

# Afrofuturism at Work: Critique & Praxis

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*During the early months of the COVID-19 pandemic, so-called essential workers from minoritized racial and ethnic groups were disproportionately subjected to workplace indignities that resembled, in the words of Keeanga-Yamahitta Taylor, a modern “Black plague.” Some observers expressed faith in existing corporate governance regimes, noting that many business leaders were steadily improving their management of competing stakeholder interests. Others, from essential workers to organized labor, demanded more stringent workplace regulations to combat irresponsible corporate behavior and limited worker bargaining power. However, a few turned to speculative fiction—such as Octavia Butler’s dystopian novel *Parable of the Sower*—for answers. For legal scholars, the fictional writings of Butler and other “Afrofuturist” literature—works that resurrect untold Black histories and imagine Black technocultural futures—not only contain plot elements that seemingly predict modern societal calamities but also offer pathways to reimagine law and political economy. This Essay provides two contributions to this emerging “Afrofuturism and the Law” movement.*

*First, this Essay advances an Afrofuturist legal critique of the modern workplace that challenges the form and function of business enterprises in advanced capitalist markets. Three themes of Afrofuturist literature ground this critique: (1) Afrofuturism calls for the disruption of elitist, identity-based hierarchies that undermine human dignity; (2) Afrofuturism urges the reformation of legal systems that foster alienation in political and economic society; and (3) Afrofuturism demands the abolition of hegemonic framings of the human condition that naturalize involuntary human sacrifice (both literal and figurative) in everyday life. Second, this Essay articulates an Afrofuturist legal praxis that emphasizes the dialogical, constitutive, and*

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*legitimizing nature of law. Afrofuturism's legal critique of the modern workplace suggests that business enterprises cannot simultaneously manage competing stakeholder interests and uphold worker dignity without reckoning with the alienation and human sacrifice that are endemic to capitalist economies.*

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*All we want do is take these chains off*  
*All we want do is take the chains of pain*  
*All we want do is be free*  
*All we want do is be free*

— J. Cole<sup>1</sup>

*If we don't watch out for ourselves, they will rob us, kill us, and maybe eat us.*  
*It's a world gone to hell, . . . and we've only got each other to keep it off us.*

— Octavia Butler<sup>2</sup>

## INTRODUCTION

It is the year 2024, and Lauren Oya Olamina's "world is falling apart."<sup>3</sup> Confined within a "walled fish-bowl cul-de-sac community" in Southern California where armed residents must keep watch for the lurking "street poor"—an "island surrounded by sharks"—Olamina witnesses the Golden State becoming "a carcass covered with too many maggots."<sup>4</sup> Powerful corporations treat the desperate working class as "more throwaways than slaves" that are "easy to replace."<sup>5</sup> "Debt slavery" is commonplace, "living skeletons" roam the streets alongside "thieves, rapists, and cannibals," and the "Crazies" have joined forces to "kill rich people. . . . sometimes they grab a rich guy and set him on fire."<sup>6</sup> The rich protect their "estates, enclaves, and businesses" with dogs and "private armies of security guards," and "there are at least two guns in every household."<sup>7</sup> Even as Olamina's father, a Baptist pastor, strives to hold their community together with Christian faith and mutual aid, Olamina has become convinced that the children of Los Angeles outside of their gated community have "nothing to look forward to."<sup>8</sup>

Octavia Butler's dystopic portrayal of twenty-first century America through the story of Lauren Olamina in her 1993 novel *Parable of the Sower* is hauntingly familiar.<sup>9</sup> Corporations in the United States have long attempted to balance maximizing shareholder value with minimizing social, political, and ecological harm. Despite good intentions, corporate decision-making has failed to decrease the concentration of poverty and wealth in the United States. Many U.S. corporations have opposed efforts to empower workers or mitigate climate change.

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1. J. COLE, *Be Free* (Dreamville Records 2014).

2. OCTAVIA E. BUTLER, *PARABLE OF THE SOWER* 286 (reissued 2019) (1993).

3. *Id.* at 275.

4. *Id.* at 9, 10, 12, 50.

5. *Id.* at 324.

6. *Id.* at 89, 110–11, 121, 289.

7. *Id.* at 39, 40, 117.

8. *Id.* at 7, 10, 15.

9. *Cf.* MIKE DAVIS, *CITY OF QUARTZ: EXCAVATING THE FUTURE IN LOS ANGELES* 224 (2018) ("In cities like Los Angeles, on the bad edge of postmodernity, one observes an unprecedented tendency to merge urban design, architecture and the police apparatus into a single, comprehensive security effort.").

Increasingly, corporate social responsibility (CSR) and environmental, social, and governance (ESG) reporting standards are touted as effective tools to steer corporate decision-making in the right direction.<sup>10</sup> However, CSR principles and ESG standards have failed to address the indignities experienced by “essential workers” in recent history, both during the COVID-19 pandemic and beyond.<sup>11</sup> Many U.S. firms committed to pursuing “purpose and profit”<sup>12</sup> have remained hostile to organized labor movements, while few have fully embraced cooperative ownership and governance schemes that empower workers.<sup>13</sup> Some U.S. firms have even criticized ESG reporting, arguing that it reflects the dawning of “woke capitalism” roused by the Movement for Black Lives.<sup>14</sup>

In *Parable of the Sower*, Octavia Butler paints a Black utopian vision of the future in a dystopian world overcome by socioeconomic insecurity, environmental chaos, and rampant violence. Lauren Olamina, the protagonist, is plagued by a rare health condition called “hyperempathy” that causes her to feel the physical sensations and emotions of others.<sup>15</sup> When her family and community are destroyed by violence and fire, Olamina journeys north for safety.<sup>16</sup> Along the way, she gathers a multiracial community of followers who are drawn to her new religious belief system, Earthseed. Among Earthseed’s core tenets is the idea that “God is change.”<sup>17</sup> Beyond delving into the challenges of survival and forming a community, Butler’s novel exposes humanity’s capacity to endure and evolve in the face of crippling adversity.

Even more, Butler’s novel exemplifies the prophetic vision of Afrofuturist literature. Coined by Mark Dery in 1994 to describe “[s]peculative fiction that treats

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10. ESG refers to a set of criteria used to evaluate a company’s performance across various environmental, social, and governance metrics with a goal of sustainability and positive social impact. CSR is a business model whereby a company takes voluntary actions alongside traditional profit-making goals to address social and environmental concerns and to contribute positively to society. See, e.g., Carl Hung, *Three Reasons Why CSR and ESG Matter to Businesses*, FORBES (Sept. 23, 2021, 8:15 AM), <https://www.forbes.com/sites/forbesbusinesscouncil/2021/09/23/three-reasons-why-csr-and-esg-matter-to-businesses/>.

11. See Mechele Dickerson, *Protecting the Pandemic Essential Worker*, 85 LAW & CONTEMP. PROBS. 177, 178 (2022); James J. Brudney, *Forsaken Heroes: COVID-19 and Frontline Essential Workers*, 48 FORDHAM URB. L.J. 1, 3 (2020); Polly Mosendz & Anders Melin, *Bosses Stretch the Definition of Who Is ‘Essential’ — and Workers Take the Risk*, BLOOMBERG (Apr. 9, 2020, 5:00 AM), <https://www.bloomberg.com/news/features/2020-04-09/are-you-an-essential-worker-in-the-pandemic-that-depends>.

12. See generally GEORGE SERAFEIM, *PURPOSE + PROFIT: HOW BUSINESS CAN LIFT UP THE WORLD* (2022) (discussing strategies that companies have adopted to simultaneously pursue profit-making and positive social impact).

13. See Matthew T. Bodie, *Labor Relations at the Woke Corporation*, 79 N.Y.U. ANN. SURV. AM. L. 171, 173–74, 196–97 (2023) (arguing that cooperative ownership and governance schemes are effective strategies to foster worker participation with companies).

14. For a discussion of woke capitalism, see generally Ross Douthat, *The Rise of Woke Capital*, N.Y. TIMES (Feb. 28, 2018), <https://www.nytimes.com/2018/02/28/opinion/corporate-america-activism.html>.

15. See BUTLER, *supra* note 2, at 11–12.

16. *Id.* at 169–70; see also Jerry Phillips, *The Intuition of the Future: Utopia and Catastrophe in Octavia Butler’s Parable of the Sower*, 35 NOVEL 299, 303 (2002).

17. See Phillips, *supra* note 16, at 303.

African-American themes and addresses African-American concerns in the context of twentieth century technoculture,<sup>18</sup> Afrofuturism builds upon a Black radical tradition of envisioning a future free of racial oppression. For example, in 1859, Martin R. Delany dramatized a worldwide slave revolt in *Blake; or, the Huts of America*.<sup>19</sup> By rejecting the assimilationist position of Frederick Douglass, Delany argued that Black utopia requires escape and self-rule.<sup>20</sup> In 1920, W.E.B. Du Bois explored the possibilities of a post-racist multiracial future in his short story, *The Comet*.<sup>21</sup> For Du Bois, as Alex Zamalin explains, interracial democracy requires a “willingness to challenge core suppositions about identity, community, and recognition.”<sup>22</sup> In the late twentieth century, the musician and poet Herman Blount, commonly known as Sun Ra, called for the reimagining of Blackness altogether, challenging dominant epistemologies of freedom, individuality, and futurity.<sup>23</sup> More recently, the movie *Black Panther* imagines a hidden sanctuary of high technological achievement in the fictional African nation of Wakanda, unspoiled by chattel slavery or colonial extraction.<sup>24</sup>

Octavia Butler builds upon this literary tradition in *Parable of the Sower*. Driven by a yearning for her readers “to consider alternative ways of thinking and doing,”<sup>25</sup> Butler exposes the dangers of deploying “neoliberal” market-based reforms to address the socioeconomic inequities that plague the U.S. political economy.<sup>26</sup> She also reveals how socially constructed categories like race or gender can erode the idea of collective democratic life.<sup>27</sup> Rather than predicting revolutionary political and economic transformation, Butler offers a “diminished utopianism” that pragmatically confronts the “deepening barbarism of our time.”<sup>28</sup> Even as Olamina’s Earthseed community aims to “take root among the stars,”<sup>29</sup> its members embrace violence and pledge fidelity to the dream of space colonization. In this way, Butler suggests that modern efforts to remedy social, economic, and ecological harms with lofty appeals to

18. Mark Dery, *Black to the Future: Interviews with Samuel R. Delany, Greg Tate, and Tricia Rose*, in *FLAME WARS: THE DISCOURSE OF CYBERCULTURE* 179, 180 (Mark Dery ed., 2d prtg. 1997) (1994).

19. MARTIN R. DELANY, *BLAKE; OR, THE HUTS OF AMERICA: A CORRECTED EDITION* (Jerome McGann ed., 2017) (1859).

20. See ALEX ZAMALIN, *BLACK UTOPIA: THE HISTORY OF AN IDEA FROM BLACK NATIONALISM TO AFROFUTURISM* 19 (2019).

21. W.E.B. DU BOIS, *The Comet*, in *DARKWATER: VOICES FROM WITHIN THE VEIL* 253 (1920).

22. ZAMALIN, *supra* note 20, at 51.

23. See *id.* at 99–108.

24. *BLACK PANTHER* (Marvel Studios 2018).

25. OCTAVIA E. BUTLER, *Positive Obsession*, in OCTAVIA E. BUTLER: *KINDRED, FLEDGLING, COLLECTED STORIES* 725, 731 (Gerry Canavan & Nisi Shawl eds., Libr. of Am. 2021) (1989).

26. See Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 *YALE L.J.* 1784, 1789 n.21 (2020) (“Neoliberalism is a mode of governance and legitimation that enforces specific distributions and configurations of ‘market discipline’ that support profits and managerial power over democratically determined social guarantees — for instance, labor market ‘liberalization,’ erosion of unions’ role in the economy, and rollbacks of social provision.”).

27. See Phillips, *supra* note 16, at 300.

28. *Id.* at 301.

29. BUTLER, *supra* note 2, at 85.

“creative capitalism” may not result in tangible changes to the lived experiences of everyday Americans.<sup>30</sup>

Butler’s critique of political economy mirrors a rich tradition of Black legal scholars who express concern about rising corporate profits alongside persistent poverty, food insecurity, and crime. Since at least the 1980s, critical race theorists such as Derrick Bell, Patricia Williams, and Kimberlé Crenshaw have applied an Afrofuturist lens to their analyses of U.S. law and political economy, exposing the embeddedness of racism and racialization in American society.<sup>31</sup> More recently, scholars such as Marissa Jackson Sow—building upon the work of philosopher Charles Mills, political theorist Cedric Robinson, and legal scholar Cheryl Harris, among others<sup>32</sup>—have argued that the social contract underpinning the U.S. rule of law is tethered to “an invisible common law that preserves control over property, capital, power, and contracting authority for those raced as white.”<sup>33</sup>

The emerging “Afrofuturism and the law” interdisciplinary movement offers a unique platform to investigate the political, social, and economic conditions that dominate the lives of disempowered, marginalized, and oppressed people.<sup>34</sup> By exposing the “hidden transcript” of minoritized racial and ethnic groups that resists depictions of the future as a majority White world,<sup>35</sup> Afrofuturism unsettles existing philosophies of being, denaturalizes commonplace human indignities, and prompts new utopic visions of the future. This Essay leverages insights from Octavia Butler’s *Parable of the Sower* to advance an Afrofuturist legal critique of the modern workplace that challenges the form and function of business enterprises in advanced capitalist markets. Three themes of Afrofuturist literature ground this critique.

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30. See generally Lisa M. Fairfax, *Stakeholderism, Corporate Purpose, and Credible Commitment*, 108 VA. L. REV. 1163 (2022) (arguing that there are tangible obstacles that stand in the way of corporations furthering the interests of all corporate stakeholders as well as broader society).

31. See *infra* Section III.A.

32. See CHARLES W. MILLS, *THE RACIAL CONTRACT* 3 (1st paperback, Cornell Paperbacks 1999) (1997) (arguing that White supremacy operates as a *global* political system, “a particular power structure of formal or informal rule, socioeconomic privilege, and norms for the differential distribution of material wealth and opportunities, benefits and burdens, rights and duties”). See generally CEDRIC J. ROBINSON, *BLACK MARXISM* (rev. & updated 3d ed. 2020) (1983); Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993).

33. Marissa Jackson Sow, *Whiteness as Contract*, 78 WASH. & LEE L. REV. 1803, 1811 (2022).

34. While race as a tool for human categorization is a social construction that too often essentializes and oversimplifies, racial categorizations are employed with tangible effect in the United States to exploit, suppress, and dehumanize subordinated populations. See MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 12–13 (3d ed. 2015). I use the racial term “Black” to describe individuals of African-American identification and members of other African diaspora cultures. I also frequently use the term “minoritized” rather than “minority” to describe how some cultural groups are pushed to the margins of society based upon racial, cultural, or other social categorizations, such as Hispanic/Latinx Americans, certain immigrants, and some religious groups.

35. See generally JAMES C. SCOTT, *DOMINATION AND THE ARTS OF RESISTANCE: HIDDEN TRANSCRIPTS* (1990).

First, Afrofuturists call for the disruption of elitist, identity-based hierarchies that undermine human dignity. In the Afrofuture,<sup>36</sup> the legacy of chattel slavery inspires an emphasis on workplace arrangements that recognize the inherent human dignity of all workers. Although the concept of human dignity is a hallmark of international human rights law, it remains undefined in U.S. constitutional jurisprudence.<sup>37</sup> Building upon three popular framings of dignity as a philosophical concept, this Essay defines human dignity as an ontological conception of the human condition that emphasizes: (1) the equal human opportunity to express inherent human capacities (dignity as equality); (2) free from the unjustified constraints of others (dignity as liberty); with (3) both equality and liberty for each person mutually reinforcing the full development of an integrated personhood (dignity as integrity).<sup>38</sup> Under this view, social organizational structures must respect the equal human dignity of all individuals who are governed by such regimes by not inhibiting their equality, liberty, and integrity. The Afrofuturist critique of the modern workplace reveals the importance of modern debates over the ownership of firms, the democratization of corporate governance, and the rights of labor unions.<sup>39</sup>

Second, Afrofuturists urge the reformation of legal systems that foster alienation in political and economic society. The concept of alienation, a mainstay of Marxist theories of law, claims that capitalist modes of production separate laborers from the means of production, thereby inhibiting the full development of their human capabilities.<sup>40</sup> Physical alienation from one's labor value often leads to a much deeper spiritual alienation from one's human potential, invoking the enduring existential question: what does it mean to be human? Whereas the U.S. Declaration of Independence declares that all people "are endowed by their Creator with certain unalienable rights,"<sup>41</sup> many American workers must alienate their right of self-governance in the scope of their employment. However, if the individual human right to self-governance can only be delegated in the workplace, and not alienated, as this Essay contends, then workplace arrangements that rent labor without providing meaningful opportunities for worker self-governance must be reformed.

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36. The term "Afrofuturity" describes a future where African-descended peoples actually exist as equally dignified humans. Often used interchangeably with the term Afrofuturism, the concept reflects futures that are inclusive, empowering, and reflective of Black culture, history, and aspirations.

37. See Darren Lenard Hutchinson, *Undignified: The Supreme Court, Racial Justice, and Dignity Claims*, 69 FLA. L. REV. 1, 5–6 (2017).

38. See generally Etienne C. Toussaint, *The Abolition of Food Oppression*, 111 GEO. L.J. 1043 (2023) (proposing this definition of human dignity as a legal concept, and building upon philosophical conceptions and U.S. constitutional jurisprudence).

39. See *infra* Section I.C.

40. See *infra* Sections I.B, II.A. This Essay's Afrofuturist legal critique and praxis embraces Marxist theories of law not as essential articulations of the modern political and economic order. Rather, Marxist legal scholarship offers generative frameworks to discern the shifting boundaries between the so-called economic and noneconomic. Defining such boundaries implicates the possibilities of deploying law for emancipatory struggle.

41. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

Third, Afrofuturists demand the abolition of hegemonic framings of the human condition that naturalize involuntary human sacrifice (both literal and figurative) in everyday life. By reclaiming marginalized Black histories and untold Black futures, the Afrofuturist critique of law and political economy promotes the recognition of marginalized populations, which is essential to their experience of human dignity.<sup>42</sup> In other words, conceptions of humanity that legitimate exploitation and marginalization in democratic life must be abolished before we can recognize one another as equally dignified humans deserving of integrity. Applied to the modern workplace, this view suggests that workplace arrangements that hinder individual autonomy, self-determination, and personal integrity in exchange for compulsory indignities must not be reformed, but *transformed* altogether.

This Essay's Afrofuturist critique of the modern workplace offers two critical insights for scholars. First, it suggests that liberal democracy and equal human dignity demand business enterprises further the cooperative and mutual benefit of the individuals who are governed by such social arrangements, including workers. To be sure, whether the cooperative ownership and management of firms or the collective bargaining rights of work councils and labor unions can resolve the indignities of modern capitalist economies is up for debate. There are numerous examples of union activities that hinder global efforts to protect human rights.<sup>43</sup> For abolitionists, capitalism does not offer a normative framework for firms to resolve the tradeoff dilemmas between competing stakeholder interests. For Afrofuturists, there remains hope in democracy to overcome capitalism's despair.

Second, this Essay models an Afrofuturist legal praxis that operates across three levels of abstraction: the individual, the collective, and the historical. This analytical method is premised on three claims about the nature of law and law reform: (1) the language of law reflects the cultural production of legal meaning (or law's dialectical nature); (2) the social and material conditions of political and economic society reflect, in part, the constitutive role of law (or law's constitutive nature); and (3) law's constitutive power produces essential legal relations that

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42. See Toussaint, *supra* note 38, at 1120 (defining "dignity-as-integrity" as when "a member of a society must not only possess certain material conditions to *act* human by pursuing individual well-being through human agency, but such a person must also possess certain material conditions to *feel* human by garnering a minimum level of social esteem, or respect, from their peers to affirm a self-perception of worthiness").

43. Compare G.A. Res. 217 (III) A, Universal Declaration of Human Rights, at pmb1., art. 1 (Dec. 10, 1948) (declaring "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" and "[a]ll human beings are born free and equal in dignity and rights"), with Daniel DiSalvo & Michael Oved, *Police Unions, Misconduct, and the Public*, CITY J. (Oct. 5, 2023), <https://www.city-journal.org/article/police-unions-misconduct-and-the-public> [<https://perma.cc/5XZG-P9Z9>] (explaining that some "[c]ritics of police unions . . . claim that, by shielding those guilty of misconduct, the unions serve to undermine police-community relations" and harm the public).



define human social existence in historically specific ways (or law's legitimating nature).<sup>44</sup>

This Essay proceeds as follows. Part I exposes how the nature of capitalist markets and the culture of the modern workplace constitute the legal meaning of human dignity in the U.S. political economy. Next, Part II reveals how the ordering and ideological power of law in capitalist economies produces the alienation that many workers experience in everyday political and economic life. Finally, Part III argues that a neoliberal framing of the role of government and the nature of humanity under capitalism naturalizes involuntary human sacrifice in capitalist economies as an essential legal relation. In so doing, such laws and political economies further antidemocracy by disempowering workers in spaces where political agency should be exercised and enjoyed, namely the workplace.

### I. ON DIGNITY

The Afrofuturist critique of law begins by uprooting marginalized voices in the history of legal discourse to reveal the cultural production of legal meaning and the historical contingency of modern legal concepts. Consider the political concept of liberty enshrined in the Declaration of Independence, which clashed with the reality of chattel slavery during the founding of the United States. While Thomas Jefferson embraced natural law theory's commitment to unalienable rights and equal human dignity, he also enslaved nearly 200 Black people at the time of the Revolutionary War.<sup>45</sup> The gradual nature of abolition in the young republic reflected the way slavery had come to define not only Southern life on plantations, but also the social, political, and economic life of Northern states.<sup>46</sup> Even after the abolition of chattel slavery by the Thirteenth Amendment,<sup>47</sup> it remained unclear to the Reconstruction Congress what *freedom* meant for emancipated Black Americans.<sup>48</sup> As Lewis Gordon argues, liberty does not necessarily imply freedom.<sup>49</sup>

This Part begins in Section I.A by exploring how the "language of the law" and its relationship to political economy are shaped by democratic cultural discourse,<sup>50</sup> political debates about what it means to live a good life. The legal

44. A full discussion of Afrofuturism as a legal praxis is beyond the scope of this Essay, but the author will explore such implications in future work.

45. See PAUL FINKELMAN, *SLAVERY AND THE FOUNDERS: RACE AND LIBERTY IN THE AGE OF JEFFERSON* 134 (2d ed. 2001).

46. See ARTHUR ZILVERSMIT, *THE FIRST EMANCIPATION: THE ABOLITION OF SLAVERY IN THE NORTH* 139 (1967).

47. U.S. CONST. amend. XIII.

48. See generally KATE MASUR, *UNTIL JUSTICE BE DONE: AMERICA'S FIRST CIVIL RIGHTS MOVEMENT, FROM THE REVOLUTION TO RECONSTRUCTION* (2021).

49. See generally Lewis R. Gordon, *A Black Existential Perspective on Afrofuturity and the Law*, 112 *GEO. L.J.* 1409 (2024).

50. According to William Forbath, "The language of the law, along with other discourses of the powerful, lays down the very terms within which subordinate groups are able to experience the world and articulate their aspirations." WILLIAM E. FORBATH, *LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT* 170 (1991).

meaning of liberty in capitalist economies reflects discrete viewpoints about the human dignity of workers. Section I.B describes how democratic cultural discourse is influenced by the dominant social practices, cultural beliefs, and collective experiences that define modern democratic life. Finally, Section I.C discusses how the concept of liberty in the modern workplace, at both the individual worker and collective workforce levels, has impacted the lived experiences of Black Americans throughout U.S. history.

#### A. THE LANGUAGE OF LAW

Far more than simply abolishing the practice of enslaved labor and indentured servitude in the United States, the Thirteenth Amendment's Enforcement Clause indicated a desire among members of the Reconstruction Congress to resolve the inherent conflict between political liberalism and chattel slavery.<sup>51</sup> This moral conflict had produced a political and economic system that undermined the human dignity of enslaved and free Black people, alongside White abolitionists.<sup>52</sup> As Frederick Douglass declared, "A man, without force, is without the essential dignity of humanity. Human nature is so constituted, that it cannot honor a helpless man, although it can pity him . . . ."<sup>53</sup> Law often rendered Black people helpless against the forces of White supremacy in the Antebellum era. But what does it mean for a man or woman to enjoy the essential dignity of humanity, such that they not only experience "the dignity of being a freeman," but also "the dignity of striving to be free"?<sup>54</sup>

Members of the Reconstruction Congress generally agreed that a fundamental duty of government is to protect citizens from institutions and systems that infringe on political liberties.<sup>55</sup> However, they were divided on what such protection demanded of the U.S. government for formerly enslaved Black Americans. Most members, such as Representative John Bingham and Senator Henry Wilson, adopted a "labor theory" of the Thirteenth Amendment,<sup>56</sup> viewing it as

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51. Section 2 of the Thirteenth Amendment provides that "Congress shall have power to enforce this article by appropriate legislation." U.S. CONST. amend. XIII, § 2; see also Dorothy E. Roberts, *The Supreme Court, 2018 Term—Foreword: Abolition Constitutionalism*, 138 HARV. L. REV. 1, 63 (2019) ("The language of the Fourteenth Amendment can be traced to specific speeches and writings of leading antislavery advocates who developed an abolition constitutionalism in the preceding decades.").

52. See Robert J. Kaczorowski, *Revolutionary Constitutionalism in the Era of the Civil War and Reconstruction*, 61 N.Y.U. L. REV. 863, 866–67 (1986) ("The most important question for the framers [of the Reconstruction Amendments] was whether the national or the state governments possessed primary authority to determine and secure the status and rights of American citizens.").

53. FREDERICK DOUGLASS, *MY BONDAGE AND MY FREEDOM* 246–47 (1855) (emphases omitted).

54. Frederick Douglass, *Citizenship and the Spirit of Caste: An Address Delivered in New York, New York, on May 11, 1858* (May 11, 1858) (transcript available at <https://frederickdouglasspapersproject.com/s/digitaledition/item/8876> [<https://perma.cc/QSH3-NF3U>]); see also Nicholas Buccola, "The Essential Dignity of Man as Man": *Frederick Douglass on Human Dignity*, 4 AM. POL. THOUGHT 228, 249 (2015).

55. See Theodore Dwight Weld, *The Power of Congress over the District of Columbia*, N.Y. EVENING POST, reprinted in THEODORE DWIGHT WELD, *THE ANTI-SLAVERY EXAMINER: THE POWER OF CONGRESS OVER THE DISTRICT OF COLUMBIA* 3, 43–44 (4th ed. 1838).

56. Rebecca E. Zietlow, *James Ashley's Thirteenth Amendment*, 112 COLUM. L. REV. 1697, 1701 (2012).

abolishing all coercive, exploitative, and oppressive workplace conditions.<sup>57</sup> A few members, such as Representative John F. Farnsworth of Illinois<sup>58</sup> and Senator James Harlan of Iowa,<sup>59</sup> advanced a more progressive “equal rights theory” of the Amendment,<sup>60</sup> arguing that the law needed to protect Black people from social, political, and economic systems of White domination (for example, the court system, the educational system, the real property system) that infringed upon Black people’s political equality and degraded their equal citizenship.<sup>61</sup>

Some went even further, such as Representatives Schuyler Colfax of Indiana and James Ashley of Ohio, who urged Congress to use its powers under the Enforcement Clause to affirmatively grant Black people social and economic liberties.<sup>62</sup> The dismantling of the Bureau of Refugees, Freedmen, and Abandoned Lands at the end of Reconstruction<sup>63</sup>—a government agency designed to empower the individual autonomy of marginalized Americans after the Civil War by providing “food, shelter, clothing, medical services, and land to displaced Southerners, including newly freed African Americans”<sup>64</sup>—signaled a dominant cultural view that human dignity did not require equity, merely the opportunity for social equality.

U.S. law has never provided a cohesive rule or analytical framework to characterize the loss of human dignity experienced by enslaved (and free) Americans

57. CONG. GLOBE, 39th Cong., 1st Sess. 343 (1866) (statement of Sen. Henry Wilson) (“[W]e have advocated the rights of the black man because the black man was the most oppressed type of the toiling men of this country.”); CONG. GLOBE, 34th Cong., 3d Sess. app. 140 (1857) (statement of Rep. John Bingham) (arguing that “no man shall be wrongfully deprived of the fruit of his toil any more than of his life”).

58. CONG. GLOBE, 38th Cong., 2d Sess. 200 (1865) (statement of Rep. John Farnsworth) (“What vested rights so high or so sacred as a man’s right to himself, to his wife and children, to his liberty, and to the fruits of his own industry? Did not our fathers declare that those rights were inalienable? And if a man cannot himself alienate those rights, how can another man alienate them without being himself a robber of the vested rights of his brother-man?”).

59. CONG. GLOBE, 38th Cong., 1st Sess. 1439–40 (1864) (statement of Sen. James Harlan).

60. See Zietlow, *supra* note 56, at 1707.

61. See ALEXANDER TESIS, *THE THIRTEENTH AMENDMENT AND AMERICAN FREEDOM: A LEGAL HISTORY* 97 (2004); William M. Carter, Jr., *Race, Rights, and the Thirteenth Amendment: Defining the Badges and Incidents of Slavery*, 40 U.C. DAVIS L. REV. 1311, 1324 & n.33 (2007); Priscilla A. Ocen, *Punishing Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners*, 100 CALIF. L. REV. 1239, 1297 (2012) (arguing that, during the Reconstruction Era, “Congress understood that reproductive subordination and exploitation were constitutive elements of slavery and that racialized policies that touch on reproductive capacity could constitute badges or incidents of slavery”).

62. See Alexander Tesis, *Interpreting the Thirteenth Amendment*, 11 J. CONST. L. 1337, 1339 (2009); Zietlow, *supra* note 56, at 1717 (quoting James Ashley stating, “[O]ur system of free labor, guaranteed by the national Constitution to all generations of men, with free schools and colleges, and a free press, with churches no longer fettered with the manacles of the slave-master, with manufactures and commerce exceeding in vastness anything which had ever been known, and a nation unrivaled in culture, enterprise, and wealth . . . because of the constitutional guarantee of the government to protect the rights of all and secure the liberty and equality of the people . . .” (alteration and omissions in original)).

63. See *Freedmen’s Bureau Acts of 1865 and 1866*, U.S. SENATE, <https://www.senate.gov/artandhistory/history/common/generic/FreedmensBureau.htm> [<https://perma.cc/9R4W-36BX>] (last visited May 13, 2024).

64. *Id.*

during the Antebellum era. Yet, the philosophical concept animates modern political and economic debates. The word dignity—derived from the Latin *dignus*—connotes a state of being worthy or honored, of bearing a value that has no equivalent.<sup>65</sup> While many Enlightenment-era thinkers, such as John Locke and Adam Smith, associated human dignity with institutional office and social rank,<sup>66</sup> it is the concept of human dignity evoked by Immanuel Kant that perhaps best embodies the egalitarian and humanistic ideals of Western liberal democratic governments.<sup>67</sup> For Kant, the human capacity to exercise free will by using practical reason distinguishes humans from nonhuman animals and nature, which are governed by material causality.<sup>68</sup> This distinguishing feature of humanity, Kant argued, establishes the foundations of moral philosophy—the usage of reason to direct human agency toward ends that conform with universal moral laws.<sup>69</sup> Humanity, as an end in itself, is the “supreme limiting condition” on all other ends.<sup>70</sup> Contrary to Thomas Hobbes, who claimed that the ancient practice of enslaving prisoners of war embodied an implicit voluntary slave contract between the enslaver and the prisoner,<sup>71</sup> Kant argued that human autonomy can never be traded in the marketplace; the worth of human dignity is beyond price.<sup>72</sup>

65. See Aurel Kolnai, *Dignity*, 51 PHIL. 251, 251 (1976).

66. See William Uzgalis, *John Locke*, STAN. ENCYC. PHIL. ARCHIVE (July 7, 2022), <https://plato.stanford.edu/archives/fall2022/entries/locke/> [<https://perma.cc/PK67-FM3M>]; Samuel Fleischacker, *Adam Smith's Moral and Political Philosophy*, STAN. ENCYC. PHIL. ARCHIVE (Nov. 11, 2020), <https://plato.stanford.edu/archives/win2020/entries/smith-moral-political> [<https://perma.cc/6CUN-VT8R>]; Remy Debes, *Adam Smith on Dignity and Equality*, 20 BRIT. J. FOR HIST. PHIL. 109, 110 (2012) (“For Smith, the term ‘dignity’ expresses either the notion of social rank or the virtue of self-command . . .”); Michael Zuckert, *Human Dignity and the Basis of Justice: Freedom, Rights, and the Self*, HEDGEHOG REV., Fall 2007, at 32, 40 (“Locke understands ‘human dignity’ as a distinctive quality . . . related intimately to virtue, that is, the excellence of a human being.”).

67. See generally IMMANUEL KANT, *GROUNDWORK OF THE METAPHYSICS OF MORALS* (Mary Gregor ed. & trans., Cambridge Univ. Press 11th prtg. 2006) (1785). To be sure, there are alternative conceptions of human dignity outside of the Western liberal tradition. A review of such views is beyond the scope of this Essay. See generally Jack Donnelly, *Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights*, 76 AM. POL. SCI. REV. 303, 306–311 (1982) (analyzing conceptions of human dignity and the meaning of human rights across Africa and in countries like China and India).

68. See KANT, *supra* note 67, at 24 (“Everything in nature works in accordance with laws. Only a rational being has the capacity to act in accordance with the representation of laws, that is, in accordance with principles, or has a will. Since reason is required for the derivation of actions from laws, the will is nothing other than practical reason.” (emphases omitted)).

69. See *id.* at 52–53.

70. *Id.* at 39. Kant articulates humanity as capturing both the subjective side of man’s rationality, an ability to assign value to goods outside of the self, and man’s ability to recognize the objective value of his worth by applying universal laws that apply equally to all. See *id.* at 37–38.

71. 2 THOMAS HOBBS, *LEVIATHAN* 176–77 (Continuum Int’l Publ’g Grp. 2005) (1651) (“If a Subject be taken prisoner in war; or his person, or his means of life be within the Guards of the enemy, and hath his life and corporall Libertie given him, on condition to be Subject to the Victor, he hath Libertie to accept the condition; and having accepted it, is the subject of him that took him; because he had no other way to preserve himselfe.”).

72. KANT, *supra* note 67, at 42 (“What is related to general human inclinations and needs has a market price; that which, even without presupposing a need, conforms with a certain taste, that is, . . . has a fancy price; but that which constitutes the condition under which alone something can be an end in itself has not merely a relative worth, that is, a price, but an inner worth, that is, *dignity*. . . . [M]orality,

Kant further contended that humans identify universal moral laws by submitting their will to an implicit “categorical imperative,” or unconditional rules that must be obeyed whenever human ends are pursued.<sup>73</sup> Kant’s second formulation of the categorical imperative clarifies the relationship between human dignity and liberty in the workplace. According to Kant, one must “[s]o act that [they] use humanity, whether in [their] own person or in the person of any other, always at the same time as an end, never merely as a means.”<sup>74</sup> In other words, every person who exercises free will must not use their own humanity or that of another instrumentally. Rather, they must respect the individual autonomy of humanity as intrinsically valuable. The practice of debt slavery, for example, violates this definition of the categorical imperative. As Octavia Butler reveals in *Parable of the Sower*, debt slavery not only exploits the laborer for the profit-making ends of the enslaver but also denies the worker’s inherent right to earn sufficient material resources to pursue self-directed ends.<sup>75</sup> Meanwhile, business owners and wealthier citizens who reap the benefits of labor exploitation enjoy a life of leisure and security.

The Afrofuturist critique extends Kant’s concept of “dignity-as-liberty”<sup>76</sup> by highlighting leisure as a key end of labor in the workplace. Unlike toil, leisure—drawing upon Aristotle’s conception of the Greek word *scholē*, which is usually translated as leisure—characterizes the personal development of the human spirit and the collective development of civilization.<sup>77</sup> As Louis O. Kelso and Mortimer J. Adler argued, “[M]an has no special dignity as a producer of subsistence or wealth, but only as a user of wealth for the sake of specifically liberal activities productive of the goods of the spirit and of civilization.”<sup>78</sup> While some low-wage

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and humanity insofar as it is capable of morality, is that which alone has *dignity*.” (emphases omitted, second emphasis added) (footnote omitted)).

73. See Tim Jankowiak, *Immanuel Kant*, INTERNET ENCYC. PHIL., <https://iep.utm.edu/kantview/> [<https://perma.cc/KU67-S4XA>] (last visited May 13, 2024).

74. KANT, *supra* note 67, at 38.

75. As argued *infra*, Butler’s view accords with the Marxist critique of political economy in important ways. See, e.g., KARL MARX, *GRUNDRISSE: FOUNDATIONS OF THE CRITIQUE OF POLITICAL ECONOMY* 488 (Martin Nicolaus trans., Random House 1973) (1857) (“[T]his complete working-out of the human content appears as a complete emptying-out, this universal objectification as total alienation, and the tearing-down of all limited, one-sided aims as sacrifice of the human end-in-itself to an entirely external end.”); Ben Burgis, *Karl Marx Was Right: Workers Are Systematically Exploited Under Capitalism*, JACOBIN (June 11, 2022), <https://jacobin.com/2022/06/karl-marx-labor-theory-of-value-gacohen-economics> [<https://perma.cc/9PZ3-VAJR>] (explaining that “Marx’s key analytic point is that mainstream economists who ignore the class antagonism at the heart of capitalism are obscuring a central element. Under feudalism, the direct producers (peasants) are clearly forced into giving up some of their ‘surplus labor’ (the time they spend working but not to meet their own needs) to the ruling class. The coerced transfer is out in the open. Under capitalism, the immediate producers (workers) are legally free to make contracts with anyone or — if they’re willing to simply go hungry — no one. The coercion is disguised.”).

76. See Toussaint, *supra* note 38, at 1108.

77. See generally Kostas Kalimtzis, *Aristotle on Scholē and Nous as a Way of Life*, 40 J. PHIL. RSCH. 131 (2015). The word *scholē* is also where the English word “school” originates. See *School*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/school> [<https://perma.cc/SHY9-RN77>] (last visited May 13, 2024).

78. LOUIS O. KELSO & MORTIMER J. ADLER, *THE CAPITALIST MANIFESTO* 34 (1958).

labor merely provides goods necessary for human subsistence, or “goods of the body” (such as health, physical strength, and athletic ability), work that provides higher order goods necessary for human happiness and social development, or “goods of the soul” (such as virtue, knowledge, and friendship), can be viewed as leisure or pathways toward the experience of leisure.<sup>79</sup> However, one’s access to leisure work is shaped by cultural discourses about liberty in the workplace.

According to cultural studies scholars, shifting cultural beliefs about what it means to live a good life are socially “produced, performed, contested, or transformed.”<sup>80</sup> Cultural practices express discrete meanings, values, and preferences that are conveyed by everyday social signifiers and symbols, which are constantly in flux.<sup>81</sup> Indeed, legal culture can be viewed as the byproduct of cultural discourses about law that shift and are shifted by cultural beliefs about political concepts like liberty, equality, citizenship, rights, and security. As Robin West explains, law can be oppositional—seeking to “contain, minimize, censor, or neutralize culture . . . particularly a culture that threatens mainstream values”—or accommodational—“by protecting [cultures or subcultures] against the machinery of ordinary law, carving exceptions to general rules so as to protect the insularity and identity of a preferred group.”<sup>82</sup> The Afrofuturist critique of the workplace urges us to consider whether voices from the African diaspora that express discrete cultural beliefs about the nature of liberty in the modern workplace have been contained or accommodated.

#### B. SOCIAL PRACTICE AND CULTURAL DISCOURSE

Before the Industrial Revolution, wealthy property owners were more likely to pursue leisure work than non-propertied workers,<sup>83</sup> often benefiting from the toil of enslaved laborers. Technological innovation now promises a world where the pursuit of leisure can become a reality for most, if not all, people.<sup>84</sup> However, the ability to pursue the goods of the soul in our modern era remains constrained by “the spirit of capitalism.”<sup>85</sup> American culture views hard work and capital accumulation as signs of progress. As a result, Americans are leveraging technology

79. Panayiotis Kapetanakis, *Aristotle on Wealth-Acquisition: Ethical, Economic and Political Issues* 51–52 (2018) (Ph.D. thesis, University of Edinburgh), <https://era.ed.ac.uk/bitstream/handle/1842/36037/Kapetanakis2019.pdf?sequence=1&isAllowed=y> [<https://perma.cc/B7T9-AK8X>].

80. See Naomi Mezey, *Law as Culture*, 13 *YALE J.L. & HUMANS* 35, 42 (2001).

81. See *id.* (referencing the work of cultural historian William H. Sewell, Jr.).

82. See Robin West, *Literature, Culture, and Law at Duke University*, in *TEACHING LAW AND LITERATURE* 98, 104–05 (Austin Sarat et al. eds., 2011).

83. See Gary Gutting, *What Work Is Really for*, *N.Y. TIMES* (Sept. 8, 2012, 3:00 PM), <https://archive.nytimes.com/opinionator.blogs.nytimes.com/2012/09/08/work-good-or-bad/>.

84. See generally Janna Anderson & Lee Rainie, *Artificial Intelligence and the Future of Humans*, *PEW RSCH. CTR.* (Dec. 10, 2018), <https://www.pewresearch.org/internet/2018/12/10/artificial-intelligence-and-the-future-of-humans/> [<https://perma.cc/R7ZG-7HUJ>] (discussing developments in artificial intelligence).

85. See generally MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* (Talcott Parsons trans., Taylor & Francis 2005) (1904).

to work longer and harder than ever before.<sup>86</sup> Scholars have long debated the relationship between the structure of a state's economy and the spirit of its citizenry.

Hegel posited that the state, as the product of an evolved consciousness, is the “ethical spirit as the substantial will manifest and clear to itself, knowing and thinking itself, accomplishing what it knows and insofar as it knows it.”<sup>87</sup> In other words, the structure of the state's marketplace for economic exchange should reflect the collective will of its people, what Jean-Jacques Rousseau called the “general will.”<sup>88</sup> Conversely, Karl Marx portrayed the evolution of history as a function of material forces in society that privilege some interests over others.

Marx developed a class-based analysis of human development consisting of a bourgeois property-owning class and a proletarian laboring class. Capitalists leverage the state's legal system of contract and property to extract value from wage-dependent laborers and generate private profits. To overcome the exploitation of labor value, Marx called for class consciousness to revolutionize existing market structures, abolish private property, and overcome capitalism's “human self-estrangement.”<sup>89</sup> Alienated from their essence as dignified human beings, the proletariat are unfree to enjoy the goods of the body and the soul. Marx explains that the “systematic and hierarchic division of labour” characteristic of capitalist modes of production inhibits the full development of human capabilities, or the fullest expression of human dignity.<sup>90</sup> Instead, many people come to view work merely as a steppingstone toward the acquisition of material needs.<sup>91</sup> When productive labor is defined as work that generates material wealth, it diminishes the wide range of human activities that further human social relations in nonmonetary terms, such as education, birthing, and caretaking.<sup>92</sup>

Marx saw communism as the solution to capitalism's workplace alienation: a classless society that might serve as “the genuine resolution of the conflict between man and nature and between man and man—the true resolution of the

86. See Gutting, *supra* note 83.

87. G.W.F. HEGEL, *OUTLINES OF THE PHILOSOPHY OF RIGHT* 228 (Stephen Houlgate ed., T. M. Knox trans., Oxford Univ. Press 2008) (1820).

88. See Sipiwe Ndlovu, *The Concept of Alienation in the Work of Frantz Fanon* 120 (May 17, 2017) (Ph.D. thesis, University of Kwazulu-Natal), [https://researchspace.ukzn.ac.za/bitstream/handle/10413/16254/Ndlovu\\_Sipiwe\\_2017.pdf?sequence=1](https://researchspace.ukzn.ac.za/bitstream/handle/10413/16254/Ndlovu_Sipiwe_2017.pdf?sequence=1) [<https://perma.cc/58A5-S8FJ>] (noting that in Rousseau's social contract theory, “his condition in the state of nature necessitates the formation of a political community to rationalize the collective good. In forming a political community, however, individuals surrender something of themselves to the general will.”).

89. KARL MARX, *ECONOMIC AND PHILOSOPHIC MANUSCRIPTS OF 1844*, at 102 (Martin Milligan ed. & trans., Dover Publications 2007) (1961) (“Communism as the positive transcendence of private property, as human self-estrangement, and therefore as the real appropriation of the human essence by and for man; communism therefore as the complete return of man to himself as a social (i.e., human) being . . .” (emphases omitted)).

90. See Bruno Leipold, *Marx's Social Republic: Radical Republicanism and the Political Institutions of Socialism*, in *RADICAL REPUBLICANISM: RECOVERING THE TRADITION'S POPULAR HERITAGE* 172, 186–87 (Bruno Leipold et al. eds., 2020) (quoting KARL MARX, *THE CIVIL WAR IN FRANCE* (1871)).

91. See KARL MARX, *SELECTED WRITINGS* 173, 450, 482–83 (David McLellan ed., 1977).

92. See Nancy Fraser, *Behind Marx's Hidden Abode: For an Expanded Conception of Capitalism*, *NEW LEFT REV.*, Mar. Apr. 2014, at 55, 61–62 (arguing that “social-reproductive activity,” like child-rearing, “is absolutely necessary to the existence of waged work”).

strife between existence and essence, . . . between freedom and necessity.”<sup>93</sup> In his view, when people labor in a noncompetitive manner, free from the compulsions of necessity and the forces of human greed, true freedom can manifest.

The United States largely rejected the Marxist critique of capitalism during the Cold War.<sup>94</sup> Instead, wealth has concentrated into the hands of an elite propertied class, a trend amplified by the rise of neoliberalism.<sup>95</sup> As labor has become increasingly automated through technological advancements, income generated from labor—whether manual, managerial, or mental labor—has become a less promising pathway for wealth generation.<sup>96</sup> Moreover, aside from the global inflation produced by supply chain interruptions during the COVID-19 pandemic, real wages for most U.S. workers today have the same purchasing power they had in the 1970s.<sup>97</sup> Most wage gains have gone to the highest earners in the workforce, rising 15.7% for workers in the top tenth percentile since 2000.<sup>98</sup> As a result, some workers have endured workplace indignities as a matter of sheer survival, such as the Amazon package deliverers who urinated and defecated in company trucks to meet quotas during the COVID-19 pandemic.<sup>99</sup>

This sense of unfreedom in the workplace—the act of working under coercion<sup>100</sup>—contradicts the fundamental tenets of liberal democracy. An individual worker, as a sovereign entity, cannot alienate their agency. They can only delegate their decision-making authority to an agent while remaining liable as a principal.<sup>101</sup> Therefore, any workplace role that denies workers their

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93. MARX, *supra* note 89, at 102 (emphasis omitted).

94. *But see* WILLIE THOMPSON, *THE LEFT IN HISTORY: REVOLUTION AND REFORM IN TWENTIETH-CENTURY POLITICS* (1997) (discussing the evolution of leftist political thought in U.S. history).

95. *See* Ana Hernández Kent, Lowell R. Ricketts & Ray Boshara, *What Wealth Inequality in America Looks Like: Key Facts & Figures*, FED. RESRV. BANK ST. LOUIS (Aug. 14, 2019), <https://www.stlouisfed.org/open-vault/2019/august/wealth-inequality-in-america-facts-figures> [<https://perma.cc/D5JX-LQHN>] (“Wealth inequality in America has grown tremendously from 1989 to 2016, to the point where the top 10% of families ranked by household wealth (with at least \$1.2 million in net worth) own 77% of the wealth ‘pie.’”).

96. *See* JENNY MARLAR, GALLUP, *ASSESSING THE IMPACT OF NEW TECHNOLOGIES ON THE LABOR MARKET: KEY CONSTRUCTS, GAPS, DATA COLLECTION STRATEGIES FOR THE BUREAU OF LABOR STATISTICS 19* (2020), <https://www.bls.gov/bls/congressional-reports/assessing-the-impact-of-new-technologies-on-the-labor-market.pdf> [<https://perma.cc/23JV-ZWXE>] (“The results from papers using industrial machines are more mixed, with some finding negative effects on labor demand and others finding no effect. The consensus among these papers, however, is that industrial machines have displaced lower-educated workers.” (citations omitted)).

97. Drew DeSilver, *For Most U.S. Workers, Real Wages Have Barely Budged in Decades*, PEW RSCH. CTR. (Aug. 7, 2018), <https://www.pewresearch.org/short-reads/2018/08/07/for-most-us-workers-real-wages-have-barely-budged-for-decades/> [<https://perma.cc/4NVL-ZVW7>].

98. *Id.*

99. Hannah Knowles, *Amazon Admits It Was Wrong to Suggest Its Workforce Never Needs to Pee in Bottles on the Job*, WASH. POST (Apr. 3, 2021, 5:26 PM), <https://www.washingtonpost.com/business/2021/04/03/amazon-tweet-peeing-bottles-apology/>.

100. *See generally* Michael M. Oswald, *The Content of Coercion*, 52 U.C. DAVIS L. REV. 1585 (2019) (discussing how coercion in the workplace is legally defined).

101. 1 JAMES M. BUCHANAN, *THE LOGICAL FOUNDATIONS OF CONSTITUTIONAL LIBERTY* 288 (1999) (“The central premise of individuals as sovereigns does allow for delegation of decision-making authority to agents, so long as it remains understood that individuals remain as principals. The premise



decision-making authority as individual principals should be deemed illegitimate under classical liberal theory.<sup>102</sup> Legitimate political and economic institutions coordinate human behavior by consent, not coercion. Yet, throughout U.S. history, workers have been granted limited bargaining power and decision-making authority in the workplace. Furthermore, unionization and collective bargaining have routinely fallen short as expressions of collective consent and cooperative engagement in workplace governance.<sup>103</sup> Even unionized workers continue to experience many of the same indignities, dangers, and meager wages as their non-unionized counterparts.<sup>104</sup>

### C. AFROFUTURISM'S APPEAL TO EGALITARIANISM

While Afrofuturism is centrally concerned with the future, it also contemplates the evolution of history, much like the Marxist critique of political economy. Afrofuturism's historical analysis reveals how minoritized racial and ethnic groups have long been subjected to workplace indignities that predetermine Black futures. The Afrofuturist critique urges us to consider how dismantling identity-based hierarchies in the workplace can minimize social, economic, and ecological harms in the future.

From the dawn of the colonial era, Black laborers in the United States have persistently fought for dignity in the workplace, exemplified by the continuous slave revolts leading up to the Civil War. At the turn of the twentieth century, even as millions of Black Americans fled poverty and racial terrorism in the South for economic opportunities in Northern cities like Philadelphia, Detroit, and New York, they continued to experience racial discrimination.<sup>105</sup> Labor organizing became a vital tool for disempowered workers to voice dissent, epitomized by the labor strike coordinated by African-American washerwomen in 1881 in Atlanta, Georgia, advocating for better pay and respect on the job.<sup>106</sup> To be sure, low-income White workers and other racial and ethnic groups also

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denies legitimacy to all social-organizational arrangements that negate the role of individuals as either sovereigns or as principals." (emphases omitted)).

102. Stemming from the works of Enlightenment-era philosophers like Adam Smith and John Locke, and later David Ricardo and John Stuart Mill, classical liberalism emphasizes individual autonomy and economic freedom. See David P. Ellerman, *Reclaiming Democratic Classical Liberalism*, in *RECLAIMING LIBERALISM* 1, 3–4 (David F. Hardwick & Leslie Marsh eds., 2020). See generally LOUIS HARTZ, *THE LIBERAL TRADITION IN AMERICA: AN INTERPRETATION OF AMERICAN POLITICAL THOUGHT SINCE THE REVOLUTION* (Second Harvest ed. 1991) (1955).

103. See *Union Deterrence and Recent NLRB Action*, WHITE HOUSE (Oct. 23, 2023), <https://www.whitehouse.gov/cea/written-materials/2023/10/23/union-deterrence-and-recent-nlr-action/> [<https://perma.cc/GV99-9688>].

104. See, e.g., *UFCW Member Speaks Out About Unjust Dismissal*, UFCW (Sept. 8, 2020), <https://www.ufcw.org/powerofaunion/> [<https://perma.cc/DXJ5-NSUQ>].

105. See *The Great Migration (1910–1970)*, NAT'L ARCHIVES (June 28, 2021), <https://www.archives.gov/research/african-americans/migrations/great-migration> [<https://perma.cc/6LGA-8RRN>]. See generally ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA'S GREAT MIGRATION* (2010) (chronicling the experiences of Black Americans during the Great Migration).

106. Brandon Weber, *'We Mean Business or No Washing': The Atlanta Washerwomen Strike of 1881*, PROGRESSIVE MAG. (Feb. 6, 2018, 7:00 AM), [https://progressive.org/magazine/we-mean-business-or-no-washing-atlanta-washerwomen-strike\\_180205/](https://progressive.org/magazine/we-mean-business-or-no-washing-atlanta-washerwomen-strike_180205/) [<https://perma.cc/7RBF-VKPS>].

suffered. The Industrial Workers of the World (IWW), established in 1905, quickly grew into one of the most diverse and radical unions in the country, providing a platform for marginalized Black workers and White immigrants alike to protest unjust labor practices.<sup>107</sup>

Under the leadership of socialists like Eugene Debs, Mary Harris “Mother” Jones, “Big Bill” Haywood, and Lucy Parsons, the IWW organized its members—affectionately called Wobblies—to stage strikes calling for improvements in workplace conditions, with the long-term goal of workers taking possession of the means of production and abolishing the wage system.<sup>108</sup> In 1913, the IWW helped coordinate a two-week strike of thousands of dockworkers and other workers in Philadelphia to advocate for a local union and higher wages.<sup>109</sup> This display of interracial solidarity demonstrated the intersectionality of economic and racial justice. Unfortunately, the IWW’s protest of World War I, critiques of capitalism, and association with the Communist Party led to the arrest of many Wobblies under claims of espionage and sedition.<sup>110</sup> These arrests weakened the power and influence of unions more broadly.<sup>111</sup>

Even as union organizing waned leading up to the civil rights movement, it remained an important tool for marginalized workers to fight for workplace freedoms. Civil rights activists like Martin Luther King, Jr., Ella Baker, Fred Hampton, and Angela Davis helped to build grassroots labor movements, echoing the activism of earlier union organizing efforts.<sup>112</sup> As King declared, “[T]he coalition that can have the greatest impact in the struggle for *human dignity* here in America is that of the Negro and the forces of labor, because their fortunes are so closely intertwined.”<sup>113</sup> King was assassinated in Memphis, Tennessee, in 1968, while on a trip to support Black sanitation workers protesting their poor working

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107. *The Industrial Workers of the World*, PBS, <https://www.pbs.org/wgbh/americanexperience/features/goldman-industrial-workers-world/> [<https://perma.cc/9D9W-XSQZ>] (last visited May 13, 2024).

108. *See id.*; PHILIP DRAY, *THERE IS POWER IN A UNION: THE EPIC STORY OF LABOR IN AMERICA* 285–87 (2010).

109. *1,500 Longshoremen Out*, N.Y. TIMES, May 19, 1913, at 2, <https://timesmachine.nytimes.com/timesmachine/1913/05/19/100620815.html?pageNumber=2> (“Leaders of the movement say that 1,500 men are out and that shipping will seriously be hindered unless the employers meet the demands of the men, who ask 35 cents an hour instead of 20 to 25 cents, the present scale.”); *see* PETER COLE, *WOBBLIES ON THE WATERFRONT: INTERRACIAL UNIONISM IN PROGRESSIVE-ERA PHILADELPHIA* 31–32 (2007).

110. *Id.* at 360–61.

111. *Id.*

112. For more information about these activists, see generally *infra* Section III.B (discussing Dr. Martin Luther King, Jr.); BARBARA RANSBY, *ELLA BAKER & THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION* (2003); JAKOBI WILLIAMS, *FROM THE BULLET TO THE BALLOT: THE ILLINOIS CHAPTER OF THE BLACK PANTHER PARTY AND RACIAL COALITION POLITICS IN CHICAGO* (2013) (discussing Fred Hampton and his tactics as leader of the Illinois Chapter of the Black Panther Party); and ANGELA Y. DAVIS, *ANGELA DAVIS: AN AUTOBIOGRAPHY* (Haymarket Books 2021) (1974).

113. Peter Cole, *MLK’s Radical Vision Was Rooted in a Long History of Black Unionism*, WASH. POST (Apr. 4, 2021, 6:00 AM) (emphasis added), <https://www.washingtonpost.com/outlook/2021/04/04/martin-luther-kings-radical-vision-was-rooted-long-history-black-unionism/>.

conditions.<sup>114</sup> The strike was organized in response to the deaths of two Black sanitation workers who were crushed to death in the back of a malfunctioning garbage compactor while sheltering themselves from the rain.<sup>115</sup> The tragic event and its aftermath—the family did not receive compensation from the city—sparked the Memphis sanitation workers’ strike.<sup>116</sup>

Today, approximately ten percent of U.S. workers belong to unions, with only six percent of private sector workers unionized.<sup>117</sup> While the overall unionization rate has fallen in recent years, organizing and union elections have increased since the pandemic.<sup>118</sup> On November 26, 2021, Amazon workers in at least twenty countries went on strike during Black Friday.<sup>119</sup> Led by the “Make Amazon Pay” campaign, a global coalition of at least seventy organizations, including Greenpeace and Oxfam, the movement sought to highlight poor working conditions in Amazon facilities.<sup>120</sup> Amazon responded by emphasizing ongoing efforts to address worker concerns, including investments to mitigate climate change, increase wages, and improve worker health benefits.<sup>121</sup> Nevertheless, the push for unionization at Amazon facilities and other companies across the United States continues.<sup>122</sup>

In August 2021, the U.S. National Labor Relations Board (NLRB) reported that Amazon had illegally interfered with a union election at an Amazon warehouse in Bessemer, Alabama.<sup>123</sup> After a second round of voting in early 2022, the

114. Bayard Rustin, a prominent civil rights activist and organizer, encouraged King to attend the Memphis sanitation strike. See Lynn Burnett, *The 1968 Memphis Strike, Part One: The Garbage Workers*, CROSS CULTURAL SOLIDARITY, <https://crossculturalsolidarity.com/the-memphis-strike-part-one-the-garbage-workers/> [<https://perma.cc/Q6V8-PAW3>] (last visited May 13, 2024); Ted Conover, *The Strike that Brought MLK to Memphis*, SMITHSONIAN MAG. (Jan. 2018), <https://www.smithsonianmag.com/history/revisiting-sanitation-workers-strike-180967512/> [<https://perma.cc/749A-QGX2>].

115. Burnett, *supra* note 114.

116. *Memphis Sanitation Workers’ Strike*, STAN.: THE MARTIN LUTHER KING, JR. RSCH. & EDUC. INST., <https://kinginstitute.stanford.edu/encyclopedia/memphis-sanitation-workers-strike> [<https://perma.cc/MY6W-NGCY>] (last visited May 13, 2024); Burnett, *supra* note 114.

117. News Release, Bureau of Lab. Stat., U.S. Dep’t of Lab., Union Members — 2023 (Jan. 23, 2024, 10:00 AM), <https://www.bls.gov/news.release/pdf/union2.pdf> [<https://perma.cc/2ZEP-F5JK>].

118. See *id.* (noting that the union membership rate has trended down since 1983 (20.1%), the first year that data were available); Heidi Shierholz, Celine McNicholas, Margaret Poydock & Jennifer Sherer, *Workers Want Unions, but the Latest Data Point to Obstacles in Their Path*, ECON. POL’Y INST. (Jan. 23, 2024), <https://www.epi.org/publication/union-membership-data/> [<https://perma.cc/G8VC-XQ4J>] (“During the fiscal year (FY) 2023, the NLRB saw a 3% increase in union election petitions. This increase builds upon FY 2022’s significant uptick (53%) of union election petitions, which was the highest filed since FY 2015.” (citation omitted)).

119. See Edward Segal, *Amazon’s Next Crisis—Global Protests and Strikes on Black Friday*, FORBES (Nov. 26, 2021), <https://www.forbes.com/sites/edwardsegal/2021/11/25/amazon-prepares-for-next-crisis—a-global-strike-by-workers-on-black-friday/?sh=7892485d498a>.

120. *Id.*

121. See *id.*

122. See Eric Rosenbaum, *The Amazon, Starbucks, Apple Union Push Is Capturing What a Majority of All American Workers Now Say They Want*, CNBC (June 3, 2022, 9:15 AM), <https://www.cnbc.com/2022/06/02/majority-of-american-workers-want-more-unionization-at-their-own-jobs.html> [<https://perma.cc/GSN4-ZLPB>].

123. Noam Scheiber, *Union Vote at Amazon Warehouse in Alabama Is Overturned by Regional Labor Office*, N.Y. TIMES (Nov. 29, 2021), <https://www.nytimes.com/2021/11/29/business/amazon->

Retail, Wholesale and Department Store Union (RWDSU), which sought to represent the workers at the warehouse, filed several claims against Amazon with the NLRB.<sup>124</sup> According to the RWDSU, Amazon “created an atmosphere of confusion, coercion, and/or fear of reprisals and thus interfered with the employees’ freedom of choice.”<sup>125</sup> This activism culminated in the formation of Amazon’s first U.S. union in April 2022 at JFK8, an Amazon warehouse with 8,000 employees on New York’s Staten Island, which Amazon had aggressively fought for years.<sup>126</sup> In January 2023, the NLRB certified the union at JFK8, preventing Amazon from unilaterally changing working conditions at the facility.<sup>127</sup> However, it remains to be seen whether the NLRB will order a third election for the Bessemer warehouse in Alabama, where Amazon has allegedly threatened to shut down the entire facility.<sup>128</sup> Such behavior violates federal law, as the Supreme Court held in *Textile Workers v. Darlington Manufacturing*.<sup>129</sup>

Amazon’s high turnover rate, coupled with its tactics to delay union elections, may ultimately dampen worker support for unions.<sup>130</sup> Workers who are frustrated with strict productivity targets and inadequate break times often quit

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bessemer-alabama-election.html. The NLRB is an independent federal agency that enforces the National Labor Relations Act (NLRA). The NLRA, enacted by Congress in 1935, protects workers’ rights by encouraging collective bargaining and workplace protections. National Labor Relations Act, ch. 371, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151–169); *see also Guidance: National Labor Relations Act*, NLRB, <https://www.nlr.gov/guidance/key-reference-materials/national-labor-relations-act> [<https://perma.cc/25WA-HG9E>] (last visited May 13, 2024).

124. Annie Palmer, *Amazon Illegally Interfered in Alabama Warehouse Vote, Union Alleges*, CNBC (Apr. 8, 2022, 9:37 AM), <https://www.cnbc.com/2022/04/07/amazon-illegally-interfered-in-alabama-warehouse-vote-union-alleges.html> [<https://perma.cc/FU6F-BQUC>].

125. *Id.*

126. *See* Katie Tarasov, *Amazon’s First U.S. Union Faces an Uphill Battle After Historic Win at Staten Island Warehouse*, CNBC (July 21, 2022, 9:22 AM), <https://www.cnbc.com/2022/07/21/how-chris-smalls-formed-amazons-first-us-union-and-whats-next.html> [<https://perma.cc/4V5X-P6KG>]; David Streitfeld, *How Amazon Crushes Unions*, N.Y. TIMES (Oct. 21, 2021), <https://www.nytimes.com/2021/03/16/technology/amazon-unions-virginia.html>.

127. Josh Eidelson & Matt Day, *Amazon Union’s NYC Victory Certified by Federal Labor Board*, BLOOMBERG (Jan. 11, 2023, 8:41 PM), <https://www.bloomberg.com/news/articles/2023-01-11/amazon-loses-bid-to-stop-certification-of-nyc-warehouse-union>.

128. An NLRB hearing began in late-April 2024 to review both the RWDSU’s and Amazon’s conduct during the second election and determine if the workers will have the chance at a third vote. Alina Selyukh, *Amazon Warehouse Workers in Alabama Might Get a Third Try at Unionizing*, NPR (Apr. 25, 2024, 5:01 PM), <https://www.npr.org/2024/04/25/1246423390/amazon-warehouse-alabama-union-vote>; *see also* Clare Duffy, *Amazon Reinstates Alabama Warehouse Worker and Union Leader Weeks After Her Firing*, CNN BUS. (June 15, 2023, 6:00 PM), <https://www.cnn.com/2023/06/15/tech/amazon-warehouse-alabama-jennifer-bates/index.html> [<https://perma.cc/F84H-6GTV>].

129. *Textile Workers Union of Am. v. Darlington Mfg. Co.*, 380 U.S. 263, 275 (1965); *see also* Shiva M. Sethi & Mark Gaston Pearce, *What a Runaway Chipotle Means for Worker’s Rights*, GEO. J. POVERTY L. & POL’Y BLOG (Mar. 20, 2023), <https://www.law.georgetown.edu/poverty-journal/blog/what-a-runaway-chipotle-means-for-workers-rights/> [<https://perma.cc/UN4X-4287>] (explaining a partial closing violates the NLRA if the employer was “motivated by a purpose to chill unionism . . . and if the employer may reasonabl[y] have foreseen that such closing would likely have that effect” (quoting *Darlington Mfg.*, 380 U.S. at 275)).

130. *See* Suresh Naidu, *Is There Any Future for a US Labor Movement?*, J. ECON. PERSPS., Fall 2022, at 3, 11 (noting that high turnover rates and employer hostility has generally dampened labor organizing).

rather than protest.<sup>131</sup> While some states like California have passed laws to restrict Amazon's ability to use stringent productivity benchmarks,<sup>132</sup> these restrictions do not exist in every state. As a result, while union organizing remains an important vehicle for workers to participate in workplace governance, many workers still experience a sense of alienation from the corporate decision-making process and, resultantly, a loss of dignity. Conservatives argue that the free wage labor system is voluntary and should be governed by individual bargains expressed through employment contracts, not by the coercion of union protests and strikes.<sup>133</sup> However, the at-will presumption in U.S. labor law (with exceptions in Montana and Puerto Rico) casts a dark shadow over workers' ability to bargain without a union. Can the traditional employment relationship overcome such workplace alienation?

Whereas historical analysis reveals how minoritized racial and ethnic groups have already been subjected to workplace indignities, the Afrofuturist critique urges us to consider whether such harms can be avoided in the future. Octavia Butler's protagonist in *Parable of the Sower*, Lauren Olamina, the Black daughter of a Baptist minister, rejects the providential conception of humanity offered by her father's religion.<sup>134</sup> To Olamina, the teleological view of history as progressing toward a revolutionary Christian salvation moment fails to account for the pain and suffering in her community. Mired in an unstable world governed by worsening climate change, extreme social stratification, and rampant labor exploitation with inadequate regulation, Olamina concludes that "God is change."<sup>135</sup> As a result, she develops her own religious belief system called *Earthseed*, which dispenses with the notion of an anthropomorphic God altogether, and embraces "contingent possibility as shaped by concrete human action."<sup>136</sup> A dialectic view of political society and human well-being underscores Olamina's ethical framework, which differs from the purely historical view. While Butler agrees that humanity cannot "escape the fundamental burden imposed upon us by existential time,"<sup>137</sup> she evokes a transcendental vision of political society that reimagines core democratic values. For example, Olamina reconceives individualism, arguing that the

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131. See Jodi Kantor & Arya Sundaram, *The Rise of the Worker Productivity Score*, N.Y. TIMES (Aug. 14, 2022), <https://www.nytimes.com/interactive/2022/08/14/business/worker-productivity-tracking.html>.

132. See Annie Palmer, *California Senate Passes Landmark Bill Taking Aim at Amazon's Labor Practices*, CNBC (Sept. 9, 2021, 10:50 AM), <https://www.cnbc.com/2021/09/09/california-senate-passes-bill-taking-aim-at-amazons-labor-practices.html> [<https://perma.cc/VWZ7-P46A>].

133. See Robert Tait, *Republicans Seize on Auto Workers Strike as Opportunity to Recapture the White House*, GUARDIAN (Sept. 22, 2023, 7:00 AM), <https://www.theguardian.com/us-news/2023/sep/22/republican-hopefuls-split-on-how-to-curry-favor-with-striking-uaw-workers> [<https://perma.cc/S568-DH49>]; Eric Levitz, *Conservatives Clarify That They're Pro-Boss, Not Pro-Market*, N.Y. MAG: INTELLIGENCER (Jan. 11, 2023), <https://nymag.com/intelligencer/2023/01/etc-noncompete-agreements-conservatives.html>.

134. BUTLER, *supra* note 2, at 7.

135. *Id.* at 17; see *id.* at 25 ("I'm not some kind of potential Job, long suffering, stiff necked, then, at last, either humble before an all-knowing almighty, or destroyed. My God doesn't love me or hate me or watch over me or know me at all, and I feel no love for or loyalty to my God. My God just is.")

136. Phillips, *supra* note 16, at 302.

137. *Id.* at 303.

dignified self “must create [i]ts own reasons for being”<sup>138</sup> to avoid “the rotting past”<sup>139</sup> that has condemned the street poor to a future as “some kind of twenty-first century slave,”<sup>140</sup> rather than conform to societal standards.

Further, even as Olamina’s followers yearn “to seed [themselves] farther and farther from this dying place,”<sup>141</sup> there are forces that threaten their freedom, their yearning “to take root among the stars.”<sup>142</sup> For the characters in Butler’s dystopian world, the workplace becomes a roadblock to their individual sovereignty and well-being. The workplace has confined social and economic mobility to predatory exchanges governed by foreign investors with a competitive drive for private profits and capital accumulation.<sup>143</sup> For the wealthy, access to private security inside gated communities—“privatized cities”—offers temporary safety and comfort at the expense of state authoritarianism.<sup>144</sup>

For those living as glorified indentured servants in company towns, and for the street poor who are “expected to fear and hate everyone but their own kind,” barbarism and cannibalism defines their desperation, with fascism looming over the horizon.<sup>145</sup> The ongoing class warfare points toward social catastrophe, ecological degradation, and the abasement of human dignity. However, for Olamina’s followers, alienation from the modern workplace in capitalist economies offers freedom. As Olamina declares in Earthseed’s scripture, *The Books of the Living*, “When no influence is strong enough [t]o unify people [t]hey divide. They struggle, [o]ne against one, [g]roup against group, [f]or survival, position, power.”<sup>146</sup> In this dystopian landscape, the modern workplace has become a site of oppression and indignity rather than liberation and self-actualization.

## II. ON ALIENATION

This Essay’s Afrofuturist critique of the modern workplace exposes how capitalist markets perpetuate elitist, identity-based hierarchies that undermine human dignity. Additionally, it reveals how traditional corporate governance regimes hinder individual self-determination, mutual recognition, and collective well-being, leading to the alienation of workers in political and economic society. This alienation stems not only from the order-giving power of law but also from its ideological power over human social relations. As this Part argues, the

138. BUTLER, *supra* note 2, at 258.

139. *Id.* at 79.

140. *Id.* at 170.

141. *Id.* at 78.

142. *Id.* at 85.

143. *Id.* at 288 (“Wages were paid, but in company script, not cash. Rent was charged for the workers’ shacks. Workers had to pay for food, for clothing—new or used—for everything they needed, and, of course they could only spend their company notes at the company store. Wages—surprise!—were never quite enough to pay the bills.”).

144. *Id.* at 129; *see id.* at 10 (“Crazy to live without a wall to protect you. . . . [M]ost of the street poor—squatters, winos, junkies, homeless people in general—are dangerous. They’re desperate or crazy or both. That’s enough to make anyone dangerous.”).

145. *Id.* at 36.

146. *Id.* at 103.

Afrofuturist lens illuminates the unique harms such alienation inflicts on Black and other minoritized racial and ethnic groups.

#### A. THE ORDER-GIVING POWER OF LAW

Kant's concept of dignity-as-liberty hints at another view of dignity that scholars have called "dignity as recognition"—a sense that experiencing dignity through self-recognition as a fully integrated human being relies upon one's relationship to a broader social context.<sup>147</sup> Throughout U.S. history, many minoritized racial and ethnic groups have grappled with the meaning of their subjection to racial terrorism, slavery, labor exploitation, land expropriation, and genocide. Black Americans, in particular, have long endured a social reality that dishonors their equal human dignity.<sup>148</sup> Such teleological concerns weigh heavily on the modern exploited worker, who contemplates their future, asking: *What is the purpose of my suffering, and what, if anything, can be done about it?*

The Afrofuturist critique similarly examines how the U.S. rule of law fosters alienation in political and economic society. Consider the rich tradition of Black radical thinkers—from Quobna Ottobah Cugoano to Fredrick Douglass, Ida B. Wells-Barnett, W.E.B. Du Bois, and Anna Julia Cooper—who each questioned what freedom means for people racialized as Black in the United States.<sup>149</sup> David Walker's 1829 *Appeal* challenged the legitimacy of enslaved labor, asserting, "[h]ave [they] not, Americans, having subjected us under you, added to these miseries, by insulting us in telling us to our face, because we are helpless, that we are not of the human family?"<sup>150</sup> After emancipation, Du Bois described the Black lived experience as a "double-consciousness," a "two-ness" where one wrestles with the negative perception of being labeled a "Negro" undeserving of human dignity, while simultaneously striving to be embraced as a free American

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147. See John Victor Enslin, *Kant on Human Dignity: A Conversation Among Scholars* 241, 246 (May 2014) (Ph.D. dissertation, Boston College), <https://dlib.bc.edu/islandora/object/bc-ir:101364/datastream/PDF/view> [<https://perma.cc/DK74-27JS>].

148. See Mabogo P. More, *Biko: Africana Existentialist Philosopher*, in *BIKO LIVES! CONTESTING THE LEGACIES OF STEVE BIKO* 45, 47 (Andile Mngxitama et al. eds., 2008) ("By virtue of the historical fact of racial oppression, colonization, and slavery, Africana philosophy raises questions of identity and liberation by focusing on the reality that African people are a black people and hence are affected by the significance of race and racism.").

149. See generally OTTOBAH CUGOANO, *THOUGHTS AND SENTIMENTS ON THE EVIL AND WICKED TRAFFIC OF THE SLAVERY AND COMMERCE OF THE HUMAN SPECIES* (1787); Frederick Douglass, *The Race Problem: Great Speech of Fredrick Douglass, Delivered Before the Bethel Literary and Historical Association in the Metropolitan A. M. E. Church, Washington, D.C. (Oct. 21, 1890)*, (transcript available at <http://nationalhumanitiescenter.org/pds/maai2/politics/text2/douglass.pdf> [<https://perma.cc/D8WP-8WBT>]); IDA B. WELLS-BARNETT, *ON LYNCHINGS* (Dover Publ'ns 2014) (1892); W. E. BURGHARDT DU BOIS, *BLACK RECONSTRUCTION IN AMERICA: AN ESSAY TOWARD A HISTORY OF THE PART WHICH BLACK FOLK PLAYED IN THE ATTEMPT TO RECONSTRUCT DEMOCRACY IN AMERICA, 1860-1880* (1935); ANNA J. COOPER, *A VOICE FROM THE SOUTH: BY A BLACK WOMAN OF THE SOUTH* (1892).

150. DAVID WALKER, *APPEAL*, in *FOUR ARTICLES; TOGETHER WITH A PREAMBLE, TO THE COLOURED CITIZENS OF THE WORLD, BUT IN PARTICULAR, AND VERY EXPRESSLY, TO THOSE OF THE UNITED STATES OF AMERICA* 16 (1830).

citizen.<sup>151</sup> As these Black thinkers grappled with the meaning of Black humanity in a society dominated by White supremacy, they also laid the groundwork for an Afrofuturist critique of Western existential philosophy.

G.W.F. Hegel provides the intellectual foundation upon which many Western thinkers have built their ideas about human existence. Hegel replaced Aristotle's static conception of humanity—where humans develop individuality toward a fixed natural potential within a fixed social order, achieved through virtues and rationality—with a dynamic conception. For Hegel, humanity develops historically and dialectically through social relations towards greater self-consciousness.<sup>152</sup> Liberty, for Hegel, is not merely the ability to choose autonomous ends but, even more, the capacity to align such ends with a universal moral will oriented toward *collective* well-being.<sup>153</sup> Thus, Hegel's conception of liberty operates at both the individual level and the level of the state, reflecting an evolving human self-consciousness of the "Spirit" in nature resulting from human struggle.<sup>154</sup>

Hegel's dialectical method described human development across history as a dynamic process, shifting from an initial conception of humanity (thesis) to a counterposition that exposes the thesis's limitations or contradictions (antithesis), and then to a new understanding that transcends these limitations with a more complex and nuanced comprehension (synthesis).<sup>155</sup> The development of individual self-consciousness through this dialectical method can only be achieved through mutual recognition by others, which is vital to the progression of the state. However, Hegel's philosophy also embedded discriminatory beliefs about people racialized as Black.<sup>156</sup>

Hegel relegated Africa to a premodern state, claiming that in "Africa, history is . . . out of the question."<sup>157</sup> Black studies scholars argue that this view of dialectics presumes an original conception of Black humanity defined as a negation of humanity itself, "locat[ed] outside the systems of order and rationality."<sup>158</sup> What happens when the conceptual starting point for political discourse is a falsehood—the premise that the enslaved African, "[t]ransformed into a negro, a

151. See W. E. BURGHARDT DU BOIS, *THE SOULS OF BLACK FOLK: ESSAYS AND SKETCHES* 3 (2nd ed. 1903).

152. Compare Marguerite Deslauriers & Zoli Filotas, *Aristotle's Human Beings*, in *HUMAN: A HISTORY* 39, 39, 41 (Karolina Hübner ed., 2022) (describing Aristotle's view), with Simon Lumsden, *Philosophy and the Logic of Modernity: Hegel's Dissatisfied Spirit*, 63 *REV. METAPHYSICS* 55, 60, 68 (2009) (describing Hegel's view).

153. See Lumsden, *supra* note 152, at 82.

154. *Id.* at 59, 63.

155. See *Hegel's Dialectics*, *STAN. ENCYC. PHIL.* (Oct. 2, 2020), <https://plato.stanford.edu/entries/hegel-dialectics/> [<https://perma.cc/J7L9-HJSK>].

156. See Avram Alpert, *Philosophy's Systemic Racism*, *AEON* (Sept. 24, 2020), <https://aeon.co/essays/racism-is-baked-into-the-structure-of-dialectical-philosophy> [<https://perma.cc/6LFJ-NE4U>].

157. GEORG WILHELM FRIEDRICH HEGEL, *LECTURES ON THE PHILOSOPHY OF WORLD HISTORY* 176 (H. B. Nisbet trans., Cambridge Univ. Press 1975) (1837).

158. LEWIS R. GORDON, *AN INTRODUCTION TO AFRICANA PHILOSOPHY* 76 (2008).



commodity,<sup>159</sup> is an inferior human?<sup>160</sup> The notion of alienation in the workplace, as Butler suggests, inadequately captures the indignities experienced by minoritized workers because the Eurocentric view of history lacks a thesis of political economy that presumes the equal dignity of Black humanity.

While not all political philosophers agree that conflict is necessary for self-consciousness, many view conflict as essential when people encounter resistance from others. Contested cultural norms can lead to misrecognition, exclusion, and even domination in political society as different groups seek recognition from others. For example, Frantz Fanon argued that the dialectic of mutual recognition cannot occur within societies dominated by White supremacist ideology because the humanity of non-White persons is not recognized by the dominant White class.<sup>161</sup> Accordingly, both the brutality of chattel slavery and the drudgery of low-wage labor can be deemed immoral on two grounds. First, slavery and low-wage work infringe upon the liberty of the enslaved and low-wage worker by denying their agency as individual sovereigns. Second, they inhibit the mutual recognition of human dignity, furthering alienation. When one is subjected to social exclusion and experiences a lack of agency, one may struggle to experience *integritas*, or living in an “unbroken state.”<sup>162</sup>

Hegel and Marx held differing views on the concept of alienation. For Hegel, alienation is a problem of lacking awareness of the fundamental unity of human social reality, which he regards as “the actuality of self-consciousness” itself.<sup>163</sup> Conversely, for Marx, alienation is a problem of lacking ownership of the means of production, a historically contingent material condition that characterizes the plight of the proletariat class under bourgeois social domination.<sup>164</sup> While Marx framed historical progress as a material problem, as opposed to Hegel’s conception

159. See Bedour Alagraa, Book Review, 51 POL. THEORY 279, 283 (2023) (quoting Sylvia Wynter, *Black Metamorphosis: New Natives in a New World* 44, n.d. (unpublished manuscript), [https://monoskop.org/images/6/69/Wynter\\_Sylvia\\_Black\\_Metamorphosis\\_New\\_Natives\\_in\\_a\\_New\\_World\\_1970s.pdf](https://monoskop.org/images/6/69/Wynter_Sylvia_Black_Metamorphosis_New_Natives_in_a_New_World_1970s.pdf) [<https://perma.cc/8FH3-46Z7>]).

160. See *id.* at 285 (“There is always something else besides the dominant cultural logic going on, and that something else is constituted another—but also transgressive—ground of understanding . . . not simply a sociodemographic location but the site of both a form of life and of possible critical intervention.” (omission in original) (quoting David Scott, *The Re-enchantment of Humanism: An Interview with Sylvia Wynter*, SMALL AXE, Sept. 2000, at 119, 164)).

161. See FRANTZ FANON, BLACK SKIN, WHITE MASKS 218 (Charles Lam Markmann trans., Pluto Press 1986) (1967) (“He who is reluctant to recognize me opposes me. In a savage struggle I am willing to accept convulsions of death, invincible dissolution, but also the possibility of the impossible.”).

162. See Henry Louis Gates, Jr., Commentary, “*What’s Love Got to Do with It?*”: *Critical Theory, Integrity, and the Black Idiom*, 18 NEW LITERARY HIST. 345, 349 (1987).

163. G. W. F. HEGEL, PHENOMENOLOGY OF SPIRIT 297 (A.V. Miller trans., Motilal Banarsidass Publishers 1998) (1807) (“But the existence of this world, as also the actuality of self-consciousness, rests on the process in which the latter divests itself of its personality, thereby creating its world. This world it looks on as something alien, a world, therefore, of which it must now take possession.”). See generally Daniel Dahlstrom, *The Self Before Self-Consciousness: Hegel’s Developmental Account*, 34 HEGEL BULL. 135 (2013); David A. Duquette, *Hegel: Social and Political Thought*, INTERNET ENCYC. PHIL., <https://iep.utm.edu/hegelsoc/> [<https://perma.cc/LV36-JV3B>] (last visited May 14, 2024).

164. Tom Brass, *Class Struggle and Unfree Labor: The (Marxist) Road Not Taken*, 81 SCI. & SOC’Y 197, 216 (2017).

of human progress as a spiritual problem, both Marx and Hegel identified alienation as the byproduct of an undeveloped consciousness.

For Marx, it is not self-consciousness but *class* consciousness that enables the worker to identify workplace law as an outgrowth of democratic cultural discourse, thereby situating the worker's experience in a capitalist society as historically contingent and subjective.<sup>165</sup> According to Marx, the worker is best positioned to discover their essential humanity through self-actualization by deploying their creativity and labor power toward self-directed ends, free from external control.<sup>166</sup> Such individual freedom is a hallmark of liberal democracy. However, capitalism not only exploits creative labor by commoditizing work but also alienates the worker from the product of their labor by appropriating labor value in exchange for a wage.<sup>167</sup> Since the capitalist controls the means of production, many laborers remain powerless to avoid the threat of starvation or destitution if they forego the wage contract.<sup>168</sup> In *Parable of the Sower*, Butler illustrates how economic inequality can breed resentment, distrust, and apathy among the working class. Alienation in the workplace triggers alienation from the political process and the erosion of civic life, setting the stage for authoritarianism and social disorder.

The Marxist critique of capitalism raises significant questions about the traditional employment relationship in liberal democratic states with capitalist economies. First, can a worker voluntarily grant another person sovereignty over their work? Scholars have wrestled with this question for centuries, particularly regarding human enslavement. Under Roman law, “[s]laves either are born or become so. They are born so when their mother is a slave; they become so either by the law of nations, that is, by captivity, or by the civil law . . . .”<sup>169</sup>

The notion that a person can voluntarily contract themselves into slavery, or implicitly contract to become a prisoner of war, was used to justify chattel slavery during the nineteenth century.<sup>170</sup> This view was also embedded in definitions of

165. See Edward Andrew, Note, *Class in Itself and Class Against Capital: Karl Marx and His Classifiers*, 16 CAN. J. POL. SCI. 577, 579, 584 (1983).

166. See Pascal Brixel, *The Unity of Marx's Concept of Alienated Labor*, PHIL. REV. (forthcoming) (manuscript at 3), <https://philpapers.org/archive/BRITUO-5.pdf> [<https://perma.cc/2JFL-P9DC>] (“Unalienated labor, Marx thinks, would be more than a mere means to securing what [the worker] needs in order to survive: it would itself be an expression of [their] humanity.”); see also PABLO GILABERT, HUMAN DIGNITY AND SOCIAL JUSTICE 226 (2023) (“[T]he Marxian view . . . demand[s] opportunities for individuals to chart their own singular projects of self-actualization and self-externalization.”).

167. See MARX, *supra* note 89, at 76–77 (“[T]he proposition that man's species nature is estranged from him means that one man is estranged from the other, as each of them is from man's essential nature.”).

168. Allen Buchanan, *Exploitation, Alienation, and Injustice*, 9 CAN. J. PHIL. 121, 123 (1979).

169. J. INST. 1.3.4.

170. See Ellerman, *supra* note 102, at 4–5, 9; SAMUEL SEABURY, AMERICAN SLAVERY DISTINGUISHED FROM THE SLAVERY OF ENGLISH THEORISTS, AND JUSTIFIED BY THE LAW OF NATURE 144 (1861) (“From all which it appears that, wherever slavery exists as a settled condition or institution of society, the bond which unites master and servant is of a moral nature: founded in right, not in might . . . in the consent of the parties . . . .” (emphases omitted)); EDWARD B. BRYAN, *Letter to the Southern*

manumission as the repayment of a debt owed.<sup>171</sup> Yet, the doctrine of unalienable rights that underscores the U.S. Declaration of Independence asserts that certain rights cannot be alienated from the individual, whether voluntarily or implicitly. As John Locke explained, “For a man, not having the power of his own life cannot by compact, or by his own consent, enslave himself to any one, nor put himself under the absolute arbitrary power of another to take away his life when he pleases.”<sup>172</sup> For Locke, slavery is an inherently illegitimate form of work.

However, Locke endorsed lesser forms of “drudgery” as permissible,<sup>173</sup> maintaining the grounds for perpetual servitude of an underclass. Montesquieu, and later William Blackstone, echoed similar views. Both decried slavery that enjoyed absolute power “over the life and fortune of the slave” as unlawful and “repugnant,”<sup>174</sup> yet they condoned a more limited version of oppression, which Montesquieu termed the “mild law of slavery which obtains in some countries.”<sup>175</sup> According to classical liberal theory, as Paul Samuelson explains, “[a] man is not . . . free to sell himself; he must *rent* himself at a wage.”<sup>176</sup> In practice, however, racism justified oppression in the workplace and the gradual abolition of slavery, which Blackstone advocated.

D. P. Ellerman argues that classic liberalism, which emphasizes natural equality and democratic principles of governance,<sup>177</sup> requires “social-organizational arrangements that are not only voluntary but have people remaining as sovereigns . . . only delegating their decision-making authority.”<sup>178</sup> However, in the modern workplace, workers routinely alienate their decision-making authority and co-responsibility for the product of their labor to employers who act not as their agents, but as their masters. For Ellerman, the modern workplace has therefore become what Thomas Hobbes called a *pactum subjectionis*, or a “covenant of every man with every man, in such manner, as if every man should say to every man, I authorize and give up my right of governing myself, to this man, or to this

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*People. From a Fellow Countryman., in LETTERS TO THE SOUTHERN PEOPLE CONCERNING THE ACTS OF CONGRESS AND THE TREATIES WITH GREAT BRITAIN IN RELATION TO THE AFRICAN SLAVE TRADE* 5, 10 (1858) (“Our property in man is a right and title to human labor. And where is it that this right and title does not exist on the part of those who have money to buy it? The only difference in any two cases is in the tenure.”).

171. Ellerman, *supra* note 102, at 5.

172. JOHN LOCKE, *THE SECOND TREATISE OF CIVIL GOVERNMENT AND A LETTER CONCERNING TOLERATION* 13 (J. W. Gough ed., 1948).

173. *See id.* at 14 (“I confess we find among the Jews as well as other nations that men did sell themselves; but ‘tis plain this was only to drudgery, not to slavery. For it is evident the person sold was not under an absolute, arbitrary, despotical power.”).

174. 1 WILLIAM BLACKSTONE, *COMMENTARIES* \*423; 1 MONTESQUIEU, *THE SPIRIT OF THE LAWS* 312 (1748).

175. MONTESQUIEU, *supra* note 174, at 317.

176. Ellerman, *supra* note 102, at 11 (quoting PAUL A. SAMUELSON, *ECONOMICS* 52 (10th ed. 1976)).

177. JAMES M. BUCHANAN, *WHY I, TOO, AM NOT A CONSERVATIVE: THE NORMATIVE VISION OF CLASSICAL LIBERALISM* 69 (2005) (“The postulate of natural equality carries with it the requirement that genuine classical liberals adhere to democratic principles of governance . . .”).

178. Ellerman, *supra* note 102, at 16.

assembly of men.”<sup>179</sup> While classic liberalism suggests that the right to develop one’s personhood through self-determination is unalienable from the human condition and essential to democratic governance, workers are routinely denied such liberty. As Butler reveals, the consequences can be deadly.

To promote democracy, John Stuart Mill recommended “the association of the laborers themselves on terms of equality, collectively owning the capital with which they carry on their operations, and working under managers elected and removable by themselves.”<sup>180</sup> This cooperative approach to workplace governance, aligned with socialist conceptions of economic markets, supports the Marxist view that human alienation stems from a lack of ownership over the means of production. A revolution in the coordination of workplace rights between workers and firms would not only inspire a “moral revolution” in the organization of society but also mediate “the standing feud between capital and labor” and transform human life “from a conflict of classes struggling for opposite interests, to a friendly rivalry in the pursuit of a good common to all.”<sup>181</sup> Simply put, it would promote “the elevation of the dignity of labor.”<sup>182</sup>

Other scholars view alienation not as something to be overcome by revolution but as an inherent aspect of the human condition. For Jean-Paul Sartre, humans can experience alienation from the self, from others, and from the world.<sup>183</sup> When one becomes aware that their identity is not fixed but is instead a product of their actions and beliefs, they can develop feelings of anxiety and uncertainty, leading to a sense of alienation from who they are and who they can become. Alienation from others and the world arises when one fails to recognize the subjectivity of other human experiences and social conditions, resulting in feelings of isolation and powerlessness. Self-consciousness, then, is the process of striving to find unity between the self and its ideal version. As Sartre put it, “I exist as the [r]ight to be what I am.”<sup>184</sup> For Sartre, freedom of the self relies first upon action—the ability to determine one’s essence by reflecting on what is possible and imagining an ideal state of affairs.<sup>185</sup> This aspect of freedom finds expression through action

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179. HOBBS, *supra* note 71, at 136–37 (alterations omitted) (emphasis omitted); *accord* Ellerman, *supra* note 102, at 19.

180. 2 JOHN STUART MILL, *PRINCIPLES OF POLITICAL ECONOMY WITH SOME OF THEIR APPLICATIONS TO SOCIAL PHILOSOPHY* 281 (Colonial Press rev. ed. 1900) (1899); *see also* Paul Solman, *The Alternative American Dream: Inclusive Capitalism*, PBS NEWSHOUR (Aug. 28, 2013, 1:40 PM), <https://www.pbs.org/newshour/economy/the-alternative-american-dream-inclusive-capitalism> [<https://perma.cc/RSP7-CAFN>] (discussing Mill’s prediction that future successful businesses would utilize collective ownership).

181. MILL, *supra* note 180, at 295.

182. *Id.*

183. Storm Heter, *Sartre’s Political Philosophy*, INTERNET ENCYC. PHIL. (quoting JEAN-PAUL SARTRE, *NOTEBOOKS FOR AN ETHICS* 382 (David Pellauer trans., Univ. of Chi. Press 1992) (1983)), <https://iep.utm.edu/sartre-p/> [<https://perma.cc/H3JW-GLBQ>] (last visited May 14, 2024).

184. JEAN-PAUL SARTRE, *BEING AND NOTHINGNESS: AN PHENOMENOLOGICAL ESSAY ON ONTOLOGY* 99 (Hazel E. Barnes trans., Citadel Press 2001) (1956).

185. *See id.* at 435 (“It is [when] we can conceive of a [new] state of affairs that a new light falls on our troubles . . .”).

toward a desired outcome, rendering such liberty a perpetual state of becoming, as one strives to overcome the tension between consent and coercion.<sup>186</sup>

Freedom also requires overcoming the alienation of the “other’s look,” which can make one feel objectified and unable to express individual agency. The Afrofuturist call to disrupt elitist, identity-based hierarchies offers a pathway toward recognizing shared humanity and collective vulnerability. Furthermore, freedom requires overcoming the alienation of capitalist markets. When workers are empowered to actively engage in workplace governance, they are positioned to overcome alienation from political and economic society. The Afrofuturist critique of domination evident in Butler’s narrative offers a pathway toward resolving the tensions between equality and liberty in capitalist economies.

#### B. THE IDEOLOGICAL POWER OF LAW

Unveiling the variously contested philosophical conceptions of alienation reveals the ideological power of law. Legal culture embeds unstated normative assumptions that shape modern views about the economic market. Consider the works of Friedrich A. Hayek, which have been influential in the modern U.S. political economy. Hayek defined liberty as freedom from coercion.<sup>187</sup> To Hayek, the market is a spontaneous order that cannot be controlled by the actions of one person. As a result, he believed that free market allocations are neither just nor unjust, and the government’s task is simply to regulate behaviors that disrupt the integrity of market competition, such as fraud or monopoly.<sup>188</sup> Hayek also argued that the free market values efficiency, which under a Pareto efficiency framework aims to satisfy individual preferences without making any person worse off.<sup>189</sup> On one hand, this conception of efficiency relies upon “traditional assumptions of substantial knowledge, perfect rationality and the absence of both transaction costs and income effects.”<sup>190</sup> On the other hand, promoting efficiency to the exclusion of other values encourages limited government interference with business labor standards and limits restraints on the freedom of contract. This legal culture is justified by a belief that too much government interference in the workplace will make it more costly for employers to breach the employment relationship.<sup>191</sup>

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186. *See id.* at 437–38 (stating that freedom “has no essence” and “we ordinarily attain it across the act”).

187. *See* F. A. HAYEK, *THE CONSTITUTION OF LIBERTY* 57–58 (Ronald Hamowy ed., Univ. of Chi. Press 2011) (1960).

188. *See* F. A. HAYEK, *LAW, LEGISLATION AND LIBERTY: A NEW STATEMENT OF THE LIBERAL PRINCIPLES OF JUSTICE AND POLITICAL ECONOMY* 119–20 (Routledge 3d prtg. 1998).

189. Anne Marie Lofaso, *Toward a Foundational Theory of Workers’ Rights: The Autonomous Dignified Worker*, 76 *UMKC L. REV.* 1, 7 (2007) (“A situation is allocatively or Pareto efficient ‘if it is impossible to change it so as to make at least one person better off (in his estimation) without making another person worse off (again, in his estimation).’” (quoting ROBERT COOTER & THOMAS ULEN, *LAW & ECONOMICS* 16 (4th ed. 2004))).

190. *Id.* at 7–8 (quoting JULES L. COLEMAN, *MARKETS, MORALS AND THE LAW* 69 (1990)).

191. *See* Richard A. Epstein, *In Defense of the Contract at Will*, 51 *U. CHI. L. REV.* 947, 951 (1984).

Unstated normative assumptions also drive the market's emphasis on wealth maximization. Advocates argue that wealth maximization incentivizes business innovation, lowers prices for consumers, and promotes an efficient allocation of resources. While market efficiency does not require a norm of wealth maximization, Richard Posner argued that wealth maximization is justified under an efficiency standard based on the view that the "wealth of society [i]s the sum of all goods and services in the society weighted by their values," which derive from their market price.<sup>192</sup> This view has been criticized because the distribution of wealth in society does not consider "starting points."<sup>193</sup> Furthermore, as Anne Marie Lofaso argues, "Increases in wealth do not necessarily entail increases in happiness."<sup>194</sup> Prioritizing wealth maximization as a governing norm of market transactions "favors the desires of the richer members" of society, who typically enjoy enhanced bargaining power and property rights.<sup>195</sup> Critics also note that profit-seeking can perpetuate environmental harms that undermine the general welfare.<sup>196</sup> Finally, defining wealth as the sum of valuable marketplace exchanges obscures how bargaining power and the legal concept of work have shaped the pricing of market transactions and whether some goods or services (such as birthing or child rearing) are priced in the market at all.<sup>197</sup>

The question of whether and how certain goods or services should be priced in the market is closely related to whether certain people deserve to be poor. To Hayek, the coercive redistribution of income by the state is only justified when an unemployed person cannot "maintain themselves," meaning they exist in a state of absolute poverty.<sup>198</sup> Hayek's solution to poverty was to reduce cyclical unemployment, rather than implement social security programs such as unemployment insurance or minimum wage laws.<sup>199</sup> Others, such as Milton Friedman, added nuance by arguing that "frictional unemployment" will always be present as workers and employers respond to market changes.<sup>200</sup> Accordingly, Friedman

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192. Lofaso, *supra* note 189, 9 (quoting RICHARD A. POSNER, *THE ECONOMICS OF JUSTICE* 60 (1983)).

193. See Lofaso, *supra* note 189, at 25 (citing C. Edwin Baker, *Starting Points in Economic Analysis of Law*, 8 *HOFSTRA L. REV.* 939 (1980)).

194. Lofaso, *supra* note 189, at 25; see also *id.* at 25 n.140 ("[M]oney or its equivalent is useful so far as it enables someone to lead a more valuable, successful, happier, or more moral life. Anyone who counts it for more than that is a fetishist of little green paper." (quoting Ronald M. Dworkin, *Is Wealth a Value?*, 9 *J. LEGAL STUD.* 191, 201 (1980))).

195. *Id.* at 25–26.

196. See ALLISON GROSSMAN & KELLEY DENNINGS, *THE INFLUENCE OF ENVIRONMENTAL TOXICITY, INEQUITY AND CAPITALISM ON REPRODUCTIVE HEALTH*, *CTR. FOR BIOLOGICAL DIVERSITY* 31 (2022), [https://www.biologicaldiversity.org/programs/population\\_and\\_sustainability/pdfs/environmental\\_reproductive\\_health\\_report.pdf](https://www.biologicaldiversity.org/programs/population_and_sustainability/pdfs/environmental_reproductive_health_report.pdf) [<https://perma.cc/83BK-N37E>] ("[T]he profit-driven market has also created disparities in who has the necessary resources to care for the health problems it triggers . . .").

197. See Fraser, *supra* note 92, at 61.

198. Lofaso, *supra* note 189, at 10 (quoting HAYEK, *supra* note 187, at 426). To be sure, the concept of absolute poverty is itself a politicized concept.

199. *Id.* (citing HAYEK, *supra* note 187, at 426).

200. Frictional unemployment characterizes the short-term unemployment that people experience as they transition from one job to the next. See *Frictional Unemployment*, MERRIAM-WEBSTER, <https://>

argued that the government should aim to limit frictional unemployment and discourage voluntary unemployment through monetary policy, such as buying or selling government securities to influence the money supply, or changing interest rates at central banks to alter borrowing and spending behaviors.<sup>201</sup>

The only way to limit inflation to an optimal rate, Friedman argued, was to free labor markets. This requires first weakening the power of labor unions, which he believed “collectively aggravate frictional unemployment by causing upward pressure on wages, and thereby contributing to a wage-price spiral.”<sup>202</sup> Hayek also disfavored unions, viewing their collective power as a coercive encroachment upon the liberty of employers and individual employees to bargain freely.<sup>203</sup> However, these views oversimplify the income-distributional effects of unionization, which can be influenced by factors like the bargaining strength of the union, the presence of a segmented labor market, and the elasticity of labor demand.<sup>204</sup> For example, when a labor market is segmented into different groups of workers with varying interests and needs, it becomes harder for workers to unite around a common goal, weakening their bargaining power.

Second, to ‘free’ labor markets, Friedman argued that the government must limit business regulations that threaten to increase frictional unemployment and should also “discipline the labor market” to decrease voluntary unemployment.<sup>205</sup> This discipline is justified by a view—stemming from Elizabethan poor laws—that workers are individually responsible for their unemployment and poverty.<sup>206</sup> To be intentionally unemployed is unjust, Friedman argued, because it undermines the ability of employers to manage frictional employment and maintain market efficiency, which presumably furthers the general welfare.<sup>207</sup>

This moral conception of work hides a subjective belief that some individuals are deserving of state welfare in the form of charity while others are not.<sup>208</sup> For example, consider the Temporary Assistance for Needy Families (TANF) program, which targets so-called needy families.<sup>209</sup> The social conservative view that welfare fosters dependency and hinders “the employers’ ability to control the

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[www.merriam-webster.com/dictionary/frictional%20unemployment](https://www.merriam-webster.com/dictionary/frictional%20unemployment) [https://perma.cc/XU4F-R9XM] (last visited May 14, 2024).

201. See generally MILTON FRIEDMAN, *MONETARIST ECONOMICS* (1991).

202. Lofaso, *supra* note 189, at 11. A wage-price spiral occurs when rising wages leads to rising prices in cyclical fashion. For example, a sudden increase in the price of a key resource can lead to higher production costs, which can trigger higher prices. In response to a higher cost of living, workers demand higher wages. To pay higher wages, business further raise prices. This spiral can lead to high inflation. See *id.* at 11 n.60.

203. See HAYEK, *supra* note 187, at 267–84.

204. See Lofaso, *supra* note 189, at 24.

205. See *id.* at 11–12 (citing FRIEDMAN, *supra* note 201).

206. See *id.* at 12.

207. See *id.* at 11–12 (citing FRIEDMAN, *supra* note 201).

208. See *id.* at 12–13 (citing CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950–1980*, at 197 (1984)).

209. *Welfare Benefits or Temporary Assistance for Needy Families (TANF)*, USA.GOV (Dec. 8, 2023), <https://www.usa.gov/welfare-benefits> [https://perma.cc/4LBC-L5N4].

supply of labor by maintaining peripheral workforces<sup>210</sup> drives the legal ambition to minimize the welfare state. The ability of employers to efficiently control their labor supply reflects a broader view that business managers should have the autonomy to make decisions on behalf of owners, shareholders, and workers. Conversely, workers are not traditionally seen as having any legal right to control business decisions. Instead, under the Hayekian view, workers are primarily responsible for developing their capacities to bargain for the most competitive wages in the labor market.<sup>211</sup> These views ignore, however, the employer's inability to guarantee fair competition for workers or equal recognition of human dignity in the workplace. As Anne Lofaso explains, "Lowering labor standards thereby allows otherwise less productive and less efficient employers, who treat their workers poorly, to compete against those who have better working conditions."<sup>212</sup>

The pursuit of low labor standards to maximize efficiency gains—or "social dumping"—has long been criticized in international law.<sup>213</sup> Beyond lauding business efficiency for wealth maximization, it "disregards the human element of labor" by promoting individual autonomy at the expense of human rights.<sup>214</sup> While this outcome is not inevitable, it underscores the conflict of interest between the desires of shareholders and the needs of workers. Advocates have called for strengthening worker control over firm decision-making through work councils and collective bargaining. However, as Lofaso explains, "Board-level worker participation without appropriate safeguards will inevitably collapse into a unitarist system of management prerogatives, contrary to the values that such participation is supposed to promote."<sup>215</sup> Even when workers are granted an ownership stake in the firm to help align their interests with the company's financial well-being, such as employee stock ownership plans (ESOPs),<sup>216</sup> without a controlling share and democratic voting, such ownership schemes can fail to overcome management prerogatives. In capitalist economies, the interests of workers and firms inevitably diverge—workers seek "higher wages, better benefits and working conditions, and job security," while shareholders prioritize "dividends and profits."<sup>217</sup>

Engaging Marxian critiques of law's ideological power reveals significant insights. Some critics dismiss Marxism as reductionist, viewing law as part of a

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210. Lofaso, *supra* note 189, at 14.

211. *See id.* at 19–20 (quoting HAYEK, *supra* note 187, at 204).

212. *Id.* at 21.

213. *See, e.g., id.* at 21 & n.120; Antonio Di Marco, *The 'Normality' of Labour Exploitation: The Right to Fair and Just Working Conditions in the Union's Social Market Economy*, 41 NETH. Q. HUM. RTS. 235, 245–46 (2023).

214. Lofaso, *supra* note 189, at 22 (citing T. H. Marshall, *Citizenship and Social Class*, in *SOCIOLOGY AT THE CROSSROADS AND OTHER ESSAYS* 67, 73–74 (1963)).

215. *Id.* at 43.

216. *See* Jeffrey M. Hirsch, *Labor Law Obstacles to the Collective Negotiation and Implementation of Employee Stock Ownership Plans: A Response to Henry Hansmann and Other "Survivalists,"* 67 *FORDHAM L. REV.* 957, 967–71 (1998) (discussing advantages of ESOPs).

217. Lofaso, *supra* note 189, at 44.



“superstructure” determined by the economic base.<sup>218</sup> However, Friedrich Engels rejected this “crude economism,” asserting that “the ultimately determining element in history is the production and reproduction of real life.”<sup>219</sup> Law is merely one “element in a totality” where “complex interactions and contradictions develop between its elements and are resolved over time.”<sup>220</sup> Alan Hunt argued that the changing content of law reflects “[t]he relative strengths of different social forces,” manifesting materially through coercion and ideologically through domination (a point emphasized by Gramsci).<sup>221</sup> Hunt thus underscored the importance of law and political economy in shaping specific social formations.<sup>222</sup>

Karl Klare, a prominent member of the Critical Legal Studies (CLS) movement, advocated for a constitutive theory of law.<sup>223</sup> As Nate Holdren and Eric Tucker explain, Klare’s historical study of the U.S. National Labor Relations (Wagner) Act revealed the law as “both an expression of the demand for industrial democracy and as a system for institutionalizing and containing class struggle.”<sup>224</sup> Klare contended that law is multifaceted, reproducing class rule while also providing tools to resist it.<sup>225</sup> However, the “linguistic turn” in academia in the late-1970s led many scholars to reject Marx’s materialist project.<sup>226</sup>

For example, Duncan Kennedy, another prominent CLS scholar, argued that legal indeterminacy is a byproduct of “an ontological or existential condition . . . that is transhistorical rather than specific to capitalism as a particular historical form of society.”<sup>227</sup> As Holdren and Tucker explain, the CLS claim of radical indeterminacy, largely divorced from social and economic developments external to law, “reembraced legal autonomy” and sidelined engagement with Marxist theories of law.<sup>228</sup> Later, in 1985, Alan Stone extended Marxist theories by developing the concept of “essential legal relations,” which posited that certain legal relations, such as private property and state-enforced contracts, “legally define

218. See Nate Holdren & Eric Tucker, *Marxist Theories of Law Past and Present: A Meditation Occasioned by the 25th Anniversary of Law, Labor, and Ideology*, 45 LAW & SOC. INQUIRY 1142, 1444 (2020).

219. *Id.* (emphasis omitted) (quoting Letter from Friedrich Engels to Joseph Bloch (Sept. 21, 1890), [https://www.marxists.org/archive/marx/works/1890/letters/90\\_09\\_21.htm](https://www.marxists.org/archive/marx/works/1890/letters/90_09_21.htm) [<https://perma.cc/3TWU-R5AK>]).

220. *Id.* at 1145.

221. *Id.* (quoting ALAN HUNT, *EXPLORATIONS IN LAW AND SOCIETY: TOWARD A CONSTITUTIVE THEORY OF LAW* 56–57 (1993)).

222. See *id.* at 1151.

223. *Id.* at 1148. The CLS movement “was comprised of a diverse group of heterodox legal scholars joined together . . . by their critique of liberal legalism,” some of whom “were attracted to and influenced by developments in critical Marxist theory.” *Id.*

224. *Id.* at 1147–48; accord Karl E. Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 MINN. L. REV. 265, 284–93 (1987).

225. Holdren & Tucker, *supra* note 218, at 1148.

226. *Id.*

227. *Id.* at 1149.

228. *Id.*

the fundamental economic relationships in society.”<sup>229</sup> Stone noted that legal decision-makers often disagree on the particularities of these relations, leading to debates on state regulations.

More recently, Marxist legal scholarship has embraced a conception of law as “relatively autonomous,” influenced by both economic and legal relations. Evgeny Pashukanis’s commodity form theory of law exemplifies this approach.<sup>230</sup> Likewise, labor historians in the 1980s and 1990s, such as Christopher Tomlins, emphasized the state’s relative autonomy, arguing that “state institutions have escaped political and ideological constraints arising from private capital’s strategic influence over investment, output, and employment only in rather exceptional circumstances.”<sup>231</sup> Tomlins described law as having an institutional structure with order-giving power and an imaginative structure with ideological power.<sup>232</sup> Tomlin’s description of law as a “modality of rule” emphasized law’s socially constitutive role as mediated by historically specific class struggles.<sup>233</sup> However, it remains unclear why such tensions result in the continued reproduction of capitalism.

Nancy Fraser and Rahel Jaeggi have sought to synthesize Marxist theories of law and political economy while advancing their own critiques of capitalism. Rejecting the base-superstructure framework, Fraser and Jaeggi propose a foreground-background model, where the foreground includes traditional economic relations like the commodification of wage labor and the background encompasses necessary noneconomic conditions such as social reproduction and natural resource extraction.<sup>234</sup> They present capitalism as “an institutionalized social order” shaped by conflicts arising at the established boundaries between the economic and the noneconomic.<sup>235</sup> Similar to Tomlin’s view, they see capitalism as a historically contingent “social totality” where different legal discourses produce varied outcomes.<sup>236</sup> Even when scholars disagree on the potential for deploying law in emancipatory struggles, the question of whether social movements can enact meaningful structural transformation remains.

### C. AFROFUTURISM’S CRITIQUE OF DOMINATION

The ideological and order-giving power of law underpins the pervasive sense of domination experienced by many workers during the COVID-19 pandemic,

229. Alan Stone, *The Place of Law in the Marxian Structure-Superstructure Archetype*, 19 *LAW & SOC’Y REV.* 39, 42, 50 (1985).

230. See Holdren & Tucker, *supra* note 218, at 1152.

231. *Id.* at 1154 (quoting CHRISTOPHER L. TOMLINS, *THE STATE AND THE UNIONS: LABOR RELATIONS, LAW, AND THE ORGANIZED LABOR MOVEMENT IN AMERICA, 1880—1960*, at xiii (1985)).

232. *Id.* at 1155 (citing CHRISTOPHER TOMLINS, *LAW, LABOR, AND IDEOLOGY IN THE EARLY AMERICAN REPUBLIC* 33–34 (1993)).

233. See TOMLINS, *supra* note 232, at 33–34 (describing work as “a prime site for instability or dissonance between dominant context and lived experience”).

234. NANCY FRASER & RAHEL JAECCI, *CAPITALISM: A CONVERSATION IN CRITICAL THEORY* 28–29 (Brian Milstein ed., 2018); see also Holdren & Tucker, *supra* note 218, at 1159.

235. FRASER & JAECCI, *supra* note 234, at 52–53.

236. See Holdren & Tucker, *supra* note 218, at 1161.

particularly those from minoritized racial and ethnic groups. For example, in March 2020, Chris Smalls, a Black Amazon worker who led a strike at the JFK8 warehouse in Staten Island, New York, demanding workplace protections and hazard pay in response to the coronavirus outbreak, was fired, ostensibly for his activism.<sup>237</sup>

In April 2020, Annie Grant, a 55-year-old Black meat packaging worker for Tyson Foods in Camilla, Georgia, died from complications of COVID-19 after being pressured to return to work despite showing symptoms.<sup>238</sup> Grant, who had worked under “shoulder to shoulder” conditions for nearly fifteen years, exemplified the plight of many meat packaging workers nationwide who were urged to stay on the job despite inadequate protections. Then-Vice President Mike Pence declared, “You are giving a great service to the people of the United States of America and we need you to continue, as a part of what we call *critical infrastructure*, to show up and do your job.”<sup>239</sup> The Tyson plant in Camilla offered workers a \$500 bonus for continuous work from April to June 2020, as compensation for their life-threatening service.<sup>240</sup>

Similarly, in April 2020, Jason Hargrove, a 50-year-old Black bus driver in Detroit, Michigan, and married father of six children, died from complications of COVID-19 just eleven days after posting a video on social media decrying his exposure to coughing passengers who refused to wear protective covering.<sup>241</sup> Hargrove’s Facebook post, featuring a masked self-portrait captioned “#ICannotStayHome” and “I’mOnTheRoad4U,”<sup>242</sup> highlighted the dire conditions faced by essential workers.

In the same month, George Leigh, a 59-year-old Black warehouse employee at Amazon’s Bethpage, New York, distribution center, and the parent to a daughter and several grandchildren, died from the coronavirus amidst growing employee demands for better safety measures, such as paid sick leave, sanitizer, and face masks.<sup>243</sup> Leigh’s death was part of a series of fatalities at Amazon facilities across the country, from Jeffersonville, Indiana, to Waukegan, Illinois, Staten Island, New York, and Tracy, California.<sup>244</sup>

237. Kenya Evelyn, *Amazon Fires New York Worker Who Led Strike Over Coronavirus Concerns*, GUARDIAN (Mar. 31, 2020, 3:40 PM), <https://www.theguardian.com/us-news/2020/mar/31/amazon-strike-worker-fired-organizing-walkout-chris-smalls> [<https://perma.cc/6LKH-PVY6>].

238. Miriam Jordan & Caitlin Dickerson, *Poultry Worker’s Death Highlights Spread of Coronavirus in Meat Plants*, N.Y. TIMES (Jan. 28, 2021), <https://www.nytimes.com/2020/04/09/us/coronavirus-chicken-meat-processing-plants-immigrants.html>.

239. *Id.* (emphasis added).

240. *Id.*

241. Michael Levenson, *11 Days After Fuming About a Coughing Passenger, a Bus Driver Died from the Coronavirus*, N.Y. TIMES (Apr. 4, 2020), <https://www.nytimes.com/2020/04/04/us/detroit-bus-driver-coronavirus.html>.

242. *Id.*

243. Annie Palmer, *Sixth Confirmed Amazon Worker Dies amid Calls for the Company to Release Data on Coronavirus Infections*, CNBC (May 14, 2020, 6:37 PM), <https://www.cnbc.com/2020/05/14/sixth-confirmed-amazon-worker-dies.html> [<https://perma.cc/EK5A-F4ML>].

244. *Id.*

In May 2020, Felix Jiminez, a 56-year-old immigrant worker at a hog processing plant in Guymon, Oklahoma, a city that is more than half Hispanic or Latino in a state that did not initially issue stay-at-home orders, died from complications of COVID-19 amid local concerns about premature returns to work.<sup>245</sup> One resident criticized, “They care about production, not workers.”<sup>246</sup> Many immigrant workers, lacking meaningful choices and often ineligible for unemployment benefits or federal relief, faced heightened vulnerabilities.<sup>247</sup>

Globally, the pandemic’s impact on gig workers was stark. In India, thousands of gig workers without legal employee status—dubbed “essential service workers” by Prime Minister Narendra Modi—died from complications of COVID-19.<sup>248</sup> Yadigiri Rao, a 50-year-old food deliverer in Hyderabad, India, and the sole earner for his family, died from the coronavirus because he “had no option but to work during the pandemic.”<sup>249</sup> Similarly, C. Murali Krishna, a 47-year-old driver for Ola and Uber, died in August 2020 from the coronavirus shortly after his family sold their home to pay for his hospital treatment.<sup>250</sup> Gururaj Gowda, a 27-year-old driver for Ola and Uber, died in June 2021 from the coronavirus, leaving behind a wife and baby son.<sup>251</sup> In each case, these families received insufficient compensation from the government or the companies they serviced.<sup>252</sup> These heartbreaking stories illustrate the profound and often deadly consequences of the ideological and order-giving power of law, which perpetuates inequities and vulnerabilities among workers, both domestically and globally.

Technological innovation does not promise a solution to these challenges. In fact, in recent years, technology companies like Facebook have outsourced work to hundreds of Africans in office buildings near slum communities in Nairobi, Kenya, to moderate social media content. These gig workers are tasked with viewing and removing illegal or banned content from the website, including videos of murders, rapes, suicides, and child sexual abuse.<sup>253</sup> Workers in the Nairobi office are among Facebook’s lowest paid workers globally, working in a culture marked by “mental trauma, intimidation, and alleged suppression of the right to

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245. Andrew Hay & Andy Sullivan, *Special Report: In Oklahoma Pork-Packing Town, COVID Stirs Fear, Faith and Sorrow*, REUTERS (May 23, 2020, 11:52 PM), <https://www.reuters.com/article/idUSKBN23003S/>.

246. *Id.*

247. See Muzaffar Chishti & Jessica Bolter, *Vulnerable to COVID-19 and in Frontline Jobs, Immigrants Are Mostly Shut Out of U.S. Relief*, MIGRATION POL’Y INST. (Dec. 9, 2020), <https://www.migrationpolicy.org/article/covid19-immigrants-shut-out-federal-relief> [<https://perma.cc/DH2X-ENVE>].

248. See Kaushik Raj & Sabah Gurmat, *As India’s Gig Workers Died of Covid-19, Their Families Received Neither Govt nor Company Aid*, ARTICLE 14 (Sept. 6, 2021), <https://article-14.com/post/as-india-s-gig-workers-died-of-covid-19-their-families-receive-neither-govt-nor-company-aid-6135842b68c1a> [<https://perma.cc/R5VP-P968>].

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. Billy Perrigo, *Inside Facebook’s African Sweatshop*, TIME (Feb. 17, 2022, 10:12 AM), <https://time.com/6147458/facebook-africa-content-moderation-employee-treatment/>.

unionize.”<sup>254</sup> Consequently, Facebook has faced litigation over allegations of “forced labor, human trafficking, and union busting in Kenya.”<sup>255</sup>

Many artificial intelligence technology companies in Silicon Valley, California, rely on “ghost workers,”<sup>256</sup> underpaid laborers from impoverished communities worldwide, including Kenya, Syria, Bulgaria, and Argentina. These workers perform repetitive, piecemeal tasks under precarious conditions, often resulting in serious musculoskeletal injuries.<sup>257</sup> Strict surveillance and performance metrics govern their work, with termination following repeated violations.<sup>258</sup> Tasks range from categorizing images for Google searches, to responding to survey questions for Amazon, translating speech to text for Netflix videos, and performing creative tasks on Fiverr. These low-skilled digital gig workers are not considered employees and are therefore ineligible for health insurance, workers’ compensation, or union protections.<sup>259</sup>

Such workplace conditions in the Global South are not anomalies. Automated surveillance is a standard feature at many technology companies across the globe, including Amazon, where warehouse workers and delivery drivers are tracked by cameras and inventory scanners.<sup>260</sup> Failure to meet performance metrics often results in discipline, leading workers to adopt risky practices that compromise their safety.<sup>261</sup> Reports indicate that Amazon drivers in the United States sometimes drive with seat belts buckled behind their backs to appear compliant with safety protocols without slowing down their delivery schedules. Consequently, these drivers suffer injuries “at a nearly 50% higher rate than their United Parcel Service counterparts.”<sup>262</sup> Some drivers must sign biometric consent forms allowing Amazon to monitor their every movement.<sup>263</sup> Workers from low-income and underserved communities are particularly vulnerable, fearing job loss if they demand more ethical working conditions.

254. *Id.*

255. Billy Perrigo, *Facebook Faces New Lawsuit Alleging Human Trafficking and Union-Busting in Kenya*, TIME (May 11, 2022, 4:53 PM), <https://time.com/6175026/facebook-sama-kenya-lawsuit/>.

256. See Julian Friedland, David Balkin & Ramiro Montealegre, *A Ghost Workers’ Bill of Rights: How to Establish a Fair and Safe Gig Work Platform*, CAL. MGMT. REV. (Jan. 7, 2020), <https://cmr.berkeley.edu/2020/01/ghost-workers/>.

257. Adrienne Williams, Milagros Miceli & Timnit Gebru, *The Exploited Labor Behind Artificial Intelligence*, NOEMA (Oct. 13, 2022), <https://www.noemamag.com/the-exploited-labor-behind-artificial-intelligence/> [https://perma.cc/5LB6-AVFH].

258. *See id.*

259. *See* Friedland et al., *supra* note 256.

260. Williams et al., *supra* note 257.

261. *See* Lauren Kaori Gurley, *Internal Documents Show Amazon’s Dystopian System for Tracking Workers Every Minute of Their Shifts*, VICE (June 2, 2022, 9:56 AM), <https://www.vice.com/en/article/5dgn73/internal-documents-show-amazons-dystopian-system-for-tracking-workers-every-minute-of-their-shifts> [https://perma.cc/HL67-5GV5].

262. Williams et al., *supra* note 257.

263. Lauren Kaori Gurley, *Amazon Delivery Drivers Forced to Sign ‘Biometric Consent’ Form or Lose Job*, VICE (Mar. 23, 2021, 11:59 AM), <https://www.vice.com/en/article/dy8n3j/amazon-delivery-drivers-forced-to-sign-biometric-consent-form-or-lose-job> [https://perma.cc/24NK-HCVY].

The Afrofuturist appeal to egalitarianism asserts that workers have a “right to equal concern and respect in the design and administration of the political institutions that govern” their lives.<sup>264</sup> The Wagner Act and the NLRB’s commitment to workplace democracy<sup>265</sup> support ongoing demands for worker empowerment and protection. Viewing the workplace as a site for democratic participation reframes it as a political institution that shapes the political and economic freedoms of individuals in society. Two important insights emerge from this perspective.

First, viewing the workplace as an independent source of collective democratic authority challenges the conventional public–private distinction endorsed by liberal legal systems. Historically, the evolution of the municipal corporation during the eighteenth and nineteenth centuries led to a clear distinction between private business corporations and municipalities.<sup>266</sup> While late nineteenth century municipal law aimed to curb economic favoritism to safeguard the public interest,<sup>267</sup> Gerald Frug suggests that separating the corporation from the municipality was essential for the ascension of a market-centric capitalist order.<sup>268</sup> Similarly, like Frug’s claim that democracy necessitates intermediate associations to bridge the gap between the market and the state (such as public banks, public housing, and cooperative grocery stores),<sup>269</sup> this Essay adopts a view of the workplace as a political institution, which suggests that democratic control and collective power within workplaces, facilitated by unions and other intermediary associations, are essential.

Second, conceptualizing the workplace as a political institution advocates for a legal entitlement to the workplace, representing a collective right to the firm.<sup>270</sup> Under this framework, workers not only demand fair wages reflecting the exchange value of their labor but also assert a right to the firm’s *use value* as a space for democratic co-governance of socio-political life.<sup>271</sup> This notion challenges the existing capitalist paradigm by advocating for workers to actively

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264. RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 180, 272–73 (1977); see Klare, *supra* note 224, at 284–85.

265. See Klare, *supra* note 224, at 284–93.

266. See GERALD E. FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS 40 (1999); Richard C. Schragger, *The Political Economy of City Power*, 44 FORDHAM URB. L.J. 91, 115–16 (2017).

267. See Schragger, *supra* note 266, at 116. Richard Schragger describes this economic favoritism as “the distribution of exclusive franchises and monopolies and the use of public power to promote private gain.” *Id.*

268. See *id.* at 117 (“This legal invention of the disempowered city was essential to the creation of our existing capitalist, market-centered legal order, according to Frug.”).

269. See FRUG, *supra* note 266, at 214–15.

270. Here, I am analogizing the notion of a collective right to the firm to the concept of a collective right to the city. For information about this concept, see generally David Harvey, *The Right to the City*, NEW LEFT REV., Sept.–Oct. 2008.

271. See EDWARD W. SOJA, SEEKING SPATIAL JUSTICE 96 (2010) (“Demanding greater access to social power and valued resources by those most disadvantaged by inequitable and unjust geographies defined the struggle to reclaim the manifold rights to the city. The aim, at least from a liberal egalitarian point of view, is to gain greater control over the forces shaping urban space, in other words to reclaim democracy from those who have been using it to maintain their advantaged positions.”).

participate in firm governance as co-managers and co-owners.<sup>272</sup> Beyond merely envisioning cooperatively owned and managed firms dominating economic markets, this perspective asserts that workers deserve the right *not* to be excluded from workplace governance. Despite efforts to promote union organizing, collective bargaining, worker councils, and cooperative ownership, contemporary labor law falls short of this vision.

Afrofuturism provides a glimpse into the consequences of such shortcomings for people like Annie Grant, who are unable to stop working during crises.<sup>273</sup> In Octavia Butler's dystopian world, tensions between workers and corporations have led to extreme wealth disparities and disengagement from political discourse among citizens, largely driven by a lack of faith in government and limited resources for subsistence. As Olamina's father notes, "Politicians and big corporations get the bread, and we get the circus."<sup>274</sup> In Butler's world, class warfare has become a relentless struggle for survival, mirroring real-world challenges faced by marginalized communities. As Olamina's stepmother declares, "Lights, progress, growth, all those things we're too hot and too poor to bother with anymore."<sup>275</sup>

The government in Butler's dystopia proposes market-based solutions to solve poverty and social unrest reminiscent of modern conservatives' proposals, including eliminating "'overly restrictive' minimum wage, environmental, and worker protection laws for those employers willing to take on homeless employees and provide them with training and adequate room and board."<sup>276</sup> Many workers succumb to debt slavery or compromise their agency, illustrating the erosion of democracy and human dignity under corporate dominance.<sup>277</sup> In Butler's fictional town of Olivar, for example, the multinational corporation Kagimoto, Stamm,

272. The Mondragon Corporation represents a modern attempt to approach this ideal through the cooperative business structure. See Nick Romeo, *How Mondragon Became the World's Largest Co-op*, NEW YORKER (Aug. 27, 2022), <https://www.newyorker.com/business/currency/how-mondragon-became-the-worlds-largest-co-op>.

273. See Jordan & Dickerson, *supra* note 238.

274. BUTLER, *supra* note 2, at 20.

275. *Id.* at 5.

276. *Id.* at 27. Similarly, see Margaret Poydock, *President Trump Has Attacked Workers' Safety, Wages, and Rights Since Day One*, ECON. POL'Y INST.: WORKING ECON. BLOG (Sept. 17, 2020, 1:30 PM), <https://www.epi.org/blog/president-trump-has-attacked-workers-safety-wages-and-rights-since-day-one/> [<https://perma.cc/JWC5-KAPK>] ("The [Trump] administration . . . rolled back worker protections [and] proposed budgets that slash[ed] funding for agencies that safeguard workers' rights, wages, and safety . . .") and Kevin Bogardus, *Conservatives Gear Up for EPA Revamp in 2025*, E&E NEWS (Feb. 26, 2024, 1:29 PM), <https://www.eenews.net/articles/conservatives-gear-up-for-epa-revamp-in-2025/> [<https://perma.cc/3CYX-PPD4>] (noting that in a 2025 Trump Administration, the "EPA would see a return to Trump administration policies that elevated deregulation and downsized the agency").

277. See Jim Miller, *Post-Apocalyptic Hoping: Octavia Butler's Dystopian/Utopian Vision*, 25 SCI-FICTION STUD. 336, 354 (1998) ("American companies go[] down [to Mexico] to take advantage of cheap labor and unenforced environmental regulations . . . they employ people and make no provision for safety. They may be poisoned with chemicals, hurt in equipment foul-ups . . . . Or they may just have to live in horrible shacks. There's no plumbing, open sewers, polluted water . . . ." (quoting Octavia Butler, *Sci-Fi Tales from Octavia E. Butler, Interview with Jerome H. Jackson*, CRISIS, Apr. 1994, 1, 4–5)).

Frampton, and Company persuades the residents “to accept smaller salaries than their socio-economic group is used to in exchange for security, a guaranteed food supply, [and] jobs.”<sup>278</sup> Many of the residents reject the proposal with deep suspicion, much like the Amazon workers who voted against unionization because they not only rationally believed that Amazon would (illegally) exact revenge against them if they voted for the union, but they also did not trust that the union could meaningfully improve their lives.<sup>279</sup>

Butler suggests that radical empathy, rather than ruthless market competition, offers a path forward. Her protagonist, Olamina, is afflicted by “hyperempathy syndrome,” an illness caused by the drug addiction of her birth mother, whom she never knew. The syndrome causes her to experience the emotions of others, both their pain and pleasure. While doctors view her condition as “an organic delusional syndrome,” Olamina views her condition not as an illness but as a remedy for societal afflictions, declaring, “if everyone could feel everyone else’s pain, who would torture? Who would cause anyone unnecessary pain?”<sup>280</sup> As Jerry Phillips argues, when one’s “sense of self is phenomenologically bound up with the humanity of the other . . . in a hyperempathetic world, the other would cease to exist as the ontological antithesis of the self, but would instead become a real aspect of oneself, insofar as one accepts oneself as a social being.”<sup>281</sup> Put another way, as Butler reveals, the answer to unyielding barbarism, chaos, and violence may be to bear the cross of sacrifice together. This concept challenges traditional notions of self and other, suggesting that embracing our interconnectedness could lead to a more compassionate and equitable society, echoing the importance of solidarity and sacrifice in overcoming systemic injustices.

### III. ON SACRIFICE

Can one experience dignity in the modern workplace without enduring the pain of sacrifice? On one hand, liberal democracies with capitalist markets inherently involve tradeoffs. Workers must relinquish certain freedoms to participate in the market, a necessity for survival. The alienation experienced in the workplace is often rationalized by the prospect of accumulating enough wealth to pursue life, liberty, and happiness during holidays and retirement. The state supports these pursuits by enforcing property rights and contractual agreements, regulating market competition, and protecting civil liberties. On the other hand, progressive scholars have long contended that the ideal of equal opportunity in capitalist markets serves to justify the accumulation of capital for the few at the expense of the

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278. BUTLER, *supra* note 2, at 118–19.

279. Karen Weise & Noam Scheiber, *Why Amazon Workers Sided with the Company Over a Union*, N.Y. TIMES (Oct. 26, 2021), <https://www.nytimes.com/2021/04/16/technology/amazon-workers-against-union.html>.

280. See BUTLER, *supra* note 2, at 12, 115.

281. Phillips, *supra* note 16, at 306.



many, resulting in significant imbalances in market power and a pervasive sense of indignity in the workplace.<sup>282</sup>

This Part argues that the constitutive power of law produces essential legal relations that define human social existence in historically specific ways. In the modern workplace, this power has made human sacrifice (both literal and figurative) and antidemocracy essential legal relations required by capitalism. Afrofuturism's reclamation of untold Black histories and imagined Black futures directly confronts this dilemma, offering a lens through which to critique and reimagine these entrenched legal and social structures.

#### A. LAW'S SANCTION OF HUMAN SACRIFICE

Beneath the contradictions of equality and liberty in the U.S. political economy lies a profound vision of democratic citizenship. This vision demands not merely the inclusion of subordinated citizens *into* the body politic with equal opportunities to compete but also the recognition of dominated citizens *within* the body politic who routinely experience unfreedom in the labor market. Limiting the concept of liberty to freedom from interference—or negative liberty—obscures the impact of marketplace domination.<sup>283</sup> Beyond equal access to civil liberties and economic opportunities, citizenship requires freedom to fully engage in democratic life, a positive conception of liberty that entails meaningful access to social and economic rights.<sup>284</sup>

In recent history, the notion of rights has faced sharp criticism.<sup>285</sup> The Critical Legal Studies (CLS) movement of the 1970s and 1980s argued that the idea of fundamental rights is inherently indeterminate.<sup>286</sup> The freedoms that citizens enjoy to pursue their individual well-being are subject to the social, cultural, and

282. See Kenneth Scheve & David Stasavage, *Wealth Inequality and Democracy*, 20 ANN. REV. POL. SCI. 451, 465 (2017) (noting that “wealth inequality in the context of a market economy generates capture . . . [and that] the state can be ‘structurally dependent’ on owners of capital because without their investments the economy will not flourish”).

283. Paul N. Cox, *The Public, the Private and the Corporation*, 80 MARQ. L. REV. 391, 496 (1997).

284. See generally Maria Dimova-Cookson, *Defending Isaiah Berlin's Distinctions Between Positive and Negative Freedoms*, in ISAAH BERLIN AND THE POLITICS OF FREEDOM: “TWO CONCEPTS OF LIBERTY” 50 YEARS LATER 73 (Bruce Baum & Robert Nichols eds., 2013); K. SABEEL RAHMAN, *DEMOCRACY AGAINST DOMINATION* (2017) (arguing that economic governance should include the ability for citizens to exercise power over economic policies).

285. See Etienne C. Toussaint, *The Purpose of Legal Education*, 111 CALIF. L. REV. 1, 59–60, 60 n.337 (2023) (explaining how David Trubek, Duncan Kennedy, Mark Tushnet, Roberto Unger, and others at the University of Wisconsin Law School launched a conference on critical legal studies in 1977); Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515, 1515 (1991) (describing critical legal studies as a political location, and explaining its “intellectual content . . . and sketch[ing] its possible future”).

286. See Mark Tushnet & Jennifer Jaff, *Critical Legal Studies and Criminal Procedure*, 35 CATH. U. L. REV. 361, 376 (1986) (“If we shift the frame—from the individual to the systemic level, from abstract moral philosophy to specific institutions, and so on—we can produce alternative results. Yet neither the formalisms nor any metatheory specifies what frame we should use.”); Mark Tushnet, *The Critique of Rights*, 47 SMU L. REV. 23, 32–34 (1993) (defining the indeterminacy thesis); Clare Dalton, *An Essay in the Deconstruction of Contract Doctrine*, 94 YALE L.J. 997, 1005–09 (1985) (critiquing the foundations of modern contract law).

political ideologies that shape law and public policy.<sup>287</sup> Consequently, rights-based discourse can “insulate the subordinating nature of private ordering from governmental regulation, legitimate existing structures of social subordination, and perpetuate an individualistic and atomistic conception of the human condition.”<sup>288</sup>

However, the critical race theory (CRT) movement, an outgrowth of the CLS movement launched in the mid- to late-1980s, pushed back against the CLS critique of rights. CRT scholars noted that the CLS critique can alienate the experiences of minoritized segments of the population when it employs the neutralizing language of colorblindness.<sup>289</sup> Patricia Williams, a key figure in the early CRT movement, argued that CLS ignored the importance of rights to the freedom struggles of Black Americans, from enslavement to Jim Crow segregation to mass incarceration. For Black Americans, rights represent “both solidarity and freedom . . . [an] empowerment of an internal and very personal sort . . . a process of finding the self.”<sup>290</sup> For Olamina in Octavia Butler’s *Parable of the Sower*, it was the protagonist’s individual right to reject the bargain offered by oppressive corporations and establish Earthseed that facilitated her journey toward freedom.

The contributions of early CRT scholars to rights-based discourse highlighted a measure of uncertainty among legal scholars regarding the constitutional demands of liberal democratic citizenship. What does it mean for a person racialized as Black in the United States to experience equality under the law, to experience human dignity in the workplace, to be free? Modern conceptions of justice,

287. See Peter Gabel & Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, 11 N.Y.U. REV. L. & SOC. CHANGE 369, 369 (1982-83) (“[T]he expansion of legal rights has only a limited impact on people’s real lives, and . . . even these limited gains can be wiped out by a change in the political climate.”).

288. Etienne C. Toussaint, *Of American Fragility: Public Rituals, Human Rights, and the End of Invisible Man*, 52 COLUM. HUM. RTS. L. REV. 826, 834-35 (2021). *But see* Morton J. Horwitz, *Rights*, 23 HARV. C.R.-C.L. L. REV. 393, 404 (1988) (“The most promising way to ensure that rights may be used on behalf of the socially weak . . . is to ground rights theory in a substantive conception of the good society.”).

289. See Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 HARV. C.R.-C.L. L. REV. 301, 303 (1987) (listing key CLS ideals such as “disparagement of legal rules and rights,” and noting that these ideals threaten minorities in part because they force minorities to “give up something of value”). See generally CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado & Jean Stefancic eds., 3d ed. 2013) (collecting CRT articles, some of which question whether civil rights law benefits racial minorities); CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al. eds., 1995) (offering articles that compare and contrast the goals of CRT and CLS). For a differing view, see Jeffrey J. Pyle, *Race, Equality and the Rule of Law: Critical Race Theory’s Attack on the Promises of Liberalism*, 40 B.C. L. REV. 787, 787-89 (1999) (criticizing critical race theory because it “attack[s] the very foundations of the liberal legal order” without providing new solutions).

290. Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401, 414 (1987) (emphasis omitted) (“For many white CLSers, the word ‘rights’ seems to be overlaid with capitalist connotations of oppression, universalized alienation of the self, and excessive power of an external and distancing sort. . . . For most blacks, on the other hand, running the risk—as well as having the power—of ‘stereo-typing’ (a misuse of the naming process; a reduction of considered dimension rather than an expansion) is a lesser historical evil than having been unnamed altogether.”).

as political philosopher Danielle Allen explains, often privilege one's freedom from interference (or private autonomy), over one's freedom to participate in public decision-making to avoid domination (or public autonomy).<sup>291</sup> However, as Allen contends, equal human dignity is foundational to liberal democracy.<sup>292</sup> When one's experience of dignity is shaped by formal laws, cultural practices, and social norms that embed hidden biases and stereotypes, certain groups may fail to experience true freedom.<sup>293</sup>

Afrofuturism's reclamation of untold Black histories illuminates the distinctions between liberty and freedom in the U.S. political economy. The sacrifices endured by low-wage workers throughout U.S. history—many of whom belong to minoritized racial and ethnic groups—highlight the limited power wielded by those who sell their labor. In contrast, the owners of capital can more readily shape laws and policies to benefit their material interests and shield themselves from harm. The Afrofuturist critique exposes this arrangement as fundamentally antidemocratic, as it denies workers their rights to self-governance in the workplace and to choose whether and how they will be sacrificed in the productive process. Furthermore, it strips them of their equal human dignity.

#### B. LAW'S APPROVAL OF ANTIDEMOCRACY

We must also consider what or *who* is being sacrificed as workers strive for both material and spiritual fulfillment, or the goods of the body and the goods of the soul. Martin Luther King, Jr. warned that integrating Black Americans into historically segregated institutions was like “integrating into a burning house . . . walking into a place that does not understand that this nation needs to be deeply concerned with the plight of the poor and disenfranchised.”<sup>294</sup> For King, the fight for racial integration necessitated more than merely bringing excluded people from the periphery of society into the core of democratic life to be acculturated into the habits and rituals of citizenship.

King envisioned a broader and more capacious conception of integration, extending beyond the mere geographic proximity of citizens. He called for a reconstruction of social and organizational structures altogether, driven by

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291. See Danielle Allen, *Political Equality and Empowering Economies: Toward a New Political Economy*, in *Political Equality as Justice* 5–6 (Jan. 2018) (unpublished manuscript), <https://canvas.harvard.edu/courses/54946/files/7587977/download?wrap=1> [<https://perma.cc/VR3N-DLNB>].

292. See Spencer Lee Lenfield, *The Egalitarian*, *HARV. MAG.* (May–June 2016), <https://harvardmagazine.com/2016/05/the-egalitarian> [<https://perma.cc/WMK7-G5L6>].

293. Non-legal norms and practices also contribute barriers to the realization of moral equality. Cf. Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 *YALE L.J.* 1317, 1333 (1964) (“For law is made not merely through statutes and legislative programs, but also through modes of official behavior.”).

294. Harry Belafonte, *Harry Belafonte Reflects on Working Toward Peace*, *MARKKULA CTR. FOR APPLIED ETHICS* (2014), <https://www.scu.edu/mcae/architects-of-peace/Belafonte/essay.html> [<https://perma.cc/25FM-WWMQ>].

appeals to “an unenforceable moral law . . . awakened in the souls of all.”<sup>295</sup> This vision demanded a transformation that would fundamentally address the systemic injustices and inequities ingrained in society. As social uprisings exploded nationwide during the civil rights movement, King observed that

[i]t is forcing America to face all its interrelated flaws—racism, poverty, militarism and materialism. It is exposing evils that are rooted deeply in the whole structure of our society. It reveals systemic rather than superficial flaws and suggests that radical reconstruction of society itself is the real issue to be faced.<sup>296</sup>

In King’s view, true integration demands an affirmation of the equal human dignity of all Americans, recognizing both the tangible sacrifices Black people have endured in the workplace and the intangible sacrifices, such as the erosion of democracy due to limited worker participation in firm governance and ownership. Enabling marginalized workers to become “co-creators in the kingdom of culture”<sup>297</sup> requires a reckoning with these sacrifices through U.S. history.<sup>298</sup> Co-governance and co-ownership not only provide opportunities for multicultural discourse on liberty and equality in capitalist markets but also disincentivize legal relations that perpetuate indignities among subordinated segments of the workforce.<sup>299</sup>

Modern attacks on the study of chattel slavery, land dispossession, and racial discrimination can be seen as backlash against the diversification of economic markets in ways that prioritize the experiences of racial and ethnic minorities. This backlash against diversity, equity, and inclusion efforts—often termed “whitelash”<sup>300</sup>—reflects a more profound and deeper cultural alienation in modern democratic life. For many Americans, the yearning for mutual recognition in an unequal market society amounts to “an ironic awareness of the joke that always lies between appearance and reality, between the discontinuity of social tradition and that sense of the past which clings to the mind.”<sup>301</sup> For example,

295. Danielle Allen, *Integration, Freedom, and the Affirmation of Life*, in *TO SHAPE A NEW WORLD: ESSAYS ON THE POLITICAL PHILOSOPHY OF MARTIN LUTHER KING, JR.* 146, 149 (Tommie Shelby & Brandon M. Terry eds., 2018).

296. MARTIN LUTHER KING, JR., *A Testament of Hope*, in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 313, 315 (James Melvin Washington ed., 1991).

297. Allen, *supra* note 295, at 148.

298. King argues that for “democracy . . . to have breadth of meaning,” it must eliminate poverty. See MARTIN LUTHER KING, JR., *WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY?* 173–74 (Beacon Press 2010) (1967). Both goals are advanced through worker participation in firm governance and ownership.

299. See Martin Luther King, Jr., *The Negro Is Your Brother*, *ATL. MONTHLY*, Aug. 1963, at 78, 86 (“We must come to see that human progress never rolls in on wheels of inevitability. It comes through the tireless efforts and persistent work of men willing to be coworkers with God, and without this hard work time itself becomes an ally of the forces of social stagnation.”).

300. See generally PROTECTING WHITENESS: WHITELASH AND THE REJECTION OF RACIAL EQUALITY (Cameron D. Lippard et al. eds., 2020).

301. See Ralph Ellison, *Change the Joke and Slip the Yoke*, 25 *PARTISAN REV.* 212, 218 (1958).

many Black Americans in disinvested urban ghettos seek recognition of their dignity amidst the overpoliced neighborhoods that belie the appearance of liberty.<sup>302</sup> Similarly, many White Americans in declining rural towns seek recognition of their dignity amidst economic stratification that contradicts the appearance of equality.<sup>303</sup> In both cases, economic inequality and political polarization alienates everyday Americans from the promises of liberal democracy.

As Ralph Ellison contended, all Americans remain “trapped somewhere in the mystery of hell,”<sup>304</sup> grasping for “freedom dreams”<sup>305</sup> while chained to a painful history of colonialism, imperialism, slavery, and White supremacy. In Butler’s *Parable of the Sower*, it is the disempowered worker—Olamina and her Earthseed followers—who are best positioned to articulate new conceptions of liberty and equality to overcome marketplace alienation. In other words, the alienation of the oppressed becomes a pathway toward freedom.

Frantz Fanon alluded to this conclusion in *Black Skin, White Masks*. He described the indignities endured by Black Americans as a “veritable hell,” a “zone of nonbeing” where marginality conjures a seemingly inescapable inferiority complex.<sup>306</sup> Fanon’s conception of existential angst differs from Sartre’s view. Sartre argued that the state of nonbeing characterizes the angst that all humans experience from their inherent freedom before entering a state of self-consciousness in which they overcome nonbeing through individual agency.<sup>307</sup> To Fanon, dispossession and racialized violence wrought by capitalist economies in post-colonial societies trigger feelings of colonial despair among oppressed populations. Under this view, self-consciousness is related to how one is perceived in society.<sup>308</sup>

While it is the psychic life of the oppressed that produces alienation, Fanon argues that a fractured sense of human dignity can only be restored through mutual recognition. Fanon embraces the Sartrean view that alienation arises not only from one’s existence in a state of nonbeing, but also from the objectifying gaze of

302. See generally Elise C. Boddie, *Racially Territorial Policing in Black Neighborhoods*, 89 U. CHI. L. REV. 477 (2022).

303. See generally PBS NewsHour, *The Struggling, Rural, White Communities that Feel like Nobody Cares*, PBS (Sept. 27, 2016, 7:24 PM), <https://www.pbs.org/newshour/show/struggling-rural-white-communities-feel-like-nobody-one-cares> [<https://perma.cc/ZFR6-M27B>].

304. See Ellison, *supra* note 301, at 218.

305. See generally ROBIN D. G. KELLEY, *FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION* (2002) (arguing that Black community-led social movements were based on hope for a new world).

306. FRANTZ FANON, *BLACK SKIN, WHITE MASKS*, at xii (Richard Philcox trans., Grove Press 2008) (1952) (“There is a zone of nonbeing, an extraordinarily sterile and arid region, an incline stripped bare of every essential from which a genuine new departure can emerge. In most cases, the black man cannot take advantage of this descent into a veritable hell.”).

307. Ndlovu, *supra* note 88, at 155 (“We . . . find in Sartre the notion of existential abandon. Thus abandoned, self-consciousness is confronted by . . . an existential lack which it seeks to overcome. The very ability to overcome the lack speaks to freedom to which non-being refers. Thus, the lack can be overcome through the quality of non-being that Sartre ascribes to self-consciousness.”).

308. See *id.* at 160–61 (“The peculiar impact of the racial gaze can be seen as when Fanon comments that the glances of the white man ‘fixed me there, in the sense in which a chemical solution is fixed by a dye’ adding that ‘an unfamiliar weight burdened me.’” (quoting FANON, *supra* note 161, at 109–10)).

others.<sup>309</sup> For Sartre, overcoming this objectifying gaze and reemerging as a subjective being requires self-consciousness and the freedom to achieve a dignified humanity.<sup>310</sup> However, Fanon rejects the conventional focus on the developmental history of a person within the context of their individual family structure, which, in his view, fails to capture the lived experiences of Black people within the broader social context of racial oppression in a White supremacist society.<sup>311</sup> Fanon views the rituals and myths that undergird racism and prejudice as habits forming a “collective unconscious” that governs societal behavior.<sup>312</sup>

For Fanon, freedom from existential angst calls for multicultural democratic discourse that exposes how biases shape social relations of domination and subordination. It also demands an awareness of the way racialization can determine whether one’s humanity is marked by flourishing or sacrifice. The low-wage Black worker in a post-colonial society, forced to endure workplace indignities for sheer survival, cannot experience the freedom to *become* because they are alienated from their essence as a dignified human being. This insecurity—the yearning to be recognized as equally dignified, while mired in oppressive conditions—reflects the age-old struggle to be recognized as an absolute end in oneself, not merely as a means to another’s end. In Butler’s *Parable of the Sower*, Olamina’s hyperempathy provides an intimate awareness of the way society harms people in everyday life.

The intertwined nature of racism and capitalism in U.S. history challenges the liberated worker from living with integrity because their freedom to pursue self-directed ends is not accompanied by societal recognition of equal human dignity. Integrity demands an awareness of *intersubjectivity*, the sense that individual human experiences are collectively shared in a democracy. When the social perception of “Blackness” inspires attempts to earn recognition through the mimicry of “Whiteness,”<sup>313</sup> such efforts merely produce a White mask of the objective

309. SARTRE, *supra* note 184, at 264–65 (“[I]n the shock which seizes me when I apprehend the Other’s look, this happens—that suddenly I experience a subtle alienation of all my possibilities, which are now associated with objects of the world, far from me in the midst of the world.”).

310. RICHARD SCHACHT, *ALIENATION* 221 (Psych. Press 2015) (1970) (“In Sartre’s view, I am not merely an object, a thing among other things. Rather, my nature is to be conceived in terms of freedom.” (emphasis omitted)).

311. See FANON, *supra* note 161, at 141–44.

312. See E. Dyson, *The Psycho-Politics of Frantz Fanon and Michael Foucault: A Critical Dialogue* 24, 32 (July 2020) (MPhil thesis, University of Oxford) (quoting FRANTZ FANON, *BLACK SKIN, WHITE MASKS* 113 (Charles Lam Markmann trans., Pluto Press 2017) (1952)), <https://ora.ox.ac.uk/objects/uuid:8b36ad1d-f49b-4a8c-a7e1-ebb5e1a4515c/files/d37720c95b> [<https://perma.cc/4E6F-KZ98>].

313. See generally Teresa J. Guess, *The Social Construction of Whiteness: Racism by Intent, Racism by Consequence*, 32 *CRITICAL SOCIO.* 649 (2006) (discussing social constructions and political significance of “Whiteness”); Harryette Mullen, *Optic White: Blackness and the Production of Whiteness*, *DIACRITICS*, Summer–Fall 1994, at 71 (connecting the construction of “Whiteness” with the concept of people of color “passing” as White); Janice Gassam Asare, *The Evolution of Whiteness in the United States*, *FORBES* (Feb. 22, 2022, 1:00 AM), <https://www.forbes.com/sites/janicegassam/2022/02/22/the-evolution-of-whiteness-in-the-united-states/?sh=7067bab97626> (documenting how “Whiteness” has been constructed over time); Milan Hrabovsky, *The Concept of “Blackness” in Theories of Race*, 22 *ASIAN & AFR. STUD.* 65 (2013) (analyzing the etymology and historical development of “Blackness” and race).

world that limits the autonomy of those persons with Black skin. Fanon suggests that this White mask of respectability renders mutual recognition—or, more specifically, dignity-as-integrity—impossible because the subjective cultural needs, values, and perspectives of minoritized racial and ethnic persons are devalued.

### C. AFROFUTURISM'S RECLAMATION OF UNTOLD FUTURES

To Fanon, the answer lies in embracing the social construction that forms the foundation of the racial inferiority complex—for Black Americans, to “shout [their] blackness.”<sup>314</sup> Since the concept of race is fundamental to the lived experience of the Black subject in a racialized world, self-consciousness emerges from the racialized bodily experience. Fanon embraces the irrationality of racialization to imbue Black people with integrity in the face of ongoing racial discrimination. Thus, when Black Americans express pride in their subjective racialized experiences—uttering declarations of Black power, or shouting “Black Lives Matter” in city streets—they open pathways towards mutual recognition in political economies constituted by racial capitalism. Only by embracing the particularized subjective experiences of the oppressed can political society discover a universal conception of humanity where all people are deemed deserving of equal human dignity. Only by reckoning with the sacrifices of the oppressed can all members of society become free.<sup>315</sup>

Fanon’s remedy rests upon the claim that the United States is a racialized society where vestiges of racial hierarchy from the Antebellum and Jim Crow eras remain salient features of modern life. These claims have inspired controversy in recent years, especially concerning how U.S. history is taught in public education.<sup>316</sup> Fanon’s insights expose the U.S. government’s celebration of “essential workers” during the COVID-19 pandemic as misleading.<sup>317</sup> By naming marginalized workers who endure sacrifices for the common good as *essential*, we do not describe their subjective experiences of sacrifice in the workplace. Rather, we articulate an objective feature of the political and economic superstructure that benefits those who are free to choose whether they will be sacrificed. In other words, *essential* does not describe the plight of marginalized workers. Instead, much in the way James Baldwin argued that “[t]he ni[\*]ger is a white invention,

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314. FANON, *supra* note 306, at 101 (“Understandably, confronted with this affective ankylosis of the white man, I finally made up my mind to shout my blackness.”).

315. See generally ERIC BLUMENSON, CARR CTR. FOR HUM. RTS. & POL’Y, HARV. KENNEDY SCH., HOW ARE HUMAN RIGHTS UNIVERSAL? (2020) [<https://perma.cc/2R9W-77R4>] (discussing the universality of moral obligations imposed by human rights).

316. See, e.g., Eric Petterson, *The (White) Washing of American History*, 17 FLA. A&M U. L. REV. 1, 5–6 (2022); Trip Gabriel & Dana Goldstein, *Disputing Racism’s Reach, Republicans Rattle American Schools*, N.Y. TIMES (Nov. 8, 2021), <https://www.nytimes.com/2021/06/01/us/politics/critical-race-theory.html>.

317. See, e.g., Deepti Hajela & Michael R. Sisak, *NYC Honors Essential Workers at Parade up Canyon of Heroes*, AP (July 7, 2021, 3:29 PM), <https://apnews.com/article/lifestyle-parades-canyons-coronavirus-pandemic-health-f6fbcd3b911164a6bcc9c51ca1fb5563>.

and white people invented him out of terrible necessities of their own,”<sup>318</sup> the word “essential” in the phrase “essential worker” more accurately describes something about those who have named the sacrificed.

The unwillingness of lawyers to name the sacrifices of the working class obscures their bondage. Even more, the superficial praise of so-called essential workers—named so by lawyers and politicians—represents a psychological projection, the manifestation of our existential yearning to be *essential* to the broader project of collective human well-being. This praise belies the silent guilt that many lawyers harbored while sitting comfortably inside their homes during the COVID-19 pandemic. It is not a guilt borne from fear that essential workers will not forgive those who can work remotely while the risks of pandemic infections are greatest. Nor is it a guilt borne from fear that racial and ethnic minorities have not forgiven America for its legal history of genocide, slavery, racial apartheid, and White supremacy. It is a guilt borne from America’s failure to come to terms with the price of legalizing a racial hierarchy premised on the concept of Whiteness. As James Baldwin put it, more simply, it is a failure to reckon with “the price of the ticket.”<sup>319</sup> White supremacist culture still shackles many people racialized as White with an existential crisis. For what does it mean to recognize oneself as White in a society still battling the headwinds of White supremacy and anti-Black racism, so many years after the toppling of Jim Crow and the Ku Klux Klan?

Even as Americans yearn for a radical reconstruction of the U.S. political economy to address poverty and workplace indignities, the naming of marginalized workers as *essential* embodies a universal hope borne from a universal fear. It is the hope of a resurrection into a new life where workers are rewarded for their efforts without enduring the collective pain of sacrifice and atonement for America’s violent history. The essential worker, then, is not a person, but an idea. If one is born in the bowels of America’s underbelly, one can rise to the heights of success—the *essence* of human being in America—if only one works hard, competes, complies, and sacrifices. Naming the oppressed as essential paints a vision of who Americans can become by blotting out the harsh reality of what America already is. In so doing, we avoid reckoning with the blood buried in our soil, the sacrifices stitched in our bones, and the undemocratic cultures infused in our workplaces. We refuse to become.

The Afrofuturist critique of the workplace offers a pathway to overcome this dilemma. In Butler’s *Parable of the Sower*, members of Olamina’s Earthseed community aim “to learn to shape God with forethought, care, and work; to

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318. JAMES BALDWIN, *THE CROSS OF REDEMPTION: UNCOLLECTED WRITINGS* 97 (Randall Kenan ed., 2010); see also Davis W. Houck, *Rhetoric and Identity in James Baldwin’s Revolution from Within*, *JAMES BALDWIN REV.*, Sept. 2017, at 110, 119; All Things Considered, ‘I Am Not Your Negro’ Gives James Baldwin’s Words New Relevance, NPR (Feb. 3, 2017, 4:35 PM), <https://www.npr.org/2017/02/03/513311359/i-am-not-your-negro-gives-james-baldwins-words-new-relevance> [<https://perma.cc/35UY-YHJD>].

319. JAMES BALDWIN, *THE PRICE OF THE TICKET: COLLECTED NONFICTION 1948–1985* (1985).



educate and benefit their community, their families, and themselves; and to contribute to the fulfillment of the Destiny.”<sup>320</sup> Olamina articulates a “race-transcendent communalist ethics” that finds “hopeful possibility in the deadliest of seemingly arrested states.”<sup>321</sup> Through Olamina’s narrative, Butler embraces collective human agency, not individualism, as the foundation of freedom and radical possibility. This agency extends beyond the political realm to govern the workplace. Olamina’s Earthseed commune evokes a “left-wing communitarian survivalism.”<sup>322</sup> Ironically, the commune commits to the violence of the market while embracing the pain of self-sacrifice: “The world is full of crazy, dangerous people. We see signs of that every day. If we don’t watch out for ourselves, they will rob us, kill us, and maybe eat us. It’s a world gone to hell . . . and we’ve only got each other to keep it off us.”<sup>323</sup> Here, Butler expresses the best of American pragmatism, locating the meaning of human experience in everyday interactions and practical adaptation.

Earthseed rejects the divisive politics of race that dominates modern society, instead embracing an “enlightened communalism” that transcends difference-based identities altogether.<sup>324</sup> By embracing diversity yet rejecting the possibility of social revolution, Butler suggests that human catastrophe and sacrifice—both tangible and intangible—are inevitable in capitalist markets. Our ability to survive lies in the development of a collective empathy for our shared vulnerabilities.<sup>325</sup> As Jim Miller argues, “Butler’s critical dystopias force us to ‘work through’ the dystopian before we can begin the effort to imagine a better world.”<sup>326</sup> We must reckon with the irrationality of sacrifice before imagining new futures.

Olamina’s commune survives the dystopian present by working collectively toward “[a]nother place. Another way. Something!”<sup>327</sup> Earthseed teaches its followers to “[e]mbrace diversity. Unite—[o]r be divided, robbed, ruled, killed [b]y those who see you as prey. Embrace diversity [o]r be destroyed.”<sup>328</sup> By taking collective responsibility for the future of their community, they can avoid catastrophe. As Miller argues, their new religion “debunks traditional religious hierarchical thinking and suggests a worldview based on the notion of radical reciprocity,” a world where “[o]ne is free to act but not free of the consequences of one’s actions.”<sup>329</sup> In other words, the necessity of sacrifice also demands that everyone embrace accountability. As Earthseed maintains, “[a] community’s first

320. See BUTLER, *supra* note 2, at 261.

321. Phillips, *supra* note 16, at 307.

322. *Id.* at 308.

323. See BUTLER, *supra* note 2, at 286.

324. Phillips, *supra* note 16, at 309.

325. See generally Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1 (2008) (recognizing common vulnerabilities based on society’s institutional structures).

326. Miller, *supra* note 277, at 339.

327. BUTLER, *supra* note 2, at 76.

328. *Id.* at 196.

329. Miller, *supra* note 277, at 356.

responsibility is to protect its children—the ones we have now and the ones we will have,<sup>330</sup> suggesting that freedom is discovered not merely in one's capacity for self-determination and individual sovereignty, but also in one's freedom to sacrifice for a community larger than the self. The Afrofuturist critique reveals that embracing the essential nature of sacrifice is a pathway toward freedom from sacrifice, as well as freedom *for* sacrifice.

This approach to liberty sharply contrasts with the view adopted by Olamina's younger half-brother, Keith. Tragically, he dies after running away from the community to join a group of thieves. His life is cut short because of his individualistic and apathetic perspective: "He would have been a monster if he had been allowed to grow up. Maybe he was one already. He never cared what he did. If he wanted to do something and it wouldn't cause him immediate physical pain, he did it, fuck the earth."<sup>331</sup> Keith's definition of freedom, centered on self-interest and disregard for others, ultimately leads to his downfall. In contrast, Lauren embraces the pain of her hyperempathy and finds hope in radical compassion and mutual recognition. The ethos of Earthseed—"Forever uniting, growing, dissolving"<sup>332</sup>—underscores the broader implications of Butler's novel, presenting it as "a Gramscian exercise in overcoming the pessimism of the intellect with an optimism of the will."<sup>333</sup> As Ralph Ellison suggested, only by descending into the depths of our despair and confronting our dark monsters can we discover a new vision for the future:

Down at the deep dark bottom of the melting pot, where the private is public and the public private, where black is white and white black, where the immoral becomes moral and the moral is anything that makes one feel good . . . the white man's relish is apt to be the black man's gall.<sup>334</sup>

### CONCLUSION

*Ma and pa got drowned, Mississippi, you're the blame,  
My ma and pa got drowned, Mississippi, you're the blame,  
Mississippi River, I can't stand to hear your name.*

— Bessie Smith<sup>335</sup>

The expression of the blues evokes a sense of joy amidst the pain of sacrifice.<sup>336</sup> Through blues music, one can experience the "passionate detachment" of

330. BUTLER, *supra* note 2, at 321.

331. *Id.* at 115.

332. *Id.* at 315.

333. Miller, *supra* note 277, at 357.

334. Ellison, *supra* note 301, at 215.

335. BESSIE SMITH, *Homeless Blues, on SWEET MISTREATER* (Columbia 1927); *see also* David Evans, *Bessie Smith's 'Back-Water Blues': The Story Behind the Song*, 26 *POPULAR MUSIC* 97, 101 (2007).

336. *See* BALDWIN, *supra* note 318, at 72–73.

reckoning with what is—the suffering inflicted by the market—while yearning for what can be—the promise of freedom offered by the state.<sup>337</sup> Similarly, as a nation, we must confront who we are while imagining what we might become. We are a country of business owners and workers, each laboring under the timeless logic of capitalism. As we pursue freedom in the market, we also grow increasingly estranged from our collective democratic essence as equally dignified political actors.

Today, we are witnessing a resurgence of union organizing across the United States, buoyed by the activism of the Movement for Black Lives. However, union activism and collective bargaining alone will not save us. Modern labor laws significantly restrict the bounds of organizing. To discover new rituals of democratic citizenship, we must reckon with the sacrifices that countless citizens endure daily to sustain an unjust status quo; sacrifices that hold our crumbling walls in place and keep hope alive for a better tomorrow; sacrifices that many workers are not free to reject; sacrifices that we—the American people—need to survive. Many Americans are not free to choose whether their lives or their agency will be sacrificed in the market. Many Americans are not free to choose lives of leisure in pursuit of human well-being. For many Americans, freedom in the workplace is a “hollow mockery.”<sup>338</sup>

A critical step in addressing the inequities that trouble America’s uneven landscape is discovering a richer conception of democratic life in the workplace. Beyond freedom from interference that preserves civil liberties, and beyond freedom from domination that affirms fundamental human rights, we must strive for a workplace that affords freedom for sacrifice. When freedom is viewed in this way, guided by the Afrofuturist lens, the Black liberation struggle does not appear to be aimed at the question of whether America will set Black people free. Nor does it seem directed at whether Black Americans and other minoritized racial and ethnic groups can experience greater freedoms in modern capitalist economies. The deeper question that remains is whether America is willing to pay the price of Black liberation, or as Baldwin argued, “[t]he price a white woman, man, boy and girl will have to pay in themselves before they look on me as another human being.”<sup>339</sup>

The Black radical tradition has always been a practice of Afrofuturism. It seeks to overcome America’s alienation from its founding ideals, to reckon with the vestiges of the Antebellum and Jim Crow eras that haunt modern society and undermine the dignity of everyday workers, to look to the future. It urges

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337. *Id.*

338. FREDERICK DOUGLASS, “*What to the Slave Is the Fourth of July?*” (1852), in *THE OXFORD FREDERICK DOUGLASS READER* 108, 119 (William L. Andrews ed., 1996) (“To him, your celebration is a sham; your boasted liberty, an unholy license; your national greatness, swelling vanity; . . . your shouts of liberty and equality, hollow mockery . . .”).

339. James Baldwin, *What Price Freedom?*, 4 *FREEDOMWAYS* 191, 194 (1964).

America, as Langston Hughes pleaded, to “[l]et America be America again.”<sup>340</sup> Resolving this existential crisis is crucial to America’s future, yet it remains our current despair. It may very well be the reason why so many are afraid to reckon with our dark past, why so many Americans remain trapped somewhere in the mystery of hell.

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340. Langston Hughes, *Let America Be America Again*, ESQUIRE (July 1, 1936), <https://classic.esquire.com/article/1936/7/1/let-america-be-america-again>.