

**Abolish Human Silencing:  
Gender Equality, Racial Equity and Reparations  
“Women and Cultural Violence” WMST 339**

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Through the interdisciplinary field of American Studies, I have developed the necessary framework to implement Transformative Justice as an alternative approach to criminalization and perpetual punishment. My interest in Transformative Justice is informed by the impact of State Violence and my experience as a Peer Educator within the Prison Industrial Complex (PIC). I am inspired by Restorative Justice practices and non-violent communication as solutions to social problems. I am especially interested in teaching marginalized populations the value of their voice for the purpose of implementing Transformative Justice practice.

This legislative session, I have joined America Votes and partners to lead a bill that will end the disenfranchisement of returning citizens in New Mexico. An analysis from the Sentencing Project's 2016 data indicates that 24,286 eligible voters in New Mexico are silenced due to felony convictions. African Americans and Latinos are disproportionately overrepresented in New Mexico's criminal punishment system. The racial disparities in the United States criminal punishment system demonstrate how restoring the vote to people of color with felony convictions would be a path towards reversing traditional laws fostered by gendered racial violence. The relationship between gendered racial violence and globalized capitalism to New Mexico's history demonstrates why ending disenfranchisement in New Mexico is a progressive step toward gender equality, racial equity, and reparations.

### **Women in Subjection: Coloniality of Gender**

Disenfranchisement is violence against women and people of color that is intended to render their bodies silent for the purpose of subjection to patriarchy. Dunbar-Ortiz explains the *Cult of Covenant* to demonstrate subjection to Christianity and Catholicism that changed the power women held in rituals and society; through the *male gaze*, religion designated mothers as binary maternal objects, virgins, and whores. Driven by male lust and fear, "Both pornography

and patriarchal religion are founded in men's appropriation, control, silencing, and self-serving definition of female sexuality" (Caputi); human silencing is necessary for *gendering domination*.

British suffragettes such as Alice Paul who fought for their right to vote were imprisoned and tortured at the HM Prison Holloway. They were restrained and injected with food through tubes inserted into their nose or mouth; they were force-fed up to four times daily for engaging in hunger strike. Prison violence including rape, sexual assault, and other forms of non-lethal torture are daily occurrences within the PIC. These forms of violence are perpetuated by the Code of Silence amongst prisoners and reinforced by felon disenfranchisement law. Despite the 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, and 19<sup>th</sup> amendments of the U.S. Constitution and the Voting Rights Act of 1965 "ended" slavery and granted voting rights to all "citizens" in America, women and people of color continue to remain voiceless due to the neocolonial practice of mass incarceration and felon silencing.

Colonial ideologies constructed around sex, gender, and race have been linked to justify land/space accumulation, economic capital, and who is *undesirable* or non-citizen. *Us vs Them* constructs impact entire populations through the arrangement and distribution of resources through policy and administrative law. Patriarchal dominance "informs oppressions like racism and homophobia, which locate the *other* as on that *feminine* side of things-that is, as being intrinsically inferior, deviant, sinful, irrational, more body than mind, hyper-sexual, hyper-violent, treacherous, savage, animalistic and closer to nature" (Caputi 2011). With the Doctrine of Discovery, these attributes have been used to define and criminalize the *other*; from the inception of "America", *othering* is how a gendered racialization was carried out and made the conditions of land theft and genocide possible. "Treating differences as a threat enables one

society to dehumanize the *other*" (Dunbar-Ortiz 2019) as objects or commodities, thereby justifying violence to accumulate territorial space as an empire.

“It is not historical coincidence that the classifications of homosexual and heterosexual appeared at the same time that the United States began aggressively policing the borders between the United States and Mexico” (Perez 2003); race and sex are linked to define citizenship. Women have been the boundary markers of empire to colonizers who "ritualistically feminized borders and boundaries” (McClintock 24) through a *Culture of Conquest*. “American” culture of conquest uses women’s bodies as a simulacrum for land requiring domination or subjugation, i.e., *virgin land*. Heteropatriarchy informs nationalism by centering the dominant masculine as the subject of struggle or the head of the family; gender inequality is therefore institutionalized by the “*family of man*” construct. The *family of man* and other institutions are influenced by the capitalist mode of production while the heterosexual model of race as a family is promoted by nationalism and foundational to gender inequality. "The white race was figured as the male of the species and the Black race as the female" (McClintock 55) *other* to whom violence is inflicted upon by “*femicide*”, “*gynocide*”, gendercide, slavery, and the Prison Industrial Complex; reinforced by Manifest Destiny, Catholicism, and Christian dogma, the *other* is also anyone who does not conform to heteropatriarchal constructs for example, queer youth, queers of color, transgendered people, and sex workers are the *other* targets impacted by State Violence through renaming, surveillance, policing, and imprisonment.

### **Anti-Blackness as Economic Capital**

Anti-Black violence is State Violence which is a function of patriarchal white supremacy and a precondition for capitalist accumulation and reproduction. It is not simply collateral damage of capital production; rather, "anti-Blackness makes possible the accumulation necessary

for capitalist reproduction" (Bledsoe and Wright 2018); commodities and race inform one another through the capitalist mode of production. Capitalism and white supremacy arose through colonization from the Atlantic Ocean six centuries ago and continues to be celebrated by American domestic terrorists and white nationalist groups such as the Ku Klux Klan, Proud Boys and New Mexico Civil Guard. Their "idea that European American civilization is superior to those of the American Indians and of the Africans who were enslaved for economic gain is called white supremacy" (Dunbar-Ortiz 2019); their attempt to uphold it is domestic terrorism and state violence. Gendered anti-Black sentiment is a white supremacist perspective that justifies violence against people of color, women, and gender non-conforming people through objectification and commodification of their bodies. Increased globalization of capital and spatial marginalization of populations is fostered by denial of Black life, patriarchy, and racial capitalism.

Racial capitalism requires expendable humans. Chattel slavery is how plantations flourished in southern states while white supremacy has structured the law and economy. Gendered racism continues to structure the economy and shape law enforcement. A prisoner is the State's commodity emasculated by "corrections" officers and prison profiteers. "Prison profiteers such as Securus and the GEO Group profit from the state violence of mass incarceration" (Booth 2019). State violence in Ferguson Missouri for example, "perpetuates capital accumulation in part by relying on the disenfranchisement and premature ending of Black lives"(Bledsoe & Wright 2018). Understanding gendered racism as prerequisite for capitalism and a mechanism of white supremacy is a necessary framework for introducing the history of disenfranchisement in New Mexico.

### Constitutional Human Silencing

"The phrase *Indians Not Taxed* was frequently used in state constitutions and statutes to exclude" (Wolfley 199) Native Americans from voting and is still part of the U.S. Constitution; because Native American tribes do not pay taxes, this language in the U.S. Constitution has been used as an economic argument that Native Americans should not be allowed to vote in revenue decisions such as bond elections. In 1940, New Mexico was one of the five states that still prohibited Native Americans not taxed from voting even though white people who were not taxed were granted voting rights. The argument that "Indians have less political energy than whites to exert on state or country elections because their time is spent exclusively on tribal matters is a variant of the *apathy* argument which has been used to justify the exclusion of Blacks from political participation in the South – an argument uniformly rejected by the courts" (Wolfley 1991).

Courts and administrative laws have reinforced gendered racial constructs through methods of exclusion. Racial constructs and notions of blood purity have been attached to the law and citizenship. For example, blood quantum is a subtractive means of eliminating tribal enrollees, while the *one drop rule* was an expansive means of enslaving African Americans. Similarly, elimination of citizenship is carried out by disenfranchisement or vote dilution. "Vote dilution is a process whereby election laws or practices either singly or in concert, combine with systematic bloc voting among an identifiable group to diminish the voting strength of at least one other group" (Wolfley 1991). Knowing that people of color are disproportionately incarcerated at higher rates than white people in the United States, felon disenfranchisement can be considered a form of vote dilution or modern-day slave code as new Jim Crow law.

Prior to the Jim Crow era, the denial of Black life is evident in colonial New Mexico territory. In 1812, Don Pedro Bautista Pino represented New Mexico in the Cortes of Spain; he outright denied the existence of Afro-descendant people in New Mexico territory. "Racial classifications, as determined by parish priests, were important in New Spain, often serving as the basis for assigning tributes and for favors, exceptions, and privileges" (Heath & Nunn 1970). Notions of *blood purity* and complex classification systems not only identified individuals with "Negro blood" but also distinguished those of Native American, Spanish, and European heritage. Pino's denial of Afro-descendant existence within the region suggests he was attempting to win favor with the Spanish Cortes by portraying the inhabitants of the region as "full-blooded" Spaniards and Native Americans in accordance with Casta hierarchy. Despite New Mexico territory's arid climate that prevented plantation slavery, a Slave Code was enacted in New Mexico between 1859-1861. "Southern colleagues acknowledged that they would support Congressional measures to advance New Mexico's interest if the territorial legislature passed a law that recognized slave property" (Stegmaier 2012). New Mexico slavery law has impacted national politics and congressional action. Therefore, New Mexico's history is necessary to consider when we think about ending disenfranchisement as a step towards gender equality, racial equity, and reparations.

### **Justifications**

However, proponents of disenfranchisement law argue that it is "*race-neutral*," "*constitutional*," and unfathomable to overturn because it is so deeply rooted in "*Western tradition*" and "*American history*." Several states passed felon disenfranchisement statutes in the late 18<sup>th</sup> century and eleven States disenfranchised persons convicted of certain *infamous* Crimes between 1776 and 182. Over two dozen states out of 34 had enacted laws preventing those

convicted of committing serious crimes from casting a vote by the end of the Civil War; “and by the time of the Fourteenth Amendment was adopted, 29 States had established disenfranchisement laws” (Clegg, Conway, & Lee 2006). Disenfranchisement proponents argue that our nation's history refutes suggestions that felony disenfranchisement laws are racially motivated and offer two justifications for the disenfranchisement of people convicted of felony offenses:

First, felon disenfranchisement laws are justified according Thomas Hobbes and John Locke's notion of a *social contract* that “ by transgressing against fellow citizens and the state through violation of the law, criminals breach the social contract and become unfit for citizenship” (Hamilton-Smith & Vogel 2015); therefore, someone who breaks the law forfeits their right to participation in the elections of legislators who make the laws, and participation in the elections of executives and prosecutors who enforce them. Second, each state within the American system possesses its own authority for defining and enforcing criminal law; besides imprisonment, fines, and probation, the forfeiture of certain rights or privileges have been traditionally implemented as part of punishment for committing a crime.

With these justifications, proponents of disenfranchisement law conclude that "the people of forty-eight states and the District of Columbia have made their voices clear in support of laws that disenfranchise felons. Neither the Constitution nor the Voting Rights Act of 1965 provide plausible grounds to invalidate the felon disenfranchisement laws that are on the books today. And it would be a crime to distort the Constitution or the intent of Congress to overturn the will of the people of 48 states via judicial fiat" (Clegg, Conway, & Lee 2006). While disenfranchisement laws have a disproportionate impact on certain racial minority groups,



proponents argue that attempting to achieve some form of racial balance is not enough reason for abolishing long-standing laws.

In contrast, those who oppose disenfranchisement law argue that "disenfranchisement of ex-felons is unconstitutional, that it results in increased crime, and that it should be abandoned as a draconian and costly practice of a pre-democratic era"(Hamilton-Smith & Vogel 2015). The harms of disenfranchisement far outweigh the benefits by further isolating an individual who is attempting to reintegrate into society. Disenfranchisement reinforces the idea that total rehabilitation is impossible, therefore, increasing alienation that contributes to criminal activity. "Research strongly supports the notion that ex-felons who are able to re-enter society with stable work and familial relationships are less likely to engage in criminal activity" (Hamilton-Smith & Vogel 2015). Civic engagement is necessary for establishing supportive relationships and the human voice is necessary for getting basic needs met.

Despite the dehumanizing effect human silencing has on society and individuals, states have enacted disenfranchisement provisions that intentionally excluded women, Native Americans, and African Americans from voting. In the case of African Americans, "the Supreme Court agreed, holding that its original enactment [of § 182 of the Alabama Constitution] was motivated by the desire to discriminate against Blacks on the account of race and that the section continues to this day to have that effect" (Hamilton-Smith & Vogel 2015) because these policies do not fulfill any crime prevention purpose; rather, these policies perpetuate gendered racism, subjugation, and marginalization that fosters criminal activity and reproduction of capitalism. The Prison Industrial Complex exemplifies how capitalism is reproduced by criminalization. Ruth Gilmore's work demonstrates how "incarceration in the United States-which has

disproportionately affected Black people-occurs not only as a storage method for *surplus* populations but also as an iteration of globalized capital finding new forms of accumulation” (Bledsoe & Wright 2018).

### **Outcome and Impact**

New forms of capital have evolved as white Europeans advanced from land theft and genocide to chattel slavery; slavery was reformed under the 13<sup>th</sup> amendment and perpetuated by the PIC through the War on Drugs, the War on Terror, and ICE. This is how gendered racism as a prerequisite for capitalism is violence against people of color. As white supremacy is embedded within the structures of the law and economy, "whiteness" is associated with legality and "American" citizenship. “Citizenship” is currently revoked for those convicted of crime in New Mexico and throughout the United States; while individuals are expected to become productive members of society, they are not allowed to participate as citizens.

Disenfranchisement exemplifies America exceptionalism; “An estimated 6.1 million Americans are forbidden to vote because of *felony disenfranchisement* or laws restricting voting rights for those convicted of felony-level crimes" (Uggen 2016). Disenfranchisement, therefore, continues to be a condition of slavery and *commodity racism* as people of color are disproportionately impacted by mass incarceration and felon silencing.

### **Examination**

Considering the colonial history of New Mexico territory in relation to the present and how the United States is economically dependent on anti-Blackness in the form of mass

incarceration; the argument that disenfranchisement is "*race-neutral*" and "*constitutional*" has been dismantled. The fact white supremacy and racism has shaped the Constitution and law cannot be denied especially during the Black Lives Matter movement at this time in history. Qualified immunity for example, protects police officers from prosecution for murdering African Americans and other people of color. Similarly, "*Indians not taxed*" exemplifies how white supremacy and racism has shaped the U.S. Constitution. I would argue that disenfranchisement has its roots in Civil Death and colonization rather than *Western tradition* and *American history*, because it is a form of systemic erasure and condition of slavery. "Although slavery is mostly associated with American South, the entire country, as it grew, benefited from the enslavement of people, primarily African-Americans" (Dunbar-Ortiz 2019), New Mexico is no exception and continues to uphold institutional racism.

According to Blueprints for Smart Justice New Mexico, "the imprisonment rate for Black adults in New Mexico was over six times that of white adults in the state in 2015"(ACLU 2018), while Latinos constituted 61% of the prison population during that time; 3/4 of those disenfranchised are not incarcerated. Therefore, the notion of a "*social contract*" that proponents use to justify disenfranchisement is irrelevant as we consider laws, statutes, and policies that were designed to target or exclude women and people of color. For example, mandatory minimum laws were implemented as part of the "War on Drugs" to target impoverished African American communities. Therefore, it is a crime that the Constitution, Congress, and the State of New Mexico continues to uphold systemic racism in the form of disenfranchisement.

## Conclusion

In conclusion, the examination of gendered racism and globalized capitalism in relation to the colonization of New Mexico demonstrates how ending disenfranchisement in New Mexico is a progressive path to dismantle institutional racism. When laws and policies are intended to target or exclude entire populations for imperialist economic gain or political power, the only recourse to reparations is abolishing the practice entirely. Disenfranchisement does not serve any purpose as a crime deterrent; rather, it is a form of dehumanization that uses crime as a justification to exclude entire populations from voting to maintain imperialist political power of the two-party corporate duopoly.

Because of the Black Lives Matter movement across the nation and here on Tewa land, there is dedicated support for ending disenfranchisement in New Mexico. Restoring the right to vote to formerly incarcerated people would be a step towards reversing Jim Crow laws that have structured America, but true Transformative Justice would be to never strip the right to vote regardless of conviction. Although I support restoring voting rights to returning citizens, I intend pursuing voting rights restoration to all confined citizens serving prison sentences and pre-trial detainees to implement Transformative Justice for the purpose of gender equality, racial equity, and reparations.

Video presentation: <https://spark.adobe.com/video/w5w9CFFrQLUv1>

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