6F-CR2N>].

<sup>7</sup> See Press Release, Off. of Governor Ned Lamont, Governor Lamont Nominates 15 Connecticut Residents to Fill Vacancies on the Superior Court (Feb. 17, 2021), <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2021/02-2021/Governor-Lamont-Nominates-15-Connecticut-Residents-To-Fill-Vacancies-on-the-Superior-Court> [<https://perma.cc/283J-FW67>].

the United States, each's veiled mechanisms and presuppositions as they relate to anti-Blackness. The connections between theological discourse and the law are the main focus of this Essay, so Judge Cirello, especially as a jurist and now-arbiter of Connecticut landlord-tenant law, provides an apt introduction to and frame for the inquiry that will follow, particularly given his explicit engagement of some of the intersections between Christian scripture and our legal frameworks. Across Parts I and II, I thus explore how the assumptions embedded in his article exemplify some of the ideological underpinnings of the country and the forms of legality it employs.

Second, engaging the work of Professors J. Kameron Carter and Adam Kotsko, I apply the concept of political theology to Judge Cirello's reading and to landmark property law case *Johnson v. M'Intosh*,<sup>8</sup> arguing (1) that both are rooted in a shared, if implicit, political theology of the state and its sociopolitical order as ultimate and legitimate, and (2) that the latter, *Johnson v. M'Intosh*, demonstrates that this claim to legitimacy is made possible through anti-Indigeneity.

Third, elaborating on the prior section, I examine housing law — summary process statutes in particular — in Connecticut as an outgrowth of this theological discourse of the United States' sociopolitical regime, paying close attention to its anti-Indigenous, anti-Black, and neoliberal features, especially the ways in which it enforces a distorted relationship to the land.

Finally, I briefly offer and explicate two examples of alternative discourses that point toward different ways of being and of relating to the land and one another, against and within empire: the LANDBACK movement and Professor Ruth Wilson Gilmore's concept of "abolition geography."<sup>9</sup>

## I.

In *Jury Trials: Democracy? Or Buck-Passing?*, Judge Cirello provides an analysis of the Christian narrative of the crucifixion of Jesus of Nazareth, which he compiles from different Christian scriptures, and compares that narrative with jury trials in the United States.<sup>10</sup> In this Part, I focus on Judge Cirello's analysis for its subtext, particularly the ways in which his analysis conflicts with the texts and their surrounding history, along with how it betrays certain resonances between the respective imperial regimes of the United States and the Roman Empire.

Judge Cirello begins his article by meditating on what jury trials in the United States ought to be, referring to them as "the purist [sic] form of democracy," noting that they are (or should be) "an important right

<sup>8</sup> 21 U.S. (8 Wheat.) 543 (1823).

<sup>9</sup> See Ruth Wilson Gilmore, *Abolition Geography and the Problem of Innocence*, in *FUTURES OF BLACK RADICALISM* 225 (Gaye Theresa Johnson & Alex Lubin eds., 2017).

<sup>10</sup> Cirello, *supra* note 4.

of the people” given in the Constitution, and concurring with Atticus Finch’s proclamation in *To Kill a Mockingbird* that “[a] court is only as sound as its jury.”<sup>11</sup> However, claiming a turn toward realism, Judge Cirello writes: “I propose that there is a different purpose for our jury system: to allow our political leaders to ‘pass the buck’ on difficult and politically consequential decisions.”<sup>12</sup> For him, the ancient prototype for jury trials in the United States — including this ulterior purpose — is the trial preceding Jesus’s execution by the Roman Empire.

Judge Cirello then summarizes the different depictions of this trial given across the three synoptic gospels (the books of Matthew, Mark, and Luke in the New Testament of the Christian Bible). He first outlines Jesus’s being accused of blasphemy — in particular, the charge that Jesus claimed to be Israel’s Messiah — and his resultant interrogation by religious authorities in Jerusalem. He then synthesizes the various depictions of Jesus’s subsequent trial in front of Pontius Pilate (for the charge of sedition,<sup>13</sup> which Judge Cirello does not mention), who was the Roman governor of Judea at the time. During this second proceeding, the so-called jury trial at issue, Judge Cirello writes that “Pilate . . . trie[d] to get Jesus to incriminate himself by asking him about the accusations that the chief priests were making.”<sup>14</sup> Jesus’s refusal to do so, Judge Cirello argues, created a tricky, political quagmire for Pilate. On one hand, if Pilate sentenced Jesus to death by his own authority, Judge Cirello writes that he would be “sure to get a backlash from Jesus’s followers”; on the other, refusing to do so “[would] have challenged the authority of the chief priests which could be a political nightmare.”<sup>15</sup> So, Judge Cirello argues that Pilate instead posed the question to the crowd of Judeans watching this trial to avoid making this difficult decision himself. The people in that crowd, the story goes, were the ones who unilaterally decided that Jesus should be executed, and Pilate carried out their will. Judge Cirello then writes: “This could be considered the first ever jury trial. What a lovely invention for people in positions of power who are faced with making tough decisions: bring together a group of random citizens and have them make decisions for you!”<sup>16</sup>

As the article concludes, Judge Cirello connects Jesus’s crucifixion to what he calls “some of the most infamous examples of jury verdicts,” namely, “[t]he O.J. Simpson trial, Rodney King, *To Kill a Mockingbird*, the Ferguson police officers [sic], etc.”<sup>17</sup> He writes that, in all of these, “the blame rested with the people of the jury,” and political leaders and

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See *Luke* 23:1–2 (New Revised Standard Version).

<sup>14</sup> Cirello, *supra* note 4.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

judges were thus spared from having to make these controversial decisions and from bearing responsibility for the consequences thereof.<sup>18</sup> Finally, Judge Cirello writes that he makes these observations — the ways jury trials throughout history have been and continue to be used by political leaders to avoid difficult decisions — “not to tear down our current system, but rather look at it in a different light” and that juries are still the “best way” to adjudicate conflicts that come before a court of law.<sup>19</sup>

However, Judge Cirello’s article suffers from a few crucial misreadings of Jesus’s crucifixion story and its surrounding historical context. In the first analysis, what he understands as a depiction of what he calls a jury trial held by Judeans was, in reality, a thinly veiled illustration of the imperial might of the Roman Empire. He correctly, albeit somewhat euphemistically, notes that “Jerusalem was an occupied city,”<sup>20</sup> but he overstates the local authority of Judea’s religious leaders when he writes that they were “the religious governing body representing the Jews in their homeland and Pilate, who represented Rome, was the occupying governor who was in charge of the secular government.”<sup>21</sup> While these religious authorities had some degree of power and legitimacy among Judeans, this was not some two-sided, synagogue-state partnership with the Roman Empire, nor did the relationship between Judea and Rome comprise a republic in which Judeans enjoyed any meaningful representation in the Roman government.<sup>22</sup> In other words, neither Jesus, nor most of Judea’s religious authorities, nor most other Judeans depicted in Christian scripture were citizens, certainly not in the way that modern-day residents of the United States might understand full citizenship, and they had few, if any, of those rights.<sup>23</sup> The Roman god-king — at the time of Jesus’s crucifixion, Tiberius Caesar Augustus<sup>24</sup> — was not some official elected by these people his forebears conquered, and targets of Rome’s imperial conquests were not offered a say in the terms of their conquer. This, for them, was not a democracy. Despite the limited, local autonomy of the provinces that would come to be incorporated into the Roman Empire, they were nevertheless supervised by Roman-appointed leaders and ultimately subordinate to

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See M. Stern, *The Political and Social History of Judea Under Roman Rule*, in *A HISTORY OF THE JEWISH PEOPLE* 239, 246–53 (H.H. Ben-Sasson ed., 1976).

<sup>23</sup> Most free Jews in the Roman Empire were not “citizens” as such until the *Constitutio Antoniniana* in 212 C.E., which was issued as an implicit announcement from the Roman Empire that “the people of Israel was somehow being [formally] absorbed into the entity called the *populus Romanus*,” or, in other words, that their conquer was official and complete. KATELL BERTHELOT, *JEWES AND THEIR ROMAN RIVALS* 340 (2021).

<sup>24</sup> Stern, *supra* note 22, at 252.

Roman rule,<sup>25</sup> a rule backed up by unparalleled military force;<sup>26</sup> indeed, the backdrop for Jesus's ministry in Judea in particular was Israel's long history of enslavement, exile, and devastating conquer by a string of foreign empires, of which the Romans were the then-latest example. This is to say that centuries of violence, mass slaughter, enslavement, land theft, the pillaging of economic resources, and the destruction and expropriation of sacred artifacts, landmarks, and mother tongues — all of these comprised the lived, traumatic realities of the Judeans at the time of Jesus's trial and formed the basis of their relationship to the Roman Empire.<sup>27</sup>

It is true that the narratives given in the gospels depict Pilate seeking the approval of the crowd of Judeans prior to crucifying Jesus,<sup>28</sup> which, in part, leads Judge Cirello to imply that Pilate, like a judge in present-day United States, somehow needed or was bound by that approval to execute an enemy of the Roman state or would not have done so without it. However, the Roman government did not *need* the Judeans' permission to kill anyone,<sup>29</sup> especially someone who had been credibly accused of sedition and refused to give a straight answer as to whether or not he was calling himself the “king of the Jews.”<sup>30</sup> Even if the events leading up to the historical fact of Jesus's crucifixion happened exactly as they are depicted in scripture (which is not necessarily the case; satisfying modern, post-Enlightenment standards of historicity would not have been a concern of biblical authors and redactors<sup>31</sup>), Jesus was tortured and executed by Roman soldiers with Roman methods at the command of a Roman governor for the crime of sedition against the Roman Empire. The consent of the Judeans, if actually solicited at all, was, at bottom, less a requirement for the execution of charismatic uprisers than an occasional part of Roman imperial theatre and a matter of bureaucratic expediency. Their delegation of local administrative practices aside, the Roman Empire and its despotic governors certainly did not meaningfully surrender their divine, necropolitical authority to their victims because of the potential unrest of a few Judean political and religious factions, as Judge Cirello suggests. Tragically, history confirms that the Romans had no need to defer to these locals; Rome handily

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<sup>25</sup> *Id.* at 247.

<sup>26</sup> See generally GABRIEL BAKER, SPARE NO ONE: MASS VIOLENCE IN ROMAN WARFARE (2021) (discussing the overwhelming strength and systematic brutality of the Roman military).

<sup>27</sup> See BERTHELOT, *supra* note 23, at 29–87.

<sup>28</sup> See, e.g., Luke 23:13–25 (New Revised Standard Version).

<sup>29</sup> Stern, *supra* note 22, at 249.

<sup>30</sup> Luke 23:3 (New Revised Standard Version) (emphasis added).

<sup>31</sup> See generally MEMORY AND IDENTITY IN ANCIENT JUDAISM AND EARLY CHRISTIANITY (Tom Thatcher ed., 2014) (examining the relationship among “actual” events, their depiction in scripture, and communal memory and identity).

destroyed Jerusalem a few decades after Jesus was executed there following a failed revolt by Judean rebels in 70 C.E.<sup>32</sup>

What Judge Cirello calls the first jury trial was therefore not an example of Judeans exercising their rights as Roman citizens — again, they were, generally speaking, not Roman citizens, and they had no “rights” as such — or the Roman government simply placing the fate of a dissident back into the hands of the Judean people. This trial, and Roman governance more generally, was aimed toward the legislating of a particular regime. In other words, here, Roman law and the exercise of it was about the consolidation of imperial power; across the different depictions of Jesus’s crucifixion in scripture, Jesus was seized by Judean religious authorities for the charge of blasphemy<sup>33</sup> while, as mentioned above, Pilate’s juridical concern was whether or not Jesus held himself out as a king.<sup>34</sup>

In this way, although Jesus’s trial should not be so confidently analogized to jury trials in the United States, the two kinds of proceedings and their underlying legal structures do share a foundational purpose: the establishment, ongoing production, and maintenance of their respective sociopolitical regimes. Like the Roman Empire, the United States and its legal structures are founded upon lands and peoples ravaged by centuries of conquest, genocide, slavery, and, in our context, the forms of racial and economic violence they would quickly evolve into.<sup>35</sup> And, similarly to Judea, the particular peoples and lands upon and by which the United States was founded suffered these things under successive and concurrent imperial powers — several European powers and the United States (and its early forms) itself.<sup>36</sup> These are the imperial roots and applications of the law of this land, and their afterlives continue to perpetuate their racialized outcomes, especially along lines of anti-Blackness and anti-Indigeneity.

In the case of Black people here, alongside countless signs and markers of various, durable forms of racism in United States society,<sup>37</sup> scholars across disciplines have explained that anti-Blackness — contempt for Black peoples, Black suffering, fear of suffering in the ways Black people suffer, etc. — is the ghost in the machine of modernity,<sup>38</sup> forming

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<sup>32</sup> See M. Stern, *The Great Revolt*, in *A HISTORY OF THE JEWISH PEOPLE*, *supra* note 22, at 299–303.

<sup>33</sup> See, e.g., *Matthew 26:57–65* (New Revised Standard Version).

<sup>34</sup> See *id.* at 27:11.

<sup>35</sup> See, e.g., HOWARD ZINN, *A PEOPLE’S HISTORY OF THE UNITED STATES 206–09* (3d ed. 2013).

<sup>36</sup> See *id.* at 1–38.

<sup>37</sup> See, e.g., Janis Bowdler & Benjamin Harris, *Racial Inequality in the United States*, U.S. DEP’T OF TREASURY (July 21, 2022), <https://home.treasury.gov/news/featured-stories/racial-inequality-in-the-united-states> [<https://perma.cc/U7X4-QMB7>]; see also DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 12 (1992).

<sup>38</sup> See Christina Sharpe, *Lose Your Kin*, *NEW INQUIRY* (Nov. 16, 2016), <https://thenewinquiry.com/lose-your-kin> [<https://perma.cc/88EE-LW6S>].

the bedrock for social institutions, relations, and imaginaries in the West, the United States in particular. On this point, Professor Zakiyyah Iman Jackson observes that “the black body is an essential index for the calculation of degree of humanity and the measure of human progress”<sup>39</sup> and that “black(ened) humanity is understood, paradigmatically, as a state of abject human animality” that others can always refer to and define themselves against.<sup>40</sup> In this way, she and other scholars highlight how (anti-)Blackness serves an essential, thoroughly incorporated function in the institutional and psychic coherence of Western(ized) society.<sup>41</sup> Professor Patrice Douglass explores this function in the context of law and policing in the United States, arguing that “Black people animate the scope of cognition with respect to criminality,”<sup>42</sup> or, in other words, that Blackness is coterminous with crime and, as Professor Christina Sharpe writes, terror:

Black people . . . become the national symbols for the less-than-human being condemned to death; become the *carriers* of terror, terror’s embodiment . . . and not the primary objects of terror’s multiple enactments but the ground of terror’s possibility. . . .

. . . .

. . . Recall Bill Bennett, former US Secretary of Education and “values czar”: “If it were your sole purpose to reduce crime,” Bennett said, “You could abort every black baby in this country, and your crime rate would go down.” This is an execrable arithmetic, a violent accounting. Another indication that the meaning of *child*, as it abuts blackness, falls . . . apart.<sup>43</sup>

Professor Anthony Farley goes further in his analysis of the law, referring to the moment of the Black becoming a commodity in chattel slavery as the “Original Accumulation,” “[t]he God of all the laws . . . the eternal return of the repressed trauma of the Middle Passage, the eternal unfolding of 1619.”<sup>44</sup> This, for Farley, manifests in a legal system that insists on what he terms throughout his work as “white-over-black,” the intractable racial hierarchy of the United States given in and as law and a myriad of other violent, racist expressions. In his words: “Law, following the system of marks and the system of property, is white-over-black, and a pleasure and a desire. . . . White-over-black is the North Star. Every correct legal answer is white-over-black.”<sup>45</sup> All of these scholars make plain not (only) that Black people suffer regular, discrete

<sup>39</sup> ZAKIYYAH IMAN JACKSON, *BECOMING HUMAN: MATTER AND MEANING IN AN ANTIBLACK WORLD* 46 (2020).

<sup>40</sup> *Id.* at 47 (emphasis omitted).

<sup>41</sup> See BELL, *supra* note 37, at 8.

<sup>42</sup> Patrice D. Douglass, *On (Being) Fear: Utah v. Strieff and the Ontology of Affect*, 17 J. VISUAL CULTURE 332, 337 (2018).

<sup>43</sup> CHRISTINA SHARPE, *IN THE WAKE: ON BLACKNESS AND BEING* 79–80 (2016) (last ellipsis in original) (footnote omitted).

<sup>44</sup> Anthony Paul Farley, *Johnnie Cochran’s Panther: An Essay on Time and Law*, 33 T. MARSHALL L. REV. 51, 58 (2007).

<sup>45</sup> Anthony Paul Farley, *Perfecting Slavery*, 36 LOY. U. CHI. L.J. 225, 229 (2004).

forms and instances of racialized violence, but that these are all grounded in an anti-Blackness that is instrumental to the internal life of the modern subject, their forms of sociality, and their legal institutions.

That Black folk occupy this country's juridical imaginative space is ironically seen in Judge Cirello's article, in his own examples of "controversial" jury trials.<sup>46</sup> As mentioned before, those examples consist of (1) trials of police officers who actually brutalized (that is, beat in the case of Rodney King and gunned down in the case of Michael Brown of Ferguson<sup>47</sup>) Black people, (2) a Black man who was acquitted of a murder charge, and (3) a fictional Black man who was falsely accused of, convicted of, and lynched for assault and rape.<sup>48</sup> These are not merely rulings about individuals, as seen in the different protest and freedom movements sparked by and associated with most of these examples.<sup>49</sup> These cases were certainly not examples of the government simply washing its hands of difficult decisions; after all, police officers were and are the ones enacting the physical violence as a part of an infrastructure comprised of government agents,<sup>50</sup> judges wield enormous power in court proceedings,<sup>51</sup> and prosecutors shape the evidence that the jury considers when they decide whether or not to return an indictment or conviction. As government-empowered processes, these various verdicts, acquittals, and nonindictments — which is to say these jury trials and the law that shaped their outcomes — are fundamentally about which violences are legible and permissible to the state and its governing social order. In all but one of Judge Cirello's examples, anti-Black violence was held to be legally acceptable and/or necessary.

## II.

Jesus's crucifixion and these examples of jury trials are not connected in the way Judge Cirello claims (as this Essay has explained, the latter are not evolutions of the former, and none are, in reality, examples of the government truly abandoning decisionmaking power to the people), but the omission that leads to his mischaracterizing of Jesus's crucifixion

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<sup>46</sup> Cirello, *supra* note 4.

<sup>47</sup> See Paula Rabinowitz, *Street/Crime: From Rodney King's Beating to Michael Brown's Shooting*, CULTURAL CRITIQUE, Spring 2015, at 143, 146.

<sup>48</sup> Cirello, *supra* note 4.

<sup>49</sup> See Anjali Sastry Krbecek & Karen Grigsby Bates, *When LA Erupted in Anger: A Look Back at the Rodney King Riots*, NPR (Apr. 26, 2017, 1:21 PM), <https://www.npr.org/2017/04/26/524744989/when-la-erupted-in-anger-a-look-back-at-the-rodney-king-riots> [<https://perma.cc/UQH9-EY8J>]; WHOSE STREETS? (Magnolia Pictures 2017) (depicting the Ferguson uprisings); Peter Kuryla, *To Kill a Mockingbird and Civil Rights Drama*, SOC'Y FOR U.S. INTELL. HIST. (July 15, 2015), <https://s-usih.org/2015/07/to-kill-a-mockingbird-and-civil-rights-drama> [<https://perma.cc/K7JX-C47S>].

<sup>50</sup> See C.R. DIV., U.S. DEP'T OF JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 2-4 (2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf) [<https://perma.cc/7ZN5-NZ38>].

<sup>51</sup> See *id.* at 8.

is the same omission that causes him to mischaracterize our jury trials — namely, the omission of the respective, constitutive mechanisms of imperial power that ground legal systems and conceptions of legality more generally for both the Roman Empire and the United States. However, despite these omissions and misreadings, Judge Cirello shines in a moment of insight toward the end of the article when he writes: “Our system is designed to protect individual rights and maintain a rule of law.”<sup>52</sup> While the first part of the statement, that our legal system is designed to protect individual rights, is complicated and contestable (Which individuals? Which rights?), the latter is not; it is an axiomatic and crucial observation that our system is indeed designed to maintain a rule of law. Of particular interest in this Essay is the content of this “rule of law” and what it means to be beholden to it. What I have argued thus far is that the United States’s rule of law, like the Roman Empire’s, is an expression of imperial dominance — which, in this context, is comprised of anti-Black and, as I will more fully explore later, anti-Indigenous violence — in its foundations and current iterations. But, in addition to its content, this Essay now turns to the *discourse* of imperial domination — specifically, the discursive shape of its legitimation and how such a discourse of legitimacy manifests and is manifested by a national ethos, an ethos which shapes and grounds Judge Cirello’s argument.

In his article, Judge Cirello offers a political reading of scripture and our jury system, attempting to analyze subtle dynamics at play in the relationship between the government and the governed. But this reading is also, I argue, a deeply theological one, not only because he is exegeting scripture, but also because his reading engages certain beliefs of the proper and the good, tacitly formulating a vision of the state as transcendent and the supreme guardian of its society. As mentioned before, Judge Cirello explains his personal opinion after his reading of Jesus’s crucifixion and modern-day trials in the United States: “Actually, I am a huge fan of our country’s jury system. Our system is designed to protect individual rights and maintain a rule of law. The purpose of this article is not to tear down our current system, but rather look at it in a different light.”<sup>53</sup> This illustrates an instructive ambivalence; on one hand, throughout the article, Judge Cirello does not explicitly account for state power and the imperial exercise thereof in his analysis of different trials throughout history, but, on the other, he acknowledges that the jury system’s purpose is to uphold the state and its grounding sociopolitical order (“Our system is designed to . . . maintain a rule of law.”<sup>54</sup>). Put differently, he articulates a conception of the state and the order it safeguards as simultaneously invisible and ultimate, which is to

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<sup>52</sup> Cirello, *supra* note 4.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

say Godlike, and, for him, the legal systems that attend to them, with all their difficulties, ought to hold a place of honor in our discourse. In other words, Judge Cirello's reading is grounded by, among other things, a certain political theology which also anchors the United States regime.

Here, I am thinking with Carter, who interrogates the relationship between political theology and anti-Blackness in *Other Worlds, Nowhere (or, The Sacred Otherwise)*.<sup>55</sup> There, Carter writes:

As I am using it, political theology is that philosophical, indeed that metaphysical, claim to the rightness, the purity, the would-be gravity of the state as the telos of society, as the horizon of order, as what securitizes the world if not life itself. . . . [P]olitical theology is the discourse of Being in its projection of the state as the ground of legitimate, political (as opposed to "non-political" or ante-political or anarchic) assembly, on the one hand, and as the ground of juridical subjecthood, on the other.<sup>56</sup>

For Carter, the state is held up and establishes itself as a sovereign with divine authority and the ultimate arbiter of legitimacy in social life, as well as the ground of "legitimacy" as such. Political theology as he describes it is, therefore, the thinking and discourse behind that claim to legitimacy, and, as he writes, this claim is mediated by anti-Blackness, or the opposition to juridically unrecognized social formations and ways of being (that is, for him, Black ones).<sup>57</sup> Taking a related but broader view of political theology, Kotsko writes: "I regard political theology as the study of systems of legitimacy, of the ways that political, social, economic, and religious orders maintain their explanatory power and justify the loyalty of their adherents,"<sup>58</sup> even beyond, independent from, and in opposition to a powerful sovereign state.<sup>59</sup> However, at the same time, Kotsko also argues that this sovereign state is employed by its sociopolitical order to effectuate that order's objectives, particularly as it relates to neoliberalism, an economic program that requires some measure of state power.<sup>60</sup> In this Essay, then, I use the term "political theology" to indicate a kind of synthesis between Carter and Kotsko, which is to say that "political theology" here describes a set of claims and discourses about the authority and legitimacy of a given sociopolitical order, an order which, in this context, begets, is reflected in, and is ultimately cultivated by its state, which also demands legitimacy.

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<sup>55</sup> J. Kameron Carter, *Other Worlds, Nowhere (or, The Sacred Otherwise)*, in *OTHERWISE WORLDS: AGAINST SETTLER COLONIALISM AND ANTI-BLACKNESS* 158 (Tiffany Lethabo King, Jenell Navarro & Andrea Smith eds., 2020).

<sup>56</sup> *Id.* at 170–71.

<sup>57</sup> *See id.* at 171–73.

<sup>58</sup> ADAM KOTSKO, *NEOLIBERALISM'S DEMONS: ON THE POLITICAL THEOLOGY OF LATE CAPITAL* 8 (2018).

<sup>59</sup> *See id.* at 5–8, 28–38.

<sup>60</sup> *Id.* at 5.

For Judge Cirello, the jury system, which, in my reading of his article, I am taking as synecdochic for the law in general, is guided by the state. And, according to him, for unexplained reasons, the state's rule of law and the sociopolitical order it maintains *should* be maintained and not torn down. In this (ideo)logical framework, the legal system and this "rule" it protects should be strong in order to safeguard their own legitimacy; such a rule is, in his words, the "*best way*" to govern.<sup>61</sup> This articulates a vision of the United States regime as what is right and, as Carter might say, the proper ground of legitimate society and juridical recognition (per Judge Cirello: "Our system is designed to protect individual rights . . .").<sup>62</sup> More specifically, Judge Cirello's ruminations on the inherent goodness of the jury system and the governing rule of law reflect the guiding and justificatory political theology of the United States as an instantiation and propellant of a certain sociopolitical order, an order that establishes adherence as its first principle and meets deviance with punishment. Judge Cirello's work resonates with this political theology as he suggests that the rule of law is self-evidently legitimate and, somewhat circularly, that the value of the legal system is in maintaining that rule. This is reverence; mythification; a discourse of "should," of "ought," of what is "best," and of the state that codifies those principles and itself as immortal, invisible, and, per Carter, the collective "horizon of order" for the country it serves. Importantly, these principles are not a special trait or the exclusive domain of Judge Cirello or any one thinker, and they illustrate a vision of society that transcends any individual's intentions or perspectives, a vision that is self-legislating and passed down throughout centuries. They reflect a broader, more diffuse discursive and ideological blueprint of statecraft and, ultimately, what Professor Cornel West might refer to as a kind of "soulcraft,"<sup>63</sup> a source and product of the communion between citizen, state, and liberal society.

With respect to jury trials and throughout United States jurisprudence, such a theological claim to/as legitimate political assembly and its discourse are subtended by anti-Blackness, as gestured toward before. This is to say, as Carter, Kotsko, and Judge Cirello all suggest or illustrate in different ways, that legitimacy is at issue for United States governance and that, if the United States governance is tied up in anti-Blackness, so, too, are the country's claims to and notions of legitimacy, which Carter explains in his work.<sup>64</sup> Alongside anti-Blackness, the so-

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<sup>61</sup> Cirello, *supra* note 4 (emphasis added).

<sup>62</sup> *Id.*

<sup>63</sup> See, e.g., Cornel West, *America Is Spiritually Bankrupt. We Must Fight Back Together*, THE GUARDIAN (Jan. 14, 2018, 4:00 PM), <https://www.theguardian.com/commentisfree/2018/jan/14/america-is-spiritually-bankrupt-we-must-fight-back-together> [<https://perma.cc/36DG-258E>].

<sup>64</sup> See generally Carter, *supra* note 55 (discussing the relationship between anti-Blackness, the state, and "legitimacy").

called “original sin” of this nation,<sup>65</sup> is anti-Indigeneity — the invisibilized key to the legitimacy that the United States professes and safeguards. Examples of anti-Indigenous violence in this country are historical, contemporary, and countless. But, more than terrible, the ongoing theft of their sacred lands and the United States’s systemic and ongoing disregard of land treaties with Native peoples,<sup>66</sup> along with various (other) forms and instances of genocide and attempts at genocide of their peoples,<sup>67</sup> are all constitutive of the regime. In other words, anti-Indigeneity is the condition of possibility for what is now known as the United States, its sociopolitical order, and its attendant legal structures, including and especially property law.

This is illustrated and given early legal power in *Johnson v. M’Intosh*. There, writing for the unanimous Court, Chief Justice Marshall explicated and codified the doctrine of discovery into a foundational case for property law jurisprudence that remains good law today.<sup>68</sup> As various scholars have explored, *Johnson v. M’Intosh* is not only a case that has been upheld and expounded upon by subsequent courts in their articulation of Native land rights and property law more generally<sup>69</sup> but also one that persists as a core and enduring part of law school curricula in the United States.<sup>70</sup> In other words, it inscribed the state’s imperial relationship to the Native into law, it established this relationship’s importance to property in/of the United States, and it thus serves as an important fulcrum of the United States legal-spatial regime, which is of interest in this Essay.

In *Johnson v. M’Intosh*, Chief Justice Marshall explained that the United States’s title to a certain plot of land was acquired in this case from the Virginia colony, which received it from Great Britain,<sup>71</sup> whose initial conquests “extinguish[ed] the Indian title of occupancy”;<sup>72</sup> the United States’s title to the land, the majority held, is thus “incompatible

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<sup>65</sup> See, e.g., Statement by President Joe Biden Marking Slavery Remembrance Day (Aug. 20, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/20/statement-by-president-joe-biden-marking-slavery-remembrance-day> [<https://perma.cc/V3ZK-CB5L>] (“More than 400 years ago, twenty enslaved Africans were forcibly brought to the shores of what would become the United States. Millions more were stolen and sold in the centuries that followed, part of a system of slavery that is America’s original sin.”).

<sup>66</sup> See Stacy L. Leeds, *By Eminent Domain or Some Other Name: A Tribal Perspective on Taking Land*, 41 TULSA L. REV. 51, 60–65 (2005).

<sup>67</sup> See Angelique Townsend EagleWoman, *The Ongoing Traumatic Experience of Genocide for American Indians and Alaska Natives in the United States: The Call to Recognize Full Human Rights as Set Forth in the UN Declaration on the Rights of Indigenous Peoples*, 3 AM. IND. L.J. 424 (2015).

<sup>68</sup> *Johnson v. M’Intosh*, 21 U.S. (8 Wheat.) 543, 592 (1823).

<sup>69</sup> See, e.g., Claire Blumenthal, “We Hold the Government to Its Word”: How *McGirt v. Oklahoma Revises Aboriginal Title*, 131 YALE L.J. 2326, 2343–45 (2022).

<sup>70</sup> See generally Kenneth H. Bobroff, *Indian Law in Property: Johnson v. M’Intosh and Beyond*, 37 TULSA L. REV. 521 (2001).

<sup>71</sup> *Johnson*, 21 U.S. (8 Wheat.) at 584–86.

<sup>72</sup> *Id.* at 587.

with an absolute and complete title in the Indians.”<sup>73</sup> To the Court, this sequence of events was the natural consequence of what they deemed to be Native inferiority:

Although we do not mean to engage in the defense of those principles which Europeans have applied to Indian title, they may, we think, find some excuse, if not justification, in the character and habits of the people whose rights have been wrested from them.

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... [T]he tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest.<sup>74</sup>

Chief Justice Marshall wrote further, discussing the potential for Native resistance: “What was the inevitable consequence of this state of things? The Europeans were under the necessity either of abandoning the country, and relinquishing their pompous claims to it, or of enforcing those claims by the sword . . . .”<sup>75</sup> Of course, enforcement by sword is precisely the option European settlers chose. This collective choice to kill and take, according to the Supreme Court, formed the legal basis of much of the United States’s title to the rest of these lands<sup>76</sup> and, accordingly, its regime in general; every court, building, law, and corporation that rests on this land relies on the government’s claim to it — a claim resting on that initial and ongoing legitimation through violence. And, as Chief Justice Marshall suggested, that legitimation of the state is mobilized by who and what the Native is or is defined to be by the white — what Chief Justice Marshall referred to as “the character and habits” of Native people. Native socialities, then, were, by definition, illegitimate means for Native peoples to lay claim to their own homelands, while justifying European conquest and settlement of the same. In other words, through this case, the Court engaged and enshrined into the law a discourse of the racialized “proper”; the settler-colony and its state as “inevitable,” securitizing social formations; and, like Judge Cirello in his article, the government as the ultimate boundary-maker, the vanguard and guardian of stability for a world under constant threat of tumult and strife. In this case, an anti-Indigenous political theology served and continues to serve as the hinge of U.S. governance, underlying and giving rise to logics and discourses of the legitimacy of our legal frameworks.

### III.

In *Johnson v. M’Intosh*, Chief Justice Marshall demonstrated that the law’s implicit political theology that I have begun to describe here

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<sup>73</sup> *Id.* at 589.

<sup>74</sup> *Id.* at 589–90.

<sup>75</sup> *Id.* at 590.

<sup>76</sup> See Bobroff, *supra* note 70, at 529–30.

extends to the very conceptualization of space and who has a “rightful” claim to it. These racialized structures of belief that Chief Justice Marshall espoused are particularly evident in property law jurisprudence. Housing law is one of the United States’s primary programmatic expressions of this political theology in/as property law, where law and belief weave together to work what theologian Willie James Jennings calls a colonial “reconfiguration of bodies and space” established by European settlers.<sup>77</sup> In other words, housing law, too, fundamentally retains and enforces a spatial regime defined over and against the Native and the Black, and it is implemented according to neoliberal principles, as this Essay will elaborate. Of particular interest here is how such a political theology manifests in Connecticut landlord-tenant law — eviction (that is, summary process) statutes in particular — with these racialized and classed valences.

Largely located in chapters 830<sup>78</sup> and 832<sup>79</sup> of the Connecticut General Statutes, the text of these summary process statutes, while powerful in the rights, remedies, and limits they apply to landlords and tenants, offer only a limited snapshot into their relation to the anti-Black and anti-Indigenous political theology undergirding them. On their face, these laws appear racially neutral; as there is no explicit mention of anything like race or ethnicity, the racialized aspects of these laws are not readily discernible from the text alone. Yet, they are still very much operative, and as legal scholars and practitioners have long observed, even ostensibly race-neutral laws and policies are forged in and often reinforce racial hierarchy.<sup>80</sup> Similarly, the actual words of Connecticut summary process statutes both mask and contain the political theology of interest here along with the different forms of racial violence that come from and give rise to it. Deciphering such an ideological scaffold therefore requires us to read around the text and to examine its roots and outcomes, as well as the assumptions embedded in the words themselves.

From its outset, property law in the United States generally required an understanding of space, place, and ownership that was radically different from most Native understandings of those concepts. In *God Is Red: A Native View of Religion*, Professor Vine Deloria Jr. explains how Western European settlers and their genealogical and ideological descendants in the United States tend to orient themselves to the world with a temporal perspective — in particular, a temporal perspective that assumes time is linear.<sup>81</sup> This orientation to and conception of time, he

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<sup>77</sup> WILLIE JAMES JENNINGS, *THE CHRISTIAN IMAGINATION: THEOLOGY AND THE ORIGINS OF RACE* 24 (2010).

<sup>78</sup> CONN. GEN. STAT. ANN. §§ 47a-1 to 47a-20f (West 2017).

<sup>79</sup> *Id.* §§ 47a-23 to 47a-42a.

<sup>80</sup> See, e.g., Neil Gotanda, *A Critique of “Our Constitution Is Color-Blind,”* 44 STAN. L. REV. 1, 16–35 (1991).

<sup>81</sup> VINE DELORIA JR., *GOD IS RED: A NATIVE VIEW OF RELIGION* 62 (3d ed. 2003).

argues, allows them to appropriate abstract notions of “progress” as the core of their identity.<sup>82</sup> These notions, especially when sutured to the Western European view that such Europeans, their descendants, and their cultures are at the most evolved or advanced point in the timeline of humanity,<sup>83</sup> comprise the cosmological assumptions underlying something like Manifest Destiny, that endless, white march from Iberia through the Americas and beyond. These kinds of racialized assumptions about the nature of the world and the (proper) human orientation to it materialize as “the propensity to judge a society or civilization by its technology”; the resultant “justifiable” conquest of nonwhite societies; and “the pretense that the earth simply does not matter, that human affairs alone are important.”<sup>84</sup> An important example of this disconnection from space and the earth in favor of a certain view of time, Deloria observes, is the rapid devastation of the North American environment in the wake of (and to make room for) ongoing settler expansion and development.<sup>85</sup>

Conversely, “American Indians,” according to Deloria, “hold their lands — places — as having the highest possible meaning, and all their statements are made with this reference point in mind.”<sup>86</sup> This is what he calls “spatial thinking,” as opposed to the primacy given to a linear conception of time, with all of its baggage, in Europeans’ tendency toward “defining . . . reality along temporal lines.”<sup>87</sup> Jennings makes a similar point:

When [Europeans] surveyed their new domain they refused to see those new worlds through the eyes of native peoples as places bound up with their bodies. Many native peoples understood their bodies as deeply connected to the earth and what walked and grew upon it. The notion of being simply bodies floating through space was pure chaos. . . . Europeans taught the peoples of the new world that they carry their identities completely on their body, detached from any specific land or animals or agriculture or place.<sup>88</sup>

Jennings elaborates on this inquiry in *The Christian Imagination*, where he analyzes historian Calvin Luther Martin’s recounting of various Native communities’ self-conceptions, writing: “Native American insight draws one into a self-description built within a vision of creation bound to specific locations. This union with the world through ‘unbounded kinship,’ as Martin calls it, turns on geographic specificity and on a kinship with plants, places, and animals.”<sup>89</sup> In other

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<sup>82</sup> *Id.* at 73.

<sup>83</sup> See JOHANNES FABIAN, *TIME AND THE OTHER: HOW ANTHROPOLOGY MAKES ITS OBJECT* 25–27 (1983).

<sup>84</sup> DELORIA, *supra* note 81, at 68.

<sup>85</sup> *Id.* at 68, 73.

<sup>86</sup> *Id.* at 61.

<sup>87</sup> *Id.* at 68.

<sup>88</sup> Willie James Jennings, *Overcoming Racial Faith*, *DIVINITY*, Spring 2015, at 4, 8.

<sup>89</sup> JENNINGS, *supra* note 77, at 42 (footnote omitted).

words, these scholars describe the Native orientation to land as a, if not the, primary mediator of one's relation to themselves, their sense of personhood, their communities, and their collective histories — not the other way around (that is, where humans are the source of meaning and value of the land). Colonialism violently introduced and enforced a rupture to these frameworks for identity and relationship to the land, tunneling pathways for structures, tactics, and ways of being that have proved disastrous to the environment and for nonwhite humans across the globe.

One such pathway is the very concept of ownership, specifically as articulated by John Locke in his *Second Treatise of Civil Government*. There, he argues that, although “the earth and all inferior creatures be common to all men,” anything in it that someone removes from its natural state by mixing with it “his labour” becomes the “unquestionable property of the labourer,”<sup>90</sup> “his private right.”<sup>91</sup> This principle, Locke argues, applies not just to “the fruits of the earth, and the beasts that subsist on it, but the earth itself.”<sup>92</sup> Upon someone laboring on the land, then, that land becomes the private property of that person, “enclose[d] . . . from the common.”<sup>93</sup> As he writes: “As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property.”<sup>94</sup> Further, Locke draws this into an explicitly theological frame, arguing that anyone who labors upon and claims land in this way does so “in obedience to [the] command of God” given in (his interpretation of) Jewish and Christian scripture to “subdue the earth, *i.e.*, improve it for the benefit of life.”<sup>95</sup> This argument, of course, implies not only that anyone who does not orient themselves in this way to land has no claim to it, but also that that person fails to live up to God's standards for “proper” human activity.

Several observations may be made about Locke's arguments. First, Locke's argument that labor gives one an exclusive claim to the land presumes that land can and should be claimed in this way at all. This is not to say that Native Americans had no concept of private land ownership<sup>96</sup> but rather that the character of the human relation to land that people like Locke articulated was fundamentally different. As Locke's work suggests, land in the prevailing European view was thought to be a mere object in the story of humanity, a resource to be used up, and a site of human action and progress that has little inherent value in the absence of human intervention, as also outlined above in

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<sup>90</sup> JOHN LOCKE, *THE SECOND TREATISE OF CIVIL GOVERNMENT AND A LETTER CONCERNING TOLERATION* 15 (J.W. Gough ed., Basil Blackwell 1948) (1690).

<sup>91</sup> *Id.* at 16.

<sup>92</sup> *Id.* at 17.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*; see also *Genesis* 1:28 (New Revised Standard Version).

<sup>96</sup> See Leeds, *supra* note 66, at 71.

Deloria's work.<sup>97</sup> Locke goes so far as to argue that the claiming of private property, especially by development, "increase[s] the common stock of mankind" and that the benefits of one acre claimed in this way "are . . . ten times more than those which are yielded by an acre of land of an equal richness lying waste in common."<sup>98</sup> This is an instrumental understanding of land based on utility; land has no value to be respected and no worth outside of material provisions for humans. The only valid form of human relation to the land is to extract from it and develop on it, and, without that kind of relation, the land is "waste[d]."<sup>99</sup> As other scholars have explained, this rationale of "improvement" was in regular, systematic use by English courts as the basis of private property rights in land — first in England, then as an underlying rationale for the colonial acquisition and expansion into the Americas;<sup>100</sup> in Locke's words: "[I]n the beginning, all the world was America."<sup>101</sup> Reflecting his subtle and powerful influence on American jurisprudence, later and modern legal expressions of Locke's ideas can be perceived in something as ubiquitous as the basic doctrine of adverse possession, where an adverse possessor's open, notorious, hostile, exclusive, and continuous use of another's property for a certain amount of time is what gives them a legal claim to it — conquest and perceived or alleged disuse constituting legal title.<sup>102</sup> Locke and his ideological descendants therefore demonstrate a crucial disjuncture with Native ways of being, in which "European settlers viewed people as separate from land and viewed land for its development potential as private property."<sup>103</sup>

Second, even if one were to assume Locke's position that human labor is what establishes the most proper human relationship to land, the limits of whose labor is legible to him and European(-American) governments for these purposes are coextensive with white supremacist boundaries, which Chief Justice Marshall affirms in *Johnson v. M'Intosh*.<sup>104</sup> For example, most Native American communities had and have, in fact, long engaged in various forms of agriculture and building-making, satisfying Locke's arbitrary list of labors ("tills, plants, improves, cultivates"<sup>105</sup>) that give a claim to land ownership.<sup>106</sup> These practices were apparently not enough to withstand a European claim to

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<sup>97</sup> See DELORIA, *supra* note 81, at 68.

<sup>98</sup> LOCKE, *supra* note 90, at 20.

<sup>99</sup> *Id.*

<sup>100</sup> See ELLEN MEIKSINS WOOD, *THE ORIGIN OF CAPITALISM* 89 (1999). See generally Calum Murray, *John Locke's Theory of Property and the Dispossession of Indigenous Peoples in the Settler-Colony*, 10 AM. INDIAN L.J., no. 1, 2022, at 1, 7 (discussing the legacy of Locke's theories of property as they relate to the displacement of Native peoples and United States property law).

<sup>101</sup> LOCKE, *supra* note 90, at 26.

<sup>102</sup> See *Adverse Possession*, BLACK'S LAW DICTIONARY (11th ed. 2019).

<sup>103</sup> Jennings, *supra* note 88, at 8.

<sup>104</sup> See *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543, 590 (1823).

<sup>105</sup> LOCKE, *supra* note 90, at 17.

<sup>106</sup> See Leeds, *supra* note 66, at 62.

the lands desired by settlers. One need not concede this much, however, as Locke's argument begs the question as to precisely *which* forms of labor establish human relationality to land. Communal historiography, religious ritual, birth and burial, kinship with flora and fauna, slave labor — none of these are labors that Locke recognizes as relevant to the question of whom the land belongs to (and who belongs to the land), and yet Native and Black people across the continent labored (and still labor) in these and other ways. These, again, are racialized theoretical exclusions; Native thought is incompatible with and, per Locke, inferior to European philosophy, and the only labors that ultimately matter to him for the existential and metaphysical concerns of something like a claim to land ownership are white theologies, desires, architectures, and agricultural practices.

As other scholars have noted, and as I have mentioned above, these particular ideas about land, real property, ownership, and their various intersections underlie property law jurisprudence and its allowances for the dispossession of Native lands throughout the United States, taking root in the thought of various early, influential legal theorists here and abroad.<sup>107</sup> In the case of Connecticut landlord-tenant statutes, these principles are particularly evident in the subtext, in what is not written but rather assumed (or written elsewhere). For example, in chapter 830 of the Connecticut General Statutes, entitled “Rights and Responsibilities of Landlord and Tenant,” a property owner in summary process proceedings is defined as “one or more persons, jointly or severally, in whom is invested (1) all or part of the legal title to the property, or (2) all or part of the beneficial ownership and a right to present use and enjoyment of the premises and includes a mortgagee in possession.”<sup>108</sup> The broadest and most straightforward legal category for legal title, and the one from which all secondary property rights such as mortgages and inheritances flow, is fee simple, for which Connecticut statutes elsewhere give “an absolute and direct dominion and property” to the owner over the land in question.<sup>109</sup> *West's Encyclopedia of American Law* gives a more thorough definition of fee simple:

The greatest possible estate in land, wherein the owner has the right to use it, exclusively possess it, commit waste upon it, dispose of it by deed or will, and take its fruits. A fee simple represents absolute ownership of land, and therefore the owner may do whatever he or she chooses with the land.<sup>110</sup>

In this legal conception of land, personhood is, as Deloria and Jennings note, totally separate and infinitely separable from the land,

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<sup>107</sup> See, e.g., BARBARA ARNEIL, JOHN LOCKE AND AMERICA: THE DEFENCE OF ENGLISH COLONIALISM 177–85 (1996); see also Sherally Munshi, *Dispossession: An American Property Law Tradition*, 110 GEO. L.J. 1021, 1034–38 (2022).

<sup>108</sup> CONN. GEN. STAT. § 47a-1(e) (2021).

<sup>109</sup> *Id.* § 47-1.

<sup>110</sup> 4 WEST'S ENCYCLOPEDIA OF AMERICAN LAW 370 (2d ed. 2005).

and a person owes nothing to the land;<sup>111</sup> the only limitations a titleholder in fee simple absolute may face are those exceptional few placed upon them by the government, which is only limited by itself. Nothing like kinship with, deference to, or possession *by* the land is contemplated by Connecticut property law for holders in fee simple — only “absolute and direct dominion”<sup>112</sup> by the owner. Instead, the central concerns there, and in summary process statutes in particular, are balances of power between freestanding individuals and the conditions under which one person can expel another from the land they have a “right” to. Indeed, the central paradigm of these eviction statutes and the most common activator of their legal machinery is the contract — whether one person violated a contractual agreement (that is, a lease) with another, the conditions under which that agreement would be rendered void or unenforceable, the implied terms of such a contract, penalties for violating that contract, whether such a contract exists at all, and so forth<sup>113</sup> — as opposed to the land as a source of duty and meaning, or a category and character with, to return to Deloria, “the highest possible meaning.”<sup>114</sup> In these statutes, the rules and procedures governing the homes of millions, the land is reduced to the site of a disputed-over dwelling and/or a set of raw materials to be consumed for human ambition.

The freely contracting individual is, therefore, the cornerstone of landlord-tenant law.<sup>115</sup> In line with this principle, besides lease provisions that explicitly violate a statute, lease terms reign supreme in summary process. A violation of any such term, no matter how unfair or minuscule, or any contractual provision that stipulates that a lease or tenancy may terminate upon a certain action or inaction, exposes the tenant to the potential termination of their lease,<sup>116</sup> which is to say to the eventual eviction and expulsion from their homes enforced by the government.<sup>117</sup> This, the logic goes, is because both parties freely assented to the terms and penalties thereof, notwithstanding the often impractically high bar for a tenant to claim something like

<sup>111</sup> See DELORIA, *supra* note 81, at 68; Jennings, *supra* note 88, at 8.

<sup>112</sup> CONN. GEN. STAT. § 47-1 (2021).

<sup>113</sup> See *id.* § 47a-23(a) (“When the owner or lessor, or the owner’s or lessor’s legal representative, or the owner’s or lessor’s attorney-at-law, or in-fact, desires to obtain possession or occupancy of any land or building, any apartment in any building, any dwelling unit, any trailer, or any land upon which a trailer is used or stands, and . . . when a rental agreement or lease of such property, whether in writing or by parol, terminates . . . such owner or lessor . . . shall give notice to each lessee or occupant to quit possession or occupancy of such land, building, apartment or dwelling unit. . .”).

<sup>114</sup> DELORIA, *supra* note 81, at 61.

<sup>115</sup> See, e.g., Cohn v. Fennelly, 86 A.2d 183, 184 (Conn. 1952) (“A lease is a contract.”); see also Gateway Co. v. DiNoia, 654 A.2d 342, 348 (Conn. 1995) (“[A tenant’s] execution of the lease . . . creates privity of contract.”).

<sup>116</sup> See CONN. GEN. STAT. § 47a-15 (2021).

<sup>117</sup> *Id.* § 47a-42 (“[T]he possessions and personal effects of such defendant or other occupant may be removed by a state marshal, pursuant to [their] eviction . . .”).

unconscionability as an escape from those penalties.<sup>118</sup> The (initial) free choice to enter into a contract is elevated as the guiding light for summary process jurisprudence and its enforcement by the government.

However, in reality, this so-called freely contracting tenant is often little more than a legal fiction. Individual tenants, by definition, have very little bargaining power; the landlord owns a property, and the tenant needs somewhere to live. The cost of eviction to a tenant is of a different degree and kind to the cost to a landlord — potential homelessness versus needing to find another tenant, perhaps with some court costs and attorneys fees. And, if all else fails, and a tenant cannot be found, a landlord can sell the property to recoup some of their losses, if not at a net profit. Conversely, for a tenant, failing to come to an agreement with a landlord or find another place to live is potential physiological and financial ruin.<sup>119</sup> From the outset, then, the power differential between landlords and tenants is often drastic, and, as a result, tenants are regularly forced into exploitative lease agreements, rents they cannot afford, and substandard living conditions.<sup>120</sup> Further, these are compounding costs and power imbalances; for example, in the state of Connecticut, once filed in court, an eviction action can remain on that tenant’s record for at least a year or longer, even if the landlord

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<sup>118</sup> See, e.g., *Rockstone Capital, LLC v. Caldwell*, 261 A.3d 1171, 1177 (Conn. App. Ct. 2021) (“The doctrine of unconscionability, as a defense to contract enforcement, generally requires a showing that the contract was both procedurally and substantively unconscionable when made — i.e., some showing of an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party . . . .” (omission in original) (citing *Hirsch v. Woermer*, 195 A.3d 1182, 1188 (Conn. App. Ct. 2018))). This is a high bar indeed; under this standard, it is difficult to prove that a tenant who, like most tenants, approaches a landlord to rent from then as “an absence of meaningful choice.” Further, legally, whether something is “reasonable, or not depends on the status quo, or the “objective” perspective of an ordinary person in a similar situation. This shared situation is the capitalist, racist, anti-poor milieu and epistemological assumptions that saturate our lives, which place the average tenant — and especially multiple marginalized tenants — at a distinct disadvantage. See Chaumtoli Huq, *Teaching Contracts Through a Critical Race and Decolonial Framework, Part II*, CONTRACTSPROF BLOG (July 14, 2020), [https://lawprofessors.typepad.com/contractsprof\\_blog/2020/07/guest-post-by-chaumtoli-huq-part-ii-freedom-to-contract-and-the-reasonable-man.html](https://lawprofessors.typepad.com/contractsprof_blog/2020/07/guest-post-by-chaumtoli-huq-part-ii-freedom-to-contract-and-the-reasonable-man.html) [<https://perma.cc/VS6F-N8X7>]. Finally, even if a tenant were to prevail on a claim that a lease is unconscionable, the remedy in that case would be to release the parties from the obligations of that contract (that is, the lease) — an eventual eviction by another name. See CONN. GEN. STAT. ANN. § 42a-2A-107 (West 2017).

<sup>119</sup> See Clark Merrefield, *Eviction: The Physical, Financial and Mental Health Consequences of Losing Your Home*, JOURNALIST’S RES. (Oct. 15, 2021), <https://journalistsresource.org/economics/evictions-physical-financial-mental-health> [<https://perma.cc/LV45-U2BQ>].

<sup>120</sup> See, e.g., JEROME N. FRANK LEGAL SERVS. ORG., PREVENTING DISPLACEMENT: THREE APPROACHES TO PROTECT NEW HAVEN RESIDENTS 5–6 (2020), [https://law.yale.edu/sites/default/files/area/clinic/anti-displacement\\_proposals\\_report\\_may\\_2020.pdf](https://law.yale.edu/sites/default/files/area/clinic/anti-displacement_proposals_report_may_2020.pdf) [<https://perma.cc/85GA-HD4B>].

files a frivolous eviction or the tenant wins their case in court, making it more difficult to find another apartment.<sup>121</sup>

The commonly proposed and juridically backed solution to the problems unaddressed by the fallacy of free choice is an insistence on it: the so-called free market. Proponents of the privatized housing market argue that if one landlord is a bad actor, then their behavior is to their own peril because another, more reasonable and/or affordable landlord will take their place and their potential tenants. This, the neoclassical logic goes, should result in a stable equilibrium of housing prices, quality housing stock, and equitable housing policies — everyone wins.<sup>122</sup> As academics and nonacademics alike have observed, however, this formula has not materialized in reality,<sup>123</sup> including in Connecticut. Here, matching similar patterns across the country,<sup>124</sup> market-rate rents are at an all-time high and increasing,<sup>125</sup> housing segregation remains an enduring feature of civic life,<sup>126</sup> and corporate landlords can keep their tenants in squalor with little more than a slap on the wrist.<sup>127</sup> Despite these facts, the law bows to market forces as a sacred sovereign beyond meaningful critique or intervention, particularly through its gaps; in Connecticut law, there is no statute that governs how much rent can be charged, no explicit or real deterrent for bringing frivolous evictions, no statutory safety net for tenants being evicted, and little mercy for tenants who cannot keep the terms of their lease.<sup>128</sup>

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<sup>121</sup> See Cate Hewitt, *Surge in Eviction Filings Leaves Thousands Facing a Future of Diminished Housing Options*, CONN. EXAM’R (Feb. 15, 2022), <https://ctexaminer.com/2022/02/15/surge-in-eviction-filings-leaves-thousands-facing-a-future-of-diminished-housing-options> [<https://perma.cc/5HR2-MYXN>].

<sup>122</sup> See, e.g., Patrik Schumacher, *Only Capitalism Can Solve the Housing Crisis*, ADAM SMITH INST. (Apr. 25, 2018), <https://www.adamsmith.org/capitalismcansolvethethehousingcrisis> [<https://perma.cc/HB6V-AZQ8>]; see also WALTER BLOCK, *DEFENDING THE UNDEFENDABLE: THE PIMP, PROSTITUTE, SCAB, SLUMLORD, LIBELER, MONEYLENDER, AND OTHER SCAPEGOATS IN THE ROGUE’S GALLERY OF AMERICAN SOCIETY* 147–54 (2018).

<sup>123</sup> See, e.g., Robbie Nelson, *Capitalism Can’t Give Us Affordable Housing*, JACOBIN (Nov. 21, 2018), <https://jacobin.com/2018/11/capitalism-affordable-housing-rent-commodities-profit> [<https://perma.cc/NH6S-JFCN>]; see also DAVID MADDEN & PETER MARCUSE, *IN DEFENSE OF HOUSING* 46–50 (2016).

<sup>124</sup> Ashfaq Khan et al., *The Rental Housing Crisis Is a Supply Problem that Needs Supply Solutions*, CTR. FOR AM. PROGRESS (Aug. 22, 2022), <https://www.americanprogress.org/article/the-rental-housing-crisis-is-a-supply-problem-that-needs-supply-solutions> [<https://perma.cc/2RSK-9M28>].

<sup>125</sup> See *Fair Market Rents (40th Percentile Rents)*, HUD USER, <https://www.huduser.gov/portal/datasets/fmr.html> [<https://perma.cc/N9WT-4Q9M>].

<sup>126</sup> See, e.g., SUSAN EATON, *A STEADY HABIT OF SEGREGATION: THE ORIGINS AND CONTINUING HARM OF SEPARATE AND UNEQUAL HOUSING AND PUBLIC SCHOOLS IN METROPOLITAN HARTFORD, CONNECTICUT* 7–12 (2020), <http://www.prrac.org/pdf/hartford-segregation-report-2020.pdf> [<https://perma.cc/2WCK-QZW2>].

<sup>127</sup> See, e.g., Thomas Breen, *Ocean Landlord Fined \$3,750*, NEW HAVEN INDEP. (May 3, 2022, 7:58 PM), [https://www.newhavenindependent.org/article/aizenberg\\_housing\\_court](https://www.newhavenindependent.org/article/aizenberg_housing_court) [<https://perma.cc/S3GX-QVCY>].

<sup>128</sup> See *Rights and Responsibilities of Landlord and Tenant*, CONN. GEN. STAT. §§ 47a-1 to 47a-20f (2021).

Moreover, as many have studied in great detail, these, too, are deeply racialized dynamics, with Black and brown tenants being uniquely vulnerable to embedded inequities in the United States housing landscape.<sup>129</sup> This is, generally speaking, legal; in Connecticut, the law has not prohibited or effectively intervened in the circumstances that create these vulnerabilities, which is evident in, for example, the persistent housing segregation mentioned before and those sophisticated, systemic, so-called “soft,” legalized forms of discrimination that perpetuate it.<sup>130</sup> Poverty therefore becomes systematized, racialized, and quickly criminalized as impoverished, Black and brown neighborhoods in Connecticut and across the nation endure both the highest rates of evictions and some of the most violent and repressive police practices.<sup>131</sup> This is cyclical: the more police are present, the more crime they find, which leads to more police;<sup>132</sup> the fewer resources a community has, the more community members are pushed into criminalized means,<sup>133</sup> which can further endanger community investment;<sup>134</sup> the more poverty is in a neighborhood, the more vulnerable it is to economic exploitation and gentrification, which displaces and concentrates residents into other impoverished and exploited neighborhoods;<sup>135</sup> and so on. And, of course, all of these intersections of anti-Blackness and poverty further endanger the housing of tenants in these communities; as a note in Connecticut’s summary process statutes mentions, a “[t]enant cannot ‘repair’ a breach

<sup>129</sup> See, e.g., *Exposing Connecticut’s Eviction Crisis: Understanding the Intersection of Race and Sex in Connecticut’s Eviction Crisis*, CTDATA (2022), <https://www.ctdata.org/evictions-report> [<https://perma.cc/722Q-2E9A>].

<sup>130</sup> See NAT’L FAIR HOUS. ALL., *THE CASE FOR FAIR HOUSING: 2017 FAIR HOUSING TRENDS REPORT* 29–39 (2017), <https://nationalfairhousing.org/wp-content/uploads/2017/07/TRENDS-REPORT-2017-FINAL.pdf> [<https://perma.cc/G2V4-V6VF>].

<sup>131</sup> See *Exposing Connecticut’s Eviction Crisis: Understanding the Intersection of Race and Sex in Connecticut’s Eviction Crisis*, *supra* note 129; Dave Collins, *Connecticut Releases Police Use-of-Force Data for 1st Time*, AP NEWS (Aug. 18, 2022), <https://apnews.com/article/police-race-and-ethnicity-connecticut-reform-hartford-c5cf91c4da409e3a0dfb1cdf7d2177d4> [<https://perma.cc/32A3-86YM>]; see also Peter Hepburn et al., *Racial and Gender Disparities Among Evicted Americans*, EVICTION LAB (Dec. 16, 2020), <https://evictionlab.org/demographics-of-eviction> [<https://perma.cc/26KC-82HC>]; Elise C. Boddie, Essay, *Racially Territorial Policing in Black Neighborhoods*, 89 U. CHI. L. REV. 478, 482–86 (2022).

<sup>132</sup> See DAVID A. HARRIS, *PROFILES IN INJUSTICE: WHY RACIAL PROFILING CANNOT WORK* 224 (2002).

<sup>133</sup> See Douglass L. Yearwood & Gerry Koinis, *Revisiting Property Crime and Economic Conditions: An Exploratory Study to Identify Predictive Indicators Beyond Unemployment Rates*, 48 SOC. SCI. J. 145, 154 (2010).

<sup>134</sup> See, e.g., Michael C. Lens & Rachel Meltzer, *Is Crime Bad for Business? Crime and Commercial Property Values in New York City*, 56 J. REG’L SCI. 442, 465–66 (2016); Muhammad Khalid Anser et al., *Dynamic Linkages Between Poverty, Inequality, Crime, and Social Expenditures in a Panel of 16 Countries: Two-Step GMM Estimates*, 9 J. ECON. STRUCTURES (2020).

<sup>135</sup> See Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631> [<https://perma.cc/H4GL-MFSR>].

of lease when the breach consists of drug related criminal activity.”<sup>136</sup> In other words, Connecticut statutes create the conditions for an essentially automatic eviction upon allegations of crime if a housing judge finds such allegations credible (and crime and credibility, to return to Douglass’s work, are always already racialized categories<sup>137</sup>). Put differently, these anti-Black outcomes, even if unintentional, steady the housing market in its current iterations and pathways, just as anti-Blackness in general lies at the core of and secures the state, the state’s sociopolitical order, and the psyche of its subject, as outlined in Part I.

In the aggregate, then, this collection of individual, ostensibly “free” choices protected or otherwise enabled by the law has led to an ongoing mass of evictions,<sup>138</sup> deepening cycles of inequality,<sup>139</sup> and persistent and deadly criminalization of the poor and the nonwhite<sup>140</sup> — profound unfreedom that those on the margins of society have supposedly chosen of their own free will. Importantly, this is not merely the free market and private economics gone awry or the law passively allowing the market to run wild. The situation outlined here is, paradoxically, a juridically enforced free market. Further, legislatively, Connecticut’s state and local governments actively encourage, solicit, and enable private development of “market-rate” housing, often a euphemism for luxury apartments with no upper bound to their rent.<sup>141</sup> With no alternatives created by law, most tenants therefore *must* participate in this privatized housing market in some way, which is to say the way assumed and enforced by law, or else risk homelessness and/or imprisonment. In other words, if a tenant does not pay their exorbitant rent or violates a provision of a legally permissible lease, even a coercive lease under the conditions described above, then, after the appropriate

<sup>136</sup> CONN. GEN. STAT. § 47a-15 note (2021) (citing *Hous. Auth. of Norwalk v. Brown*, 19 A.3d 252 (Conn. App. Ct. 2011)).

<sup>137</sup> Douglass, *supra* note 42.

<sup>138</sup> See Ginny Monk, *CT Eviction Filings on Track to Reach Highest Number in Years*, CT MIRROR (Mar. 21, 2022, 5:55 PM), <https://ctmirror.org/2022/03/21/ct-eviction-filings-on-track-to-reach-highest-number-in-years> [<https://perma.cc/BM48-R7U5>].

<sup>139</sup> See generally Matthew Desmond, *Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship*, MACARTHUR FOUND. (Mar. 2014), [https://www.macfound.org/media/files/hhm\\_research\\_brief\\_-\\_poor\\_black\\_women\\_are\\_evicted\\_at\\_alarming\\_rates.pdf](https://www.macfound.org/media/files/hhm_research_brief_-_poor_black_women_are_evicted_at_alarming_rates.pdf) [<https://perma.cc/84KS-AJ3V>] (on evictions and cyclical, racialized, and gendered poverty).

<sup>140</sup> See Abigail Higgins & Olúfémi O. Táíwò, *Enforcing Eviction*, THE NATION (Aug. 19, 2020), <https://www.thenation.com/article/society/police-eviction-housing> [<https://perma.cc/Q4BG-KKEM>].

<sup>141</sup> See Ginny Monk, *More than Half of Connecticut Towns Failed to Turn In Affordable Housing Plans; Advocates, Legislators Regrouping, “Let’s Hold the State’s Feet to the Fire,”* HARTFORD COURANT (June 6, 2022, 5:35 PM), <https://www.courant.com/news/connecticut/hc-news-towns-and-zoning-connecticut-20220606-vg6k7h6wfzeddkbv07fg4jrmjy-story.html> [<https://perma.cc/BB2F-K2GS>]; see also Thomas Breen, *“Inclusionary” Housing Law Passes*, NEW HAVEN INDEP. (Jan. 19, 2022), [https://www.newhavenindependent.org/article/inclusionary\\_zoning\\_3](https://www.newhavenindependent.org/article/inclusionary_zoning_3) [<https://perma.cc/CJ2P-P4QW>] (where New Haven passed an ordinance to provide tax abatements to developers building new developments with five to twenty percent affordable housing units depending on the location and size of the building, or, in other words, new developments with eighty to ninety-five percent market-rate housing).

summary process proceedings, a local housing judge will enter judgment for the landlord, and a judicial marshal will come to their apartment and tell them to leave. If they refuse, a police officer will force them to leave on the grounds of trespass, at gunpoint and in handcuffs if necessary.<sup>142</sup> The government will then document and broadcast both the eviction and the arrest records for all employers, landlords, and anyone else to see with a little research. And, if the eviction was wrongful and incorrectly decided, and if the tenant realizes it in time, the tenant is not allowed to appeal their case unless they can afford to tender to their landlord monthly use and occupancy payments (often the last agreed-upon rent) for the length of the appeal process.<sup>143</sup> This is the essence of neoliberalism as described by Kotsko and others: “Rather than simply getting the state ‘out of the way,’ [policymakers] both deployed and transformed state power, including the institutions of the welfare state, to reshape society in accordance with market models.”<sup>144</sup> Here, sovereignty is variously and in different permutations shared by state, market, and stratified society, which also legitimate themselves, one another, and the kind of world they (seek to) create, forcing faithful adherence to their principles and solutions. None of these in their current forms can exist without the others, and they work together to weave a canopy of legitimacy that both covers and gives rise to the governing sociopolitical order.

In sum, the landscape of housing law, and landlord-tenant law in particular, is textured by a political theology that casts the market, the state, and the kind of society that produces and is produced by both as the inherently legitimate, collective horizon of order for social life in the United States. As I have explored here, this political theology is grounded by imbricated and co-constituting logics and structures of anti-Indigeneity, anti-Blackness, and neoliberalism. Connecticut summary process jurisprudence is one of many examples of this theological framework, a framework “so wide, so comprehensive that it has disappeared, having expanded to cover the horizon of modernity itself”<sup>145</sup> — a powerful center of gravity around and into which tenants, landlords, legislators, and housing judges alike are made to revolve.

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<sup>142</sup> See, e.g., Tara O’Neill, *Westport Man Charged with Trespassing Twice in Two Days*, CTPOST (Oct. 2, 2017, 5:24 PM), <https://www.ctpost.com/policereports/article/Westport-man-charged-with-trespassing-twice-in-12243209.php> [<https://perma.cc/8HUU-KBJD>]. See generally Michael D. Gottesman, *End Game: Understanding the Bitter End of Evictions*, 8 CONN. PUB. INT. L.J. 1 (2008) (describing removal process after eviction in Connecticut).

<sup>143</sup> CONN. GEN. STAT. § 47a-35a (2021).

<sup>144</sup> KOTSKO, *supra* note 58, at 5.

<sup>145</sup> JENNINGS, *supra* note 77, at 38.

## IV.

My primary aim in this Essay has been to bear witness, to excavate some of those world-shattering dispositions that congeal into modern life, rather than to offer any particular solution to the myriad violences thereof, as deadly and unsustainable as they have shown themselves to be. But in the final analysis, I consider two alternatives, or, at least, alternative frames, from which to mount collective action and differently orient ourselves to the world and one another. Even briefly considered, these examples demonstrate that the conditions of mind and matter described in this Essay were and are not inevitable and that other ways of being are possible. The first example highlighted here is the Land Back movement (stylized here as “LANDBACK” in conformity with the official website<sup>146</sup>), a movement led by a coalition of Native American individuals and tribes to reclaim sovereignty over the lands appropriated from them by colonial powers. Importantly, LANDBACK also (re)claims a different kind of relationship to space and land — not of human-centered, unilateral rule, but of true partnership. In this brief analysis of LANDBACK, I have largely refrained from editorializing on the written materials quoted here so as to allow the movement’s demands as articulated on their website to speak for themselves. The second is the theoretical concept of “abolition geography” as coined and developed by Ruth Wilson Gilmore. For her, abolition geography serves as a framework through which one might rework the spatial regimes forged in and by racial capitalism, as a way of conceptualizing a landscape of freedom over, under, and against technologies of carcerality.

A. *LANDBACK*

According to their official website, “LANDBACK is a movement that has existed for generations with a long legacy of organizing and sacrifice to get Indigenous Lands back into Indigenous hands” and “a political framework that allows us to deepen the field of organizing movements working toward true collective liberation.”<sup>147</sup> Their manifesto reads:

IT IS THE RECLAMATION OF EVERYTHING STOLEN FROM  
THE ORIGINAL PEOPLES: LAND x LANGUAGE x CEREMONY x  
FOOD x EDUCATION x HOUSING x HEALTHCARE x  
GOVERNANCE x MEDICINES x KINSHIP

It is a relationship with Mother Earth that is symbiotic and just, where we have reclaimed stewardship.

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<sup>146</sup> LANDBACK, <https://landback.org> [<https://perma.cc/5KD6-BW7K>]

<sup>147</sup> *Id.*

It is bringing our People with us as we move towards liberation and embodied sovereignty through an organizing, political and narrative framework.

It is a long legacy of warriors and leaders who sacrificed freedom and life.

It is a catalyst for current generation organizers and centers the voices of those who represent our future.

It is recognizing that our struggle is interconnected with the struggles of all oppressed Peoples.

It is a future where Black reparations and Indigenous LANDBACK co-exist. Where BIPOC collective liberation is at the core.

It is acknowledging that only when Mother Earth is well, can we, her children, be well. It is our belonging to the land — because — we are the land.

We are LANDBACK!<sup>148</sup>

LANDBACK articulates a vision that is productively disruptive to that which is articulated in the political theology explored in this Essay. The premise and central demands of the movement are reclamation and justice, as opposed to the paradigm of conquest that occasions legitimacy in the United States. In contrast to abstract, Lockean ideals of a claim to a place based on “efficient” land use, LANDBACK heralds ideals of justice and liberation, not as abstract virtues, but as, in their words, an “embodied” ethic, grounded in material struggle and the legacy of ancestors engaging in the same. This is not a way of being that holds one group above all others or considers itself superior; instead, it contemplates and pushes toward solidarities with others, and it acknowledges shared struggles across differences for the sake of a better, more just way for all. In other words, LANDBACK, as a movement and a way of being, does not use alterity as grounds to kill, steal, and destroy, unlike Locke or the Supreme Court in *Johnson v. M’Intosh*. And, far from a relationship to the land characterized by humans’ “absolute and direct dominion” per Connecticut’s statutes<sup>149</sup> or a surrender of the land to the “free” market or its despotic state, LANDBACK champions a “symbiotic” relationship with the land flowing from kinship and shared being: “It is our belonging to the land — because — we *are* the land.”<sup>150</sup>

### B. “Abolition Geography”

Throughout her work, Gilmore analyzes the carceral state, the prison-industrial complex, and their various technologies of punishment and incarceration, arguing, like other scholars,<sup>151</sup> that they are

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<sup>148</sup> *LANDBACK Manifesto*, LANDBACK, <https://landback.org/manifesto> [<https://perma.cc/4ASW-HPQY>].

<sup>149</sup> See CONN. GEN. STAT. § 47-1 (2021).

<sup>150</sup> *LANDBACK Manifesto*, *supra* note 148 (emphasis added).

<sup>151</sup> See Jodi Melamed, *Racial Capitalism*, 1 CRITICAL ETHNIC STUDS. 76, 76–78 (2015).

intimately tied up in racial capitalism, which she uses as a description of all capitalism — particularly, as a “relation” in which “capitalism requires inequality and racism enshrines it.”<sup>152</sup> Specifically, though by no means an exhaustive accounting, this relationship between prisons and capitalism is evident in the various ways in which prisons are deployed to serve capital and protect its interests. For example, as Gilmore and others note, prisons fracture labor solidarity,<sup>153</sup> they serve as repositories for free and cheap labor for the state and corporations, and, increasingly, they produce profit by virtue of their very construction and filling.<sup>154</sup> And, of course, the nonwhite, and the Black and Native in particular, disproportionately suffer these capitalistic violences of incarceration<sup>155</sup> — per Gilmore, prisons function as a technology of the racialized enshrinement of the inequality that capitalism requires. Further, as scholars such as Douglass and Farley explain as mentioned above, the utility of these ties between carceral logics, race, and capitalism is not merely fiscal; rather, as gestured toward in Parts I and II, these connections also operate on the level of and in (anti-Black) grammars of feeling, reason, and existence — what some have referred to as the “libidinal economy.”<sup>156</sup>

Against this, Gilmore studies and advocates for the abolition of prisons. The struggle for prison abolition for her is inseparable from a grounded sense of space — “[a]ll liberation struggle is place-based liberation struggle. . . . Liberation struggle is specific to the needs and the struggles of people where they are, and that ‘where’ has many, many dimensions.”<sup>157</sup> These observations lead Gilmore to develop a concept she calls “abolition geography,” which “starts from the homely premise that freedom is a place”<sup>158</sup>:

Thus, abolition geography — how and to what end people make freedom provisionally, imperatively, as they imagine *home* against the disintegrating

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<sup>152</sup> Antipode Foundation, *Geographies of Racial Capitalism with Ruth Wilson Gilmore — An Antipode Foundation Film*, YOUTUBE, at 01:36 (June 1, 2020), <https://www.youtube.com/watch?v=2CS627aKrJI> [<https://perma.cc/76N2-RTPN>].

<sup>153</sup> See Adam D. Reich & Seth J. Prins, *The Disciplining Effect of Mass Incarceration on Labor Organization*, 125 AM. J. SOCIO. 1303, 1304 (2020).

<sup>154</sup> See KARA GOTSCH & VINAY BASTI, THE SENT’G PROJECT, CAPITALIZING ON MASS INCARCERATION: U.S. GROWTH IN PRIVATE PRISONS 11 (2018), <https://www.sentencingproject.org/publications/capitalizing-on-mass-incarceration-u-s-growth-in-private-prisons/#IV.%20Private%20Contractors%20and%20their%20Expanding%20Reach> [<https://perma.cc/W5A9-C3M5>].

<sup>155</sup> See Leah Wang, *The U.S. Criminal Justice System Disproportionately Hurts Native People: The Data, Visualized*, PRISON POL’Y INITIATIVE (Oct. 8, 2021), <https://www.prisonpolicy.org/blog/2021/10/08/indigenouspeoplesday> [<https://perma.cc/EE7S-PNKS>]. See generally ASHLEY NELLIS, THE SENT’G PROJECT, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS (2021), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons> [<https://perma.cc/KXQ2-6GAP>] (on the relationship between racial hierarchy and incarceration rates).

<sup>156</sup> See AFROPESSIMISM: AN INTRODUCTION 7 & n.1 (2017).

<sup>157</sup> Antipode Foundation, *supra* note 152, at 09:23.

<sup>158</sup> Gilmore, *supra* note 9, at 227.

grind of partition and repartition through which racial capitalism perpetuates the means of its own valorization. . . . In other words, it's a way of studying, and of doing political organizing, and of being in the world, and of worlding ourselves.<sup>159</sup>

Engaging the work and praxis of such figures as Paul Gilroy, W.E.B. Du Bois, and Harriet Tubman, Gilmore argues that the Black Radical Tradition enacts and points toward this framework — a heuristic for an ongoing, experimental, and flexible push against the unfreedom wrought by the carceral, racial-capitalist sociopolitical order — and its resistance to the fracturing of community and coalition.<sup>160</sup> For her, freedom is a place to be imagined and reimaged, constructed and reconstructed, and freedom also happens *in* places. Abolition geography thus provides a conceptual, spatial frame through which one might dream and enact alternatives to the status quo and can be present to *where* those alternatives already are, even if in small spaces and moments.

To be sure, this is a methodology for strategic fightback against structures of oppression, but it is, like LANDBACK, also a vision for a different way of life, one closely related to geography in a way that might help sustain those under the boot of anti-Black, anti-Indigenous neoliberalism. It is a conception of home, a recasting of both our imaginative and geographical spaces that resists, as she terms it, the “partition and repartition” of space assumed and enabled in something like evictions, property sales, and “fee simple.” Instead, it envisions experimentation, solidarity, and collective work on and with the land, against the tyranny of the market-state and its racialized demands. Here, a person is not detached from space, free to arbitrarily abandon and appropriate it with no existential cost and little accountability to others; rather, community and the land beneath it are a primary concern, the source of political action, and the source and means of life-sustaining alternatives to and within an oppressive regime. In Gilmore’s words:

Put another way, abolition geography requires challenging the normative presumption that territory and liberation are at once alienable and exclusive — that they should be partitionable by sales, documents, or walls. Rather, by seizing the particular capacities we have, and repeating ourselves . . . we will, because we do, change ourselves and the external world. Even under extreme constraint.<sup>161</sup>

## CONCLUSION

This is an Essay about faith, not (only) the stuff of steeples and synagogues, but as an amalgamation of discourses and contestations about legitimacy, belonging, and world-forming. As I have suggested here, the concept and implementation of housing and the law that enforces it, as

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<sup>159</sup> *Id.* at 238.

<sup>160</sup> *Id.* at 236–38.

<sup>161</sup> *Id.* at 238.

powerful as they are, were and are not inevitable; they are the product of choices that flow from belief. The questions I have begun to articulate here center around making sense of how, which, and whose beliefs are operative in housing law, as well as what those beliefs enable and push us to do. But, more fundamentally, this Essay argues through its method that, if the political economy that textures our lives is theological — that is, a modality of belief — then belief is what must be engaged to effectively apprehend and, if possible, shift or destroy systems of power. In a sense, the foregoing may be understood as a call away from presumed, sovereignized rituals and idols, toward a better way: “[B]e it known to you, O king, that we will not serve your gods and we will not worship the golden statue that you have set up.”<sup>162</sup>

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<sup>162</sup> *Daniel* 3:18 (New Revised Standard Version).