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Tayyab Mahmud

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# LAW OF GEOGRAPHY AND THE GEOGRAPHY OF LAW: A POST-COLONIAL MAPPING

TAYYAB MAHMUD\*

## ABSTRACT

*This article examines the relationship between law and geography through the prisms of colonialism and neoliberal Empire. Using two novels set in nineteenth and twenty-first century India, respectively, it evaluates the so-called first law of geography, namely that “everything is related to everything else, but near things are more related than distant things.” It argues that the formative and enduring relationship between global systems of domination and modern law has created a geo-legal space that has a global dimension. This geo-legal space creates norms and subjectivities that are intimately related to spatially distant forces and projects. Emergence and consolidation of capitalism created a global geo-economic space where law and geography were brought together, creating an intimate relationship between the global and the local. Accumulation by dispossession, an enduring feature of capitalism, renders this global relationship one of domination and exploitation. While colonial and post-colonial phases of global capitalism deployed different regimes of political and economic governance, they function within the same grammar of modern law that facilitates domination and exploitation in the service of capital accumulation by dispossession.*

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\* Professor of Law and Director, Center for Global Justice, Seattle University School of Law. An earlier version of this paper was presented at the Annual Conference of the Association for the Study of Law, Culture and the Humanities. I want to thank Denise da Silva, Peter Fitzpatrick, Russell Powell, Frank Valdes, and Robert Westley for their thoughtful comments on earlier drafts.

See, men and women in Bangalore live like the animals in a forest do. Sleep in the day and then work all night, until two, three, four, five o'clock, depending, because their masters are on the other side of the world, in America.

—*The White Tiger*<sup>1</sup>

The postcolonial exists as an aftermath, as an after—after being worked over by colonialism.

—Gyan Prakash<sup>2</sup>

What the map cuts up, the story cuts across.

—Michel de Certeau<sup>3</sup>

## INTRODUCTION

Designated “a motto of our discipline”<sup>4</sup> by geographers, the first law of geography states: “[E]verything is related to everything else, but near things are more related than distant things.”<sup>5</sup> This law of geography, however, fails to account for the geography of modern law—a geography that developed in the context of material and discursive structures and practices attendant to the emergence and consolidation of capitalism.

Law must have a domain over which to exercise dominion. In order to function, law has to be positioned and deployed upon spaces and bodies. Orders and subjectivities created thereby have an unavoidable spatiality. While drawing boundaries is an inaugural function of geography, policing boundaries is a routine function of the law.<sup>6</sup> Capitalism and modernity spread this symbiotic relationship on a global scale. Modern social theory, while privileging time, has tended to treat space as “dead, the

<sup>1</sup> ARVIND ADIGA, *THE WHITE TIGER* 255 (2008) [hereinafter ADIGA, *THE WHITE TIGER*].

<sup>2</sup> Gyan Prakash, *Postcolonial Criticism and Indian Historiography*, 31/32 *SOCIAL TEXT* 8 (1992).

<sup>3</sup> MICHEL DE CERTEAU, *THE PRACTICE OF EVERYDAY LIFE* 129 (1988).

<sup>4</sup> Daniel Z. Sui, *Tobler's First Law of Geography: A Big Idea for a Small World?*, 94 *ANNALS ASS'N. AM. GEOGRAPHERS* 269, 270 (2004).

<sup>5</sup> Waldo Tobler, *A Computer Movie Simulating Urban Growth in the Detroit Region*, 46 *ECON. GEOGRAPHY* 234, 236 (1970).

<sup>6</sup> See CORNELIA VISMANN, *Starting from Scratch: Concepts of Order*, in *NO-MANS-LAND, IN WAR, VIOLENCE, AND THE MODERN CONDITION* 49 (B. Huppau ed., 1997).

fixed, the undialectical, the immobile.”<sup>7</sup> The spatial and the temporal, however, are mutually constitutive, “in that each shapes and is simultaneously shaped by the other in a complex interrelationship which may vary in different social formations and at different historical conjunctures.”<sup>8</sup> Modern geography and modern law were forged on the anvil of geopolitics and geoeconomics that undergirds the emergence and consolidation of capitalism as a world system.

The colonial encounter between the West and the Rest and its aftermath is a defining feature of the capitalist world system. Colonialism sutured together “territorialist and capitalist logics of power” on a world-wide scale.<sup>9</sup> The worldview forged and sustained by this encounter and its accompanying material and discursive structures etched the foundational contours of the very identities of the West and the Rest. These enduring contours furnish the channels through which legal orders in and between these entangled zones continue to flow. As the geopolitics and geoeconomics of capitalism bring the farthest reaches of the globe within their fold, the proposition that “near” things are more related than “farther” things does not hold. Things and subjectivities procreated by modern law are intimately related to distant forces and distant things. The global reach of capitalism and its endemic feature accumulation by dispossession<sup>10</sup> create a relationship between law and geography that refutes the so-called first law of geography.

## I. THE TWO NOVELS

The vantage point of this article is furnished by two novels: *Sea of Poppies*,<sup>11</sup> and *The White Tiger*.<sup>12</sup> The two stories of violence, dislocation, and subaltern agency unfold in early nineteenth and twenty-first century India, respectively, against the backdrops of colonialism and neoliberal globalization. Both attest

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<sup>7</sup> MICHEL FOUCAULT, *The Question of Geography*, in POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS 709 (Colin Gordon ed., 1980). See also EDWARD SOJA, POSTMODERN GEOGRAPHIES: THE REASSERTION OF SPACE IN CRITICAL SOCIAL THEORY, 31-35 (1989).

<sup>8</sup> Edward Soja, *The Socio-Spatial Dialectic*, 70 ANNALS ASS'N. AM. GEOGRAPHERS 207, 225 (1980).

<sup>9</sup> GIOVANNI ARRIGHI, THE LONG TWENTIETH CENTURY: MONEY, POWER, AND THE ORIGINS OF OUR TIMES 54 (1994).

<sup>10</sup> See *infra* note 30-41 and accompanying text.

<sup>11</sup> AMITAV GHOSH, *SEA OF POPPIES* (2008) [hereinafter GHOSH, *SEA OF POPPIES*].

<sup>12</sup> ADIGA, *THE WHITE TIGER*, *supra* note 1.

to the interlacing of geography and law in modern global regimes of power. Both substantiate that under capitalism structures and processes calibrated by spatially distant forces circumscribe all facets of collective life.

Dubbed by *The Wall Street Journal* as “an anticolonial rant that takes aim at 19<sup>th</sup>-century globalization,”<sup>13</sup> *Sea of Poppies* (“SOP”) dramatizes two great economic themes of that era: cultivation of opium in India for the Chinese market and transportation of indentured labor to plantation colonies. It is 1838, the eve of the Opium War. Along the Ganges, farmers are forced to abandon their subsistence crops to grow only poppies, to be then processed in *Inferno*-esque opium factories. The booming opium trade fills many coffers. War clouds gather as China attempts to limit this trade.

The moral center of the novel is Deeti. Married to a hopeless opium addict, drugged and violated on her wedding night, and bullied into the ritual practice of *sutti*,<sup>14</sup> Deeti is rescued from self-immolation by the untouchable, Kalua, and her cross-caste elopement triggers a manhunt along the length of the Ganges. The lovers flee, make their way to Calcutta, sign up as *girmityas*—those who have signed the agreement of indentured servitude—and board a schooner bound for Mauritius.

The novel’s characters are caught up in global designs they neither control nor understand. With their possibilities circumscribed by colonialism, they fashion new identities within discursive and material structures furnished by global entanglements. The novel ends when the *Ibis*, a slaving schooner converted to transport convicts, indentured servants, and opium from India, is storm-tossed off Sumatra. Everybody aboard is escaping something—most commonly, the clutches of empire.

*The White Tiger* (“TWT”), an epistolary novel, is a defiant confession of an unrepentant murderer who has the gall to question his lowly place in the order of things. Rapid neo-liberal restructuring of the Indian and global economies lubricated by pervasive corruption frame the story. In letters to the Chinese premier, Balram, the protagonist, explains the secrets of “how entrepreneurship is born, nurtured, and developed in this, the glorious twenty-first century of man.” He narrates his own rags-to-riches story as the road-map to success in today’s India that forms

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<sup>13</sup> Un-Signed Editorial, *Economic Fiction*, WALL ST. J., October 21, 2008, at A11.

<sup>14</sup> *Sutti* is a rare funeral practice among some Hindu communities in which a widowed woman immolates herself on the funeral pyre of the deceased husband. The practice was outlawed in India in 1829.

a critical part of the global economy, a trip that spans two distinct but overlapping spaces: “an India of Light, and an India of Darkness.”<sup>15</sup>

Son of a bicycle-rickshaw driver in a village in Bihar, Balram manages to escape the oppressive landlords and corrupt police by becoming a driver for Ashok, who has returned to India from the US to help manage his family’s coal-mining business. Balram and Ashok move to Gurgaon, one of Delhi’s exploding satellites, to be closer to the government officials Ashok must regularly bribe to promote the family business. As Balram witnesses the widening chasm between India’s corrupt rich and destitute masses, he grows bitter. He begins by skimming off car repair and gasoline bills, but he soon graduates to premeditated robbery and the calculated murder of Ashok. Balram knows that his family will certainly be tortured and killed in retribution. He flees south and using bribes to the police to eliminate competitors, achieves an Indian entrepreneur’s dream: a successful taxi business servicing the outsourced call centers of Bangalore. He claims: “I have switched sides: I am now one of those who cannot be caught in India.”<sup>16</sup>

With scatological precision, Balram strips away the sheen of a self-congratulatory nation and reveals instead a space where the privileged and the dispossessed are steeped in a deadly struggle for domination and survival—a struggle intimately related to neo-liberal restructuring of national and global economies. Balram issues an ominous prediction about the future: “*I am tomorrow.*”<sup>17</sup>

## II. CAPITALISM AND ACCUMULATION BY DISPOSSESSION

‘My canes are rotting in the field, Mr [sic] Reid,’ said the planter. ‘Tell Mr Burnham that I need men. Now that we may no longer have slaves in Mauritius, I must have coolies.’ . . . ‘Do you mean slaves, sir?’ Mr Burnham winced. ‘Why no, Reid. Not slaves— coolies. Have you not heard it said that when God closes one door he opens another? When the doors of freedom were closed to the African, the Lord opened them to a tribe that was yet more needful of it—the Asiatick.’<sup>18</sup>

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<sup>15</sup> ADIGA, *THE WHITE TIGER*, *supra* note 1, at 12.

<sup>16</sup> *Id.* at 275.

<sup>17</sup> *Id.* at 4 (emphasis added).

<sup>18</sup> GHOSH, *SEA OF POPPIES*, *supra* note 11, at 20, 74.

To sum up—in the old days there were one thousand castes and destinies in India. These days, there are just two castes: Men with Big Bellies, and Men with Small Bellies.

And only two destinies: eat—or get eaten up.<sup>19</sup>

Both *SOP* and *TWT* portray liminal spaces<sup>20</sup> where law, extra-legality, and illegality are braided to produce the other side of universality—“moral and legal *no man's land*, where universality finds its spatial limit.”<sup>21</sup> Both Balram and Deeti exist at the margins of formal economies and legality where multiple cultural, social, and political geographies overlap. Appreciation of the production of such spaces and subjectivities where laws and geographies comingle requires a clear understanding of the workings of capitalism as a global economic system. Mainstream discourses conflate capitalism and markets, with markets often seen as “an independent, motive force”<sup>22</sup> with an agency of their own.<sup>23</sup> This accompanies a Hegelian conflation of the story of

<sup>19</sup> ADIGA, *THE WHITE TIGER*, *supra* note 1, at 54.

<sup>20</sup> “The attributes of liminality or liminal personae (‘threshold people’) are necessarily ambiguous, since this condition and these persons elude or slip through the network of classification that normally locate states and positions in cultural space. Liminal entities are neither here nor there, they are betwixt and between the positions assigned and arrayed by law, custom, convention, and ceremonial.” VICTOR W. TURNER, *THE RITUAL PROCESS: STRUCTURE AND ANTI-STRUCTURE* 95 (1969).

<sup>21</sup> Denise Ferreira de Silva, *Towards a Critique of the Socio-Logos of Justice: The Analytics of Raciality and the Production of Universality*, in 7:3 *SOCIAL IDENTITIES* 421, 422 (2001).

<sup>22</sup> Capital and capitalism are presented as “large, powerful, persistent, active, expansive, progressive, dynamic, transformative; embracing, penetrating, disciplining, colonizing, constraining; systemic, self-reproducing, rational, lawful, self-rectifying; organized and organizing, centered and centering; originating, creative, protean; victorious and ascendant; self-identical, self-expressive, full, definite, real, positive, and capable of conferring identity and meaning.” J. K. GIBSON-GRAHAM, *THE END OF CAPITALISM (AS WE KNEW IT): A FEMINIST CRITIQUE OF POLITICAL ECONOMY* 4 (1996). Polanyi, in his critique of the “free market,” reminded us that “[t]here is nothing natural about laissez-faire; free markets could never have come into being merely by allowing things to take their course. . . . [L]aissez-faire itself was enforced by the state . . . . Laissez was planned. Planning was not.” KARL POLANYI, *THE GREAT TRANSFORMATION* 139-41 (1957). See also Claire Turenne Sjolander, *The Rhetoric of Globalization: What's in a Wor(l)d?*, 51 *INT'L J.* 603 (1996); John Tagg, *Globalization, Totalization and the Discursive Field*, in *CULTURE, GLOBALIZATION AND THE WORLD-SYSTEM: CONTEMPORARY CONDITIONS FOR THE REPRESENTATION OF IDENTITY* 155-60 (A. D. King ed., 1991).

<sup>23</sup> LOWELL BRYAN AND DIANA FARRELL, *MARKET UNBOUND: UNLEASHING GLOBAL CAPITALISM* 21 (John Wiley & Sons 1996).

Western civilization with the history of mankind.<sup>24</sup> Even after Keynes and the birth of macro-economics, the economy is typically presented in non-geographical terms as a “self-evident object of study”<sup>25</sup>—one that is autonomous, self-contained and self-regulating. The language of economics takes as referent a bounded nation-state, with the world “pictured in the form of separate nation-states, with each state marking the boundary of a distinct economy.”<sup>26</sup> Critical economic geography, however, instructs that concepts like the economy should be located within particular temporal and spatial contexts.<sup>27</sup> Critical economic geography trains on the “socio-spatial” dialectic,<sup>28</sup> and emphasizes that any social division of labor is also a “spatial division of labor”; different kinds of engagements in processes of production are typically located in different geographical settings.<sup>29</sup> These departures directs us that in order to appreciate the relationship between modern law and geography, we must take into account the global reach and animating features of capitalism.

Central to the predicaments of Balram and Deeti is an enduring characteristic of capitalism— accumulation by dispossession. Accumulation by dispossession signifies that markets always rely on non-market legal and extra-legal coercive forces to facilitate asymmetrical distribution of economic gain and pain.<sup>30</sup> In the

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<sup>24</sup> See ROBERT YOUNG, *WHITE MYTHOLOGIES: WRITING HISTORY AND THE WEST* (2004); DIPESH CHAKRABARTY, *PROVICALIZING EUROPE: POSTCOLONIAL THOUGHT AND HISTORICAL DIFFERENCE* 10 (2000).

<sup>25</sup> Nigel Thrift, *Pandora's box? Cultural geographies of economies*, in *THE OXFORD HANDBOOK OF ECONOMIC GEOGRAPHY* 690 (G. Clark, M. Feldman and M. Gertler eds, 2000).

<sup>26</sup> Thomas Mitchell, *Fixing the Economy*, 12:1 *CULTURAL STUDIES* 82, 90 (1998).

<sup>27</sup> See P. Crang, *Cultural Turn and the (Re)constitution of Economic Geography*, in *GEOGRAPHIES OF ECONOMICS* (R. Lee and J. Wills eds, 1997); N. Castree, *Economy and Culture are Dead! Long Live Economy and Culture!*, 28:2 *PROG. IN HUMAN GEOG.* 204 (2004); T. BARNES, *LOGICS OF DISLOCATION: MODELS, METAPHORS, AND MEANING OF ECONOMIC SPACE* (1996).

<sup>28</sup> Edward Soja, *The Socio-Spatial Dialectic*, 70:2 *ANNALS ASS'N. AM. GEOGRAPHERS* 207 (1980); DAVID HARVEY, *THE LIMITS TO CAPITAL* (1982) [hereinafter *LIMITS TO CAPITAL*]; David Harvey, *The Geopolitics of Capitalism*, in *SOCIAL RELATIONS AND SPATIAL STRUCTURES* 128 (Derek Gregory and John Urry eds., 1985).

<sup>29</sup> See D. MASSEY, *SPATIAL DIVISIONS OF LABOR: SOCIAL STRUCTURES AND THE GEOGRAPHY OF PRODUCTION* (1984).

<sup>30</sup> See MICHAEL PERELMAN, *THE INVENTION OF CAPITALISM: CLASSICAL POLITICAL ECONOMY AND THE SECRET HISTORY OF PRIMITIVE ACCUMULATION* (2000); Jim Glassman, *Primitive Accumulation, Accumulation by Dispossession, Accumulation by 'Extra-Economic' Means*, 30:5 *PROGRESS IN HUMAN GEOGRAPHY* 608 (2006); DAVIS HARVEY, *THE NEW IMPERIALISM* 137-182



geography of global capitalism, embracing different scales and spaces, this accumulation by extra-economic means is facilitated by myriad legal regimes. These legal regimes range from global to local and formal to customary. Hegemonic social theories portray the emergence of capitalism as benign, natural, and non-coercive, resulting from inherently different natures of individuals, personal traits like entrepreneurship, and ideological shifts like the rise of a Protestant ethic. Critical political economy, however, holds that legal and extra-legal coercion were indispensable in the genesis of capitalism—a new mode of production, “which divorces the worker from ownership of the conditions of his own labour; it is a process which operates two transformations, whereby the social means of subsistence and production are turned into capital, and the immediate producers are turned into wage-labourers.”<sup>31</sup>

The process turned on “*ex-novo* separation between producers and means of production”<sup>32</sup> by deploying extra-economic coercive power of the state and the law. For example, Enclosure Acts<sup>33</sup> and Game Laws<sup>34</sup> of England were coercive uses of law to dispossess rural farmers, hunters, and other subsistence producers, forcing them to seek a livelihood in the “free” wage market. Labeling this phenomenon primitive accumulation, canonical critical political economy had relegated it to the pre-history of capitalism.<sup>35</sup> However, later scholarship on global political economy establishes that primitive accumulation is “a basic ontological condition for capitalist production, rather than just a historical precondition.”<sup>36</sup>

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(2003); Michael Perelman, *Primitive Accumulation from Feudalism to Neoliberalism*, 18 (2) CAPITALISM NATURE SOCIALISM 44, 54 (2007).

<sup>31</sup> KARL MARX, 1 CAPITAL 874 (1976) (1867). See also MICHAEL PERELMAN, THE INVENTION OF CAPITALISM: CLASSICAL POLITICAL ECONOMY AND THE SECRET HISTORY OF PRIMITIVE ACCUMULATION. (2000).

<sup>32</sup> Massimo De Angelis, *Separating the Doing and the Deed: Capital and the Continuous Character of Enclosures*, 12 (2) HISTORICAL MATERIALISM 57, 63 (2004).

<sup>33</sup> See JOHN BAKER, VI THE OXFORD HISTORY OF THE LAWS OF ENGLAND 650-52, 1483-1558 (2003).

<sup>34</sup> See E. P. THOMSON, WHIGS AND HUNTERS: THE ORIGINS OF THE BLACK ACT 94, 99, 207, 261 (1975). WILLIAM BLACKSTONE, IV COMMENTARIES ON THE LAWS OF ENGLAND 174-75 (1775).

<sup>35</sup> The portrayal of primitive accumulation by critical political economists was marred by historicism, Eurocentricism, and anti-peasant prejudice of their milieu. See Glassman, *supra* note 30, at 608, 610-12.

<sup>36</sup> *Id.* at 615. For the scholarship that lead to this conclusion, see ROSA LUXEMBERG, THE ACCUMULATION OF CAPITAL 351 (A. Schwarzschild trans., 1968) (1923); HANNAH ARENDT, IMPERIALISM: PART TWO OF THE ORIGINS OF TOTALITARIANISM (1968); PAUL BARAN, THE POLITICAL ECONOMY OF GROWTH (1957); ANDRE GUNDER FRANK, CAPITALISM AND UNDERDEVELOPMENT IN LATIN AMERICA: HISTORICAL STUDIES OF CHILE AND BRAZIL (1967);

These interventions underscore the continuing role of coercive political forces in underwriting the purportedly extra-political realm of the market and that “production of value that enters into the circuits of capitalist accumulation through the parasitization of formally non-capitalist processes is a deeply embedded feature of capitalism.”<sup>37</sup> They also alert us that, since its origin, capitalism has been a global phenomenon that co-opts rather than displaces non-capitalist modes of production, and results in uneven development of different geographical zones within its ambit. The enduring nature of accumulation by dispossession can be seen in the various forms of social capital that are required by capital but not paid by it. Examples include publically funded education and infrastructure, gendered and often racialized household and reproductive labor,<sup>38</sup> instrumental use of race, class, and nationality in immigration and land-ownership laws that consolidated agro-capital in California,<sup>39</sup> and new appropriation of the commons for private accumulation whereby “the global commons are being enclosed.”<sup>40</sup> In sum, “neither capitalism as a whole nor the capital-labour relationship on which its contradictory and conflictual dynamic depends can be reproduced purely through market relations. Both require supplementary modes of reproduction, regulation and governance—including those provided in part through the operations of the state.”<sup>41</sup>

Colonialism, inherently a process of domination and extraction of value, was the constitutive field for the emergence of mercantile capitalism in Europe and created the financial resources to engage

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IMMANUEL WALLERSTEIN, *THE CAPITALIST WORLD ECONOMY* (1979); SAMIR AMIN, *ACCUMULATION ON A WORLD SCALE: A CRITIQUE OF THE THEORY OF UNDERDEVELOPMENT* (1974); SAMIR AMIN, *UNEQUAL DEVELOPMENT: AN ESSAY ON THE SOCIAL FORMATIONS OF PERIPHERAL CAPITALISM* (1976); Aiden Foster-Carter, *The Modes of Production Controversy*, 107 NEW LEFT REV. 47 (1978); HAROLD WOLPE, *THE ARTICULATION OF MODES OF PRODUCTION: ESSAYS FROM ECONOMY AND SOCIETY* (1980).

<sup>37</sup> *Glassman, supra* note 30, at 617.

<sup>38</sup> See Claude Meillassoux, *From Reproduction to Production*, 1 ECON. & SOC'Y 93 (1972); Claude Meillassoux, *Maidens, Meals and Money: Capitalism and the Domestic Community* (1981); Nona Y. Glazer, *Servants to Capital: Unpaid Domestic Labor and Paid Work*, 16:1 REV. OF RADICAL POL. ECON. 61 (1984); Nancy Hartsock, *Globalization and Primitive Accumulation: The Contributions of David Harvey's Dialectical Marxism*, in DAVID HARVEY: A CRITICAL READER 183 (Noel Castree and Derek Gregory eds., 2006).

<sup>39</sup> See RICHARD WALKERS, *THE CONQUEST: 150 YEARS OF AGRIBUSINESS IN CALIFORNIA* 66 (2004).

<sup>40</sup> Hartsock, *supra* note 38, at 176; LIMITS TO CAPITAL, *supra* note 28, at 146-48.

<sup>41</sup> BOB JESSOP, *THE FUTURE OF THE CAPITALIST STATE* 11 (2002).

the “freed” labor in production governed by profit rather than subsistence.<sup>42</sup> The “discovery” of the Americas and global colonial domination, accompanied by an elaborate reordering of international law and its normative penumbra, facilitated colonial plunder that filled the coffers of mercantile class of Europe. For example, bullion extraction and export from Spanish America, including 134,000 tonnes of silver between 1493 and 1800,<sup>43</sup> is perhaps the single most important factor in triggering capitalist production in Europe. It is through such violent expropriations that capitalism was born “dripping from head to foot, from every pore, with blood and dirt,” having achieved the transformation of “pigmy property of the many into the huge property of the few.”<sup>44</sup> While colonial appropriation of financial resources and the production of “free” labor by dispossession were the primitive accumulation that triggered the emergence of capitalism as a new mode of production, modes of accumulation by dispossession remain integral to exploitative global economic relations that serve global capital accumulation.

Accumulation by dispossession also produces a reserve army of labor. While the “creative destruction”<sup>45</sup> of capitalism destroys traditional entitlements and subsistence economies, and estranges direct producers from their means of labor, all those dislocated are not absorbed in the new production process.<sup>46</sup> This unabsorbed labor is the so-called “surplus humanity”:<sup>47</sup> populations separated from their non-capitalist means of subsistence but not integrated into the productive circuits of wage labor on a stable basis. They

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<sup>42</sup> The process is captured rather evocatively by the following:

The discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the aboriginal population, the beginnings of the conquest and plunder of East Indies, and the turning of Africa into a warren for the commercial hunting of blackskins, signaled the rosy dawn of the era of capitalist production.

MARX, *supra* note 31, at 751.

<sup>43</sup> Ward Barrett, *World Bullion Flows, 1450-1800*, in *THE RISE OF MERCHANT EMPIRES: LONG-DISTANCE TRADE IN THE EARLY MODERN WORLD, 1350-1750* 224, 237, 400 (J. D. Tracy ed., 1990)

<sup>44</sup> MARX, *supra* note 31, at 760, 762.

<sup>45</sup> See JOSEPH A. SCHUMPETER, *CAPITALISM, SOCIALISM AND DEMOCRACY*, 81-86 (1950) (1942).

<sup>46</sup> See Thomas I. Palley, *From Keynesianism to Neoliberalism: Shifting Paradigms in Economics*, in *NEOLIBERALISM: A CRITICAL READER* 20-23 (Alfredo Saad-Filho and Deborah Johnson eds., 2005); ROBERT SKIDELSKY, *KEYNES: THE RETURN OF THE MASTER* (2009).

<sup>47</sup> Mike Davis, *Planet of Slums: Urban Involution and the Informal Proletariat*, *NEW LEFT REV.*, 5, 23 (Mar.-Apr. 2004).

are those who are “condemned to the world of the excluded, the redundant, the dispensable, having nothing to lose, not even the chains of wage-slavery . . . the shadowy figures of the rejected, the marginal, the leftovers of capital’s arising, the wreckage and debris.”<sup>48</sup> This is the remainder of the “sacrifice of ‘human machines’ on the pyramids of accumulation.”<sup>49</sup> This “surplus humanity,” the reserve army of labor, remains an enduring and indispensable feature of capitalism.

What do those not absorbed in formal markets do while suspended in the “imaginary waiting room” of history?<sup>50</sup> They tend to their subsistence needs as best they can by exchanging needs and capacities in networks of barter, petty trade, and casual employment under the radar of the law. The result is the emergence of a “need economy”<sup>51</sup>: a zone outside the formal legal frames of contract and regulation signifying “informalization within the accumulation economy.”<sup>52</sup> This zone is the so-called informal economy. While ostensibly “discovered in Africa in the early 1970s,”<sup>53</sup> the informal economy has been a perennial and enduring companion of the formal capitalist economy. Its emergence was contemporaneous with the emergence of capitalism, and it endures as capitalism persists.

Accumulation by dispossession, the reserve army of labor, and the informal economy set the stage on which the dramas of *SOP* and *TWT* unfold. How did law and geography come together to create a global field for accumulation by dispossession?

### III. SPACES OF THE GLOBAL GEO-LEGAL: MODERN GEOGRAPHY / MODERN LAW

‘D’you mean to use her as a slaver, sir? But  
have not your English laws outlawed that trade?’

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<sup>48</sup> KALYAN SANYAL, *RETHINKING CAPITALIST DEVELOPMENT: PRIMITIVE ACCUMULATION, GOVERNMENTALTY AND POST-COLONIAL CAPITALISM* 53 (2007).

<sup>49</sup> Ferruccio Gambino, *A Critique of the Fordism and the Regulation School*, 19 COMMON SENSE (Ed Emery trans.), June 1996, available at [http://www.wildcat-www.de/en/zirkular/28/z28e\\_gam.htm](http://www.wildcat-www.de/en/zirkular/28/z28e_gam.htm) (last viewed on May 14, 2010)

<sup>50</sup> DIPESH CHAKRABARTY, *PROVINCIALIZING EUROPE: POSTCOLONIAL THOUGHT AND HISTORICAL DIFFERENCE* 10 (2000).

<sup>51</sup> SANYAL, *supra* note 48, at 208-15.

<sup>52</sup> *Id.* at 237.

<sup>53</sup> Martha Alter Chen, *Rethinking the Informal Economy- Linkages with the Formal Economy and Formal Regulatory Environment*, 1 Research Paper 2005/10 (United Nations University—World Institute of Development Economics Research UNU-WIDER, 2005)

‘That is true,’ Mr. Burnham nodded. ‘Yes indeed they have, Reid. It’s sad but true that there are many who’ll stop at nothing to halt the march of human freedom.’ ‘Freedom, sir?’ ... ‘Freedom, yes, exactly,’ said Mr. Burnham. “Isn’t it what the mastery of the white man means for the lesser races? As I see it Reid, the African Trade was the greatest exercise in freedom since God led the children of Israel out of Egypt.... The march to the shining city in never without pain, is it? Didn’t the Israelites suffer in the desert?”<sup>54</sup>

His attempt at the your-fortune-and-weight-for-one-rupee machine yields “Respect for the law is the first command of the gods.”<sup>55</sup>

Law and geography have an unavoidable and intimate relationship. In drawing and policing boundaries between spaces and bodies, law plays a constitutive function for geography. In describing spaces and bodies, geography furnishes the grounds for the operation of law. The terms of engagement between law and geography are demarcated by underlying material and discursive structures. Circumnavigation of Africa and “discovery” of the “New World” in late fifteenth century marked a decisive turn in world history and inaugurated the age of colonialism and capitalism. This turn and its aftermath inscribed a new grammar of the relationship between law and geography.

No sooner was a new world “discovered” than a line was drawn to divide and allocate the world beyond Europe.<sup>56</sup> This line inscribed into international law the right of European sovereigns over the non-European world as “lords with full, free, and every kind of power, authority and jurisdiction” earlier granted by Papal

<sup>54</sup> GHOSH, SEA OF POPPIES, *supra* note 11, at 73.

<sup>55</sup> ADIGA, THE WHITE TIGER, *supra* note 1, at 211-12.

<sup>56</sup> The line, *partition del mar oceano*, drawn by the Treaty of Tordesillas on June 7, 1494, ran from the North Pole to the South Pole, approximately through the middle of the Atlantic Ocean. Portugal and Spain agreed that all newly discovered territories west of the line would belong to Spain and those east of the line to Portugal. FRANCES GARDINER DAVENPORT, 1 EUROPEAN TREATIES BEARING ON THE HISTORY OF THE UNITED STATES AND ITS DEPENDENCIES TO 1648 45 (Frances Gardiner Davenport, ed., Carnegie Institution of Washington, 1917); CARL SCHMITT, THE *NOMOS* OF THE EARTH IN THE INTERNATIONAL LAW OF THE *JUS PUBLICUM* EUROPAEUM 89 (G. L. Ulmen trans., 2003). *See also*, ANTHONY PAGDEN, SPANISH IMPERIALISM AND THE POLITICAL IMAGINATION (1990).

edict.<sup>57</sup> This inaugural act of an incipient global legal order injected a grammar of colonial domination into the genetic code of modern international law.<sup>58</sup> This divide was supplemented by the “amity lines” that separated a European “sphere of peace and the law of nations from an overseas sphere in which there was neither peace nor law.”<sup>59</sup> These demarcations gave rise to the maxim: “Beyond the equator there are no sins.”<sup>60</sup> In this new global order, “[e]verything that occurred ‘beyond the line’ remained outside the legal, moral, and political values recognized on this side of the line.”<sup>61</sup> The career of modern international law is the story of making, maintaining, and managing this enduring line. By sanctioning colonial domination, these inaugural gestures had a defining impact on the career of capitalism as a global system, and the development of modern geography.

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<sup>57</sup> *Inter caetera divinae* of May 4, 1494. See SCHMITT, *supra* note 56, at 91; Boaventura de Souza Santos, *Beyond Abyssal Thinking*, EUROZINE Jun. 29, 2007, available at <http://www.eurozine.com/pdf/2007-06-29-santos-en.pdf> (last visited Dec., 2010); J. H. ELLIOTT, *IMPERIAL SPAIN 1469-1716* 57-58 (St. Martin's Press 1964); MARK COCKER, *RIVERS OF BLOOD, RIVERS OF GOLD: EUROPE'S CONQUEST OF INDIGENOUS PEOPLES* 14-15 (1998).

<sup>58</sup> Modern international law, therefore “is a *world-historic result* of the early colonial experience of transatlantic and eastern trade . . . it is the dialectical result of the very process of conflictual, expanding inter-polity interaction in an age of early state forms and mercantile colonialism. . . . [I]nternational law is colonialism.” CHINA MIEVILLE, *BETWEEN EQUAL RIGHTS: A MARXIST THEORY OF INTERNATIONAL LAW* 168-9 (2005).

<sup>59</sup> Wilhelm Georg Grewe, *THE EPOCHS OF INTERNATIONAL LAW* 154 (2000). “Amity lines” were initiated by the Treaty of Cateau-Cambresis of 1559. See A. Claire Cutler, *Towards a Radical Political Economy Critique of Transnational Economic Law*, in *INTERNATIONAL LAW ON THE LEFT: RE-EXAMINING MARXIST LEGACIES* 199, 205 (Susan Marks ed., 2008) and SCHMITT, *supra* note 56, at 92-99.

<sup>60</sup> SCHMITT, *supra* note 56, at 90. See also Boaventura de Souza Santos, *supra* note 56, at 30, f.n. 10. One can trace the emergence of spheres of influence in the nineteenth century to the sixteenth century amity lines. For the status of such spheres of influence, see Paul O. KEAL, *UNSPOKEN RULES AND SUPERPOWER DOMINANCE* 179-92 (1983) and SCHMITT, *supra* note 56, at 281-294.

<sup>61</sup> SCHMITT, *supra* note 56 at 94. In 1906, it was pointed out that “[t]he color line belts the world,” serving the same purpose. W. E. B. Du Bois, *The Color Line Belts the World*, in *AMERICAN SOCIAL AND POLITICAL THOUGHT: A READER* 313 (Andreas Hess ed., 2003). This zone “beyond the line” also furnished the constitutive grounds for the founding canon of liberalism, modern law, and the identity of Europe. See PETER FITZPATRICK, *THE MYTHOLOGY OF MODERN LAW* (1992); PETER FITZPATRICK, *MODERNISM AND THE GROUNDS OF LAW* (2001); DIPESH CHAKRABARTY, *PROVINCIALIZING EUROPE: POSTCOLONIAL THOUGHT AND HISTORICAL DIFFERENCE* (2000); UDEH SINGH MEHTA, *LIBERALISM AND EMPIRE: A STUDY IN NINETEENTH-CENTURY BRITISH LIBERAL THOUGHT* (1999).

Modern geography is “amongst the advance-guard of a wider ‘western’ epistemology, deeply implicated in colonial-imperial power.”<sup>62</sup> Not surprisingly, “geography is inescapably marked (both philosophically and institutionally) by its location and development as a western-colonial science.”<sup>63</sup> From its very inception, modern geography formed part of knowledge-production practices that aimed to get a grasp over colonized bodies and territories, deploying an impulse to chart, count, and map.<sup>64</sup> As a vanguard colonial discipline, geography did not discover the world, it constituted it. The connections between geographical explorations and interests of European powers are well documented and bring into relief the ideological scaffoldings of the discipline.<sup>65</sup> Geography played a key role in the production of “otherness” of Europe’s others. Geography was in the vanguard of the enterprise to reach, discover, and grasp that underwrote Europe’s “planetary consciousness” that emerged in Europe in the eighteenth century as the slave trade linked Africa with the Americas.<sup>66</sup> Nineteenth century geography also facilitated the rise of “panoptical time” wherein global history was consumed, God-like, “at a glance—in a single spectacle from a point of privileged invisibility.”<sup>67</sup> While physical mappings made the colonized visible and fixed, cultural geography rendered her irredeemably other. In the process, geography helped put down many a marker of modern constructions of race by helping to suture bodies and consciousness with space. As geography shifted its conceptual grounds from naturalistic theology to evolutionary biology, it played a critical role in the modern constructions of race that enabled and sustained colonial domination.<sup>68</sup> These constructions of racial difference and hierarchy helped reconcile colonial

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<sup>62</sup> James D. Sidaway, *Postcolonial Geographies: an Exploratory Essay*, 24 *PROGRESS IN HUM. GEOGRAPHY* 591, 593 (2000).

<sup>63</sup> *Id.*

<sup>64</sup> See FELIX DRIVER, *GEOGRAPHY MILITANT: CULTURES OF EXPLORATION AND EMPIRE* (2001) and BERNARD S. COHN, *COLONIALISM AND ITS FORMS OF KNOWLEDGE: THE BRITISH INDIA* (1996).

<sup>65</sup> See J. M. BLAUT, *THE COLONIZER’S MODEL OF THE WORLD: GEOGRAPHICAL DIFFUSIONISM AND EUROCENTRIC HISTORY* (1993).

<sup>66</sup> MARY LOUISE PRATT, *IMPERIAL EYES: TRAVEL WRITING AND TRANSCULTURATION* 15 (1992).

<sup>67</sup> ANNE MCCLINTOCK, *IMPERIAL LEATHER: RACE, GENDER AND SEXUALITY IN THE COLONIAL CONQUEST* 37 (1995).

<sup>68</sup> See DAVID N. LIVINGSTONE, *THE GEOGRAPHICAL TRADITION: EPISODES IN THE HISTORY OF CONTESTED ENTERPRISE* 216-59 (1992) and Tayyab Mahmud, *Colonialism and Modern Constructions of Race: A Preliminary Inquiry*, 53 *U. MIAMI L. REV.* 1219 (1999).

domination with liberal ideals of liberty and equality.<sup>69</sup> Colonization of India played a vital role in this enterprise. For emerging colonial knowledge production project that included modern geography, colonized India—deemed a “laboratory of mankind,”<sup>70</sup>—was “not merely a source . . . but the very center of its debates.”<sup>71</sup>

Modern international law both constituted and was constituted by the global economy and geopolitics of the colonial era.<sup>72</sup> The resulting global order was that of “layered sovereignty,”<sup>73</sup>—differing levels of internal and external self-determination for different territories and people. The differential sovereignties and the attending sliding scale of legal eligibility and personality of territories were legitimized by the infamous discourse of civilization.<sup>74</sup> Sanctioned by international law that privileged European practices and interests, Europe made demands upon non-European formations and enforced upon non-European territories the laws by which they were henceforth to be governed.<sup>75</sup> These enduring differentiated coordinates of sovereignty continue to complement the hierarchical structure of the global political economy. They modulate operations of power globally to animate norms of international governance. These norms continue to array different geopolitical regions along a range of permissible practices of sovereignty that congeal in specific spaces. This global regime of hierarchical sovereignty inserts different spaces into a legal order of global domination/subordination. It both constitutes and

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<sup>69</sup> See UDAY SINGH MEHTA, *LIBERALISM AND EMPIRE A STUDY OF NINETEENTH-CENTURY BRITISH LIBERAL THOUGHT* (1999); Tayyab Mahmud, *Race, Reason, and Representation*, 33 U.C. DAVIS L. REV. 1581 (2000) and RACISM AND COLONIALISM: ESSAYS ON IDEOLOGY AND SOCIAL STRUCTURE (Robert Ross ed., 1982).

<sup>70</sup> C. Piney, *Colonial Anthropology in the “Laboratory of Mankind,”* in *THE RAJ: INDIA AND THE BRITISH 1600-1947* 252 (C. Baylt ed., 1990)

<sup>71</sup> THOMAS R. TRAUTMANN, *ARYANS AND BRITISH INDIA* 3 (1997).

<sup>72</sup> See Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 HARV. INT’L L.J. 1 (1999) [hereinafter Anghie, *Finding the Peripheries*] and SIBA N. GROVOGUI, *SOVEREIGNS, QUASI-SOVEREIGNS, AND AFRICANS: RACE AND SELF-DETERMINATION IN INTERNATIONAL LAW* (1996).

<sup>73</sup> FREDERICK COOPER, *Alternatives to Empire: France and Africa after World War II*, in *THE STATE OF SOVEREIGNTY: TERRITORIES, LAWS, POPULATIONS* 94 (Douglas Howland & Luise White eds., 2009).

<sup>74</sup> See GERRIT W. GONG, *THE STANDARD OF ‘CIVILIZATION’ IN INTERNATIONAL SOCIETY* (1984).

<sup>75</sup> See ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2005).



reflects distributions of power, attending material and symbolic economies, and corresponding subjectivities.

Modern law itself takes its primary constitutive grounds from Europe's colonial encounter with its racialized other. The entanglement of modern law, in both its national and international iterations, with colonialism and empire is quite transparent.<sup>76</sup> While colonialism was "central and enduring in the making of modern law," law remains "a key mode of imperial power."<sup>77</sup> The savage and her space, lacking Western understandings of geometry, history and law, had to be ordered to contain the danger of otherness. The colonized other, deemed an error of arrested evolution, was prescribed the corrective culture of a higher rational order. Claiming the authority of reason and redemption, colonialism undertook its "'soul making' mission,"<sup>78</sup> combining with the "epistemic violence" of imperialism.<sup>79</sup> The colonizers had no doubt that "[t]he Natives must either be kept down by a sense of our power, or they must willingly submit from a conviction that we are more wise, more just, more humane, and more anxious to improve their condition than any other rulers they possibly could have."<sup>80</sup> Colonial law substantiates that "violence is not exterior to the order of *droit*. It threatens it from within" and necessitates that we "recognize meaning in a violence that is not an accident arriving from outside law."<sup>81</sup> Modern law focused on the quality of the relationship between a people and territory to articulate doctrines of "*terra nullius*" and "discovery," and to fashion new property rights regimes.<sup>82</sup> These, in turn, assigned eligibility to

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<sup>76</sup> The canonical works of Hobbes, Locke, Montaigne, Adam Smith, Hegel and Austin attest to this claim. See PETER FITZPATRICK, *THE MYTHOLOGY OF MODERN LAW* (1992) and PETER FITZPATRICK, *MODERNISM AND THE GROUNDS OF LAW* (2001).

<sup>77</sup> PETER FITZPATRICK, *LAW AS RESISTANCE: MODERNISM, IMPERIALISM, LEGALISM* 23 (2008).

<sup>78</sup> Benita Perry, *Problems in Current Theories of Colonial Discourse*, in *THE POST-COLONIAL STUDIES READER* 39 (Bill Ashcroft et. al., eds., 1995) (quoting Gayatri Chakravorty Spivak).

<sup>79</sup> *Id.* at 38. See also *RACE AND THE ENLIGHTENMENT: A READER* (Emmanuel Chukwudi Eze ed., 1997).

<sup>80</sup> Gauri Viswanathan, *Currying Favor: The Politics of British Educational Policy in India 1813-54*, in *DANGEROUS LIASONS: GENDER, NATION AND POSTCOLONIAL PERSPECTIVES* 113 (Anne McClintock, Aamir Mufti & Ella Shohat, eds., 1997).

<sup>81</sup> JACQUES DERRIDA, *Force of Law: The "Mystical Foundation of Authority,"* in *DECONSTRUCTION AND THE POSSIBILITY OF JUSTICE* 34-35 (Drucilla Cornell, Michel Rosenfeld & David Carlson eds., 1992).

<sup>82</sup> See JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* (2004); Robert A. Williams, *The Algebra of Federal Indian Law: The Hard Trial of*

autonomous political society and membership in global society. Frames of *jus gentium*, or principles of law common to all peoples, yielded to positivist ontology of law and sovereignty. Doctrines of sovereignty and recognition, foundational building blocks of international law, rest on such assignments.<sup>83</sup> The distinction between “civilized” and “uncivilized”—constituted in no small measure by modern geography—furnished the grounds for “civilizational geopolitics,”<sup>84</sup> the dominant spatial imaginary of the West. “[P]ositivism’s triumphant suppression of the non-European world”<sup>85</sup> rested on the premise that “of uncivilized natives international law t[ook] no account.”<sup>86</sup> Consequently, in the new global legal order “[t]o characterize any conduct whatever towards a barbarous people as a violation of the law of nations, only shows that he who so speaks has never considered the subject.”<sup>87</sup> This new and positivist international law at the service of “states with

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*Decolonizing and Americanizing the White Man’s Indian Jurisprudence*, 1986 WIS. L. REV. 219 (1986); PAUL O. KEAL, *EUROPEAN CONQUEST AND THE RIGHTS OF INDIGENOUS PEOPLES* (2003); BOYCE RICHARDSON, *PEOPLE OF TERRA NULLIUS: BETRAYAL AND REBIRTH IN ABORIGINAL CANADA* (1993).

<sup>83</sup> See ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2004); See Anghie, *Finding the Peripheries*, *supra* note 72, at 1. Antony Anghie, *Francisco de Vitoria and the Colonial Origins of International Law*, in LAWS OF THE POSTCOLONIAL 89 (E. Darian-Smith & Peter Fitzpatrick eds., 1999); MARTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE & FALL OF INTERNATIONAL LAW* 98-178 (2001); Peter Fitzpatrick, *Latin Roots: The Force of International Law as Event*, in EVENTS: THE FORCE OF INTERNATIONAL LAW (Fleur Johns, Richard Joyce and Sundhya Pahuja eds.) (Unpublished, forthcoming article. Article on file with author).

<sup>84</sup> JOHN AGNEW, *GEOPOLITICS: RE-VISIONING WORLD POLITICS* (1998). See also GROVOGUI, *supra* note 72; GERRIT GONG, *THE STANDARD OF CIVILIZATION IN INTERNATIONAL SOCIETY* (1986).

<sup>85</sup> Anghie, *Finding the Peripheries*, *supra* note 72, at 7.

<sup>86</sup> John Westlake, *John Westlake on the Title to Sovereignty*, in *IMPERIALISM* 45, 47 (Philip D. Curtin ed., 1971).

<sup>87</sup> JOHN STUART MILL, *A Few Words on Non-Intervention*, in *THE SPIRIT OF THE AGE: VICTORIAN ESSAYS* 166 (Gertrude Himmelfarb ed., 2007) (1859). Antony Anghie captures the relationship between international law’s turn to positivism and a particular characterization of colonized people well:

The violence of positivist language in relation to non-European peoples is hard to overlook. Positivists developed an elaborate vocabulary for denigrating these people, presenting them as suitable objects for conquest, and legitimizing the most extreme violence against them, all in the furtherance of the civilizing mission – the discharge of the white man’s burden.

Anghie, *Finding the Peripheries*, *supra* note 72, at 7.

good breeding”<sup>88</sup> produced a confluence of people and territory in the category “backward,” and legitimated colonial acquisition of “backward territory.”<sup>89</sup> Over time, the master-narrative of “civilization” created discourses of “development,” “modernization” and “globalization”—constructs that took on the work of classifying populations, territories, and desirable social change.<sup>90</sup> In succession, attendant global legal regimes were put in place. Today these legal regimes engulf the four corners of the globe in ubiquitous regulatory designs that enforce elaborate normative orders over almost all realms of collective life. Capital accumulation by dispossession, both in colonial and post-colonial phases, rests on the colonial grammar of modern law.

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<sup>88</sup> J. WESTLAKE, COLLECTED PAPERS ON PUBLIC INTERNATIONAL LAW 6 (L. Oppenheim ed., 1914).

<sup>89</sup> M. F. LINDLEY, THE ACQUISITION AND GOVERNMENT OF BACKWARD TERRITORY IN INTERNATIONAL LAW, BEING A TREATISE ON THE LAW AND PRACTICE RELATING TO COLONIAL EXPANSION (1969)(1926); Robert A. Williams, Jr., THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST (1990).

<sup>90</sup> Seeing societies through the binary lens of modern/traditional, this model prescribed diffusion of modern technologies, laws, and ways of life as the panacea for underdevelopment. The resulting economic policies, crafted under the watchful eyes of experts from the global North, focused on growth of leading sectors of the economy, whose trickle-down effect was supposed to, in time, take care of lagging sectors and poverty. The capacity for effective control rather than representative nature of the state was deemed the yardstick of an appropriate political order. See W. W. ROSTOW, THE STAGES OF ECONOMIC GROWTH: A NON-COMMUNIST MANIFESTO (1960); CHARLES KINDLEBERGER, ECONOMIC DEVELOPMENT (3d. ed. 1995). For critiques of this model, see SAMIR AMIN, UNEQUAL DEVELOPMENT (1976); SUSAN BODENHEIMER, THE IDEOLOGY OF DEVELOPMENTALISM: THE AMERICAN PARADIGM FOR LATIN AMERICAN STUDIES (1971); ARTURO ESCOBAR, ENCOUNTERING DEVELOPMENT: THE MAKING AND UNMAKING OF THE THIRD WORLD (1995). This model of development was an extension of colonial designs of social development. See VINAY GIDWANI, CAPITAL INTERRUPTED: AGRARIAN DEVELOPMENT AND THE POLITICS OF WORK (2008). It was in this context that the “law and development” project emerged as part of the ensemble of prescribed legal designs far removed from the culture, practices and material needs of the vast populations of the global South. See JAMES GARDNER, LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA (1980) and Laura Nader, *Promise or Plunder? A Past and Future Look at Law and Development*, 7:2 GLOBAL JURIST 1 (2007), available at <http://www.bepress.com/gj/vol7/iss2/art1>; Issa G. Shivji, *Law's Empire and Empire's Lawlessness: Beyond Anglo-American Law*, 1 J. L. SOC. JUST. & GLOBAL DEV. (2003), available at [http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2003\\_1/shivji2/shivji2.rtf](http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2003_1/shivji2/shivji2.rtf).

#### IV. COLONIAL GEO-LEGAL AND GLOBAL TERMS OF ENGAGEMENT

Would it not be the duty of this court to deal with such a man in exemplary fashion, not just in strict observance of the law, but also to discharge that sacred trust that charges us to instruct the natives of this land in the laws and usages that govern the conduct of civilized nations?<sup>91</sup>

‘Jesus Christ is Free Trade and Free Trade is Jesus Christ.’ Truer words, I believe, were never spoken. If it is God’s will that opium be used as an instrument to open China to his teachings, then so be it. . . . Why, one might even say that it is opium that has made this age of progress and industry possible: without it, the streets of London would be thronged with coughing, sleepless, incontinent multitudes. And if we consider all this, is it not apposite to ask if the Manchu tyrant has any right to deprive his helpless subjects of the advantages of progress?<sup>92</sup>

Inscription of the law over colonized bodies and spaces subscribed to an enduring grammar of modernity’s engagement with alterity. This grammar is not one of exclusion.<sup>93</sup> Rather, this engagement with alterity forms a three-pronged matrix: engulfment/exception/subordination. The other does not exist prior to the engagement; it is not “discovered,” left out or left alone—excluded from operations of power. The other was and is produced by and through engagement. It is engulfed in operations of modernity, located in zones of exception, and positioned in states of subordination. This subordination in and as exception concurrently produces the other and the identity of the modern self.

The regimes of engulfment of the other aim to render the subjected body “more obedient as it becomes more useful.”<sup>94</sup> Here the role of law becomes critical. Recognition of the centrality of

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<sup>91</sup> GHOSH, SEA OF POPPIES, *supra* note 11, at 219.

<sup>92</sup> *Id.* at 106-07.

<sup>93</sup> For a critique of the “exclusion” thesis in modern construction of race, see DENISE FERREIRA DA SILVA, TOWARDS A GLOBAL IDEA OF RACE (2007).

<sup>94</sup> MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 137-38 (Alan Sheridan trans., 2d ed. 1979).

law to the colonizing process stands widely acknowledged.<sup>95</sup> Law in the colony aimed to “reduce . . . to civility” those who had “no skill of submission.”<sup>96</sup> Violence was deemed a vital instrument of colonial progress,<sup>97</sup> with law furnishing “the cutting edge of colonialism.”<sup>98</sup> Violence in general, and the violence of law in particular, were seen as playing “the leading part in the creation of civilization.”<sup>99</sup> Colonial rule deemed “[o]ur law . . . a compulsory gospel which admits of no dissent and no disobedience.”<sup>100</sup> This overt concert of law and violence has been aptly characterized “*lawfare*, the effort to conquer and control indigenous peoples by the coercive use of legal means.”<sup>101</sup> The geo-legal space of colonialism brings into sharp relief “the blood that has dried on the codes of law.”<sup>102</sup>

In the colony, law congealed epistemic, structural, and physical violence. The colonized other, deemed an error of arrested evolution, was prescribed corrective norms of a higher rational order. This “soul-making”<sup>103</sup> colonial project entailed entrenchment of a layered legal order. First, the colony was inserted into the global legal system of hierarchically differentiated sovereignties. Second, metropolitan law was transplanted in the colony, supplemented by exceptions that ensured that coercion displaced hegemony as its animating force,<sup>104</sup> thereby ordering a “rule of difference” that mandated performance of nonidentity

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<sup>95</sup> See Sally Engle Merry, *From Law and Colonialism to Law and Globalization*, 28 LAW & SOC. INQUIRY 269-90 (2003); NATHAN J. BROWN, *THE RULE OF LAW IN THE ARAB WORLD: COURTS IN EGYPT AND THE GULF* (1997); CONTESTED STATES: LAW, HEGEMONY, AND RESISTANCE, (Mindie Lazarus-Black & Susan Hirsch eds., 1994); RONEN SHAMIR, *THE COLONIES OF LAW: COLONIALISM, ZIONISM, AND LAW IN EARLY MANDATE PALESTINE* (2000).

<sup>96</sup> J. AXTELL, *THE INVASION WITHIN: THE CONTEST OF CULTURES IN COLONIAL NORTH AMERICA* 131, 271 (1985).

<sup>97</sup> ASHIS NANDY, *THE INTIMATE ENEMY: LOSS AND RECOVERY OF SELF UNDER COLONIALISM* 69 (1983).

<sup>98</sup> MARTIN CHANOCK, *LAW, CUSTOM, AND SOCIAL ORDER: THE COLONIAL EXPERIENCE IN MALAWI AND ZAMBIA* 4 (1998).

<sup>99</sup> ERIC STOKES, *THE ENGLISH UTILITARIANS AND INDIA* 294 (1959).

<sup>100</sup> R. C. J. COCKS, *SIR HENRY MAINE: A STUDY IN VICTORIAN JURISPRUDENCE* 87 (1988). See also RADHIKA SINGHA, *A DESPOTISM OF LAW: CRIME AND JUSTICE IN EARLY COLONIAL INDIA* (1998).

<sup>101</sup> J. L. Comaroff, *Colonialism, Culture, and the Law: A Foreword*, 26 LAW & SOC. INQUIRY 306 (2001).

<sup>102</sup> JAMES MILLER, *THE PASSION OF MICHEL FOUCAULT* 289 (1993) (quoting Michel Foucault).

<sup>103</sup> Perry, *supra* note 78, at 39.

<sup>104</sup> See RANAJIT GUHA, *DOMINANCE WITHOUT HEGEMONY: HISTORY AND POWER IN COLONIAL INDIA* (1997).

between the colonizer and the colonized.<sup>105</sup> Third, through selective recognition, malleable norms of the colonized were truncated and reconstituted as fixed “customary law.”<sup>106</sup>

Attempts to modernize the colony while keeping its imagined traditional lineaments in place produced a geo-legal space that rather than being a homogenous whole, was fractured—multiple normative orders laid claim over the same space. This fracture complemented “uneven development,”<sup>107</sup> and the “asymmetries that inevitably arise out of spatial exchange relations”<sup>108</sup> orchestrated by global capital accumulation. While the phenomenon of unevenness, and synchronicity of the non-synchronous, is intrinsic to capitalism, this assumed an exaggerated form in colonial contexts where diverse modes of production were harnessed in the service of global accumulation.<sup>109</sup> The resulting concurrent homogenizations and differentiations continue to animate the post-colonial imperial order.<sup>110</sup> One particular result is the accelerated dislocation of subordinated bodies across spaces and identities. Both *SOP* and *TWT* attest to the subaltern’s continual negotiation with these incessant dislocations.

It is claimed that “[t]he global economy is something that has developed only in very recent terms.”<sup>111</sup> If globalization means an economy in which each part of the world is linked by markets sharing close to real-time information, then globalization began not in the 1970s but in the nineteenth century with the “Victorian Internet”<sup>112</sup>—a system of submarine telegraph cables and the

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<sup>105</sup> PARTHA CHATTERJEE, *THE NATION AND ITS FRAGMENTS: COLONIAL AND POSTCOLONIAL HISTORIES* 16-24 (1993).

<sup>106</sup> See FRANCIS G. SNYDER, *CAPITALISM AND LEGAL CHANGE: AN AFRICAN TRANSFORMATION* (1981); SALLY FALK MOORE, *SOCIAL FACTS AND FABRICATIONS: CUSTOMARY LAW IN KILIMANJARO, 1880-1980* (1986).

<sup>107</sup> NEIL SMITH, *UNEVEN DEVELOPMENT: NATURE, CAPITAL AND THE PRODUCTION OF SPACE* 90 (1984).

<sup>108</sup> HARVEY, *supra* note 30, at 31.

<sup>109</sup> For the phenomenon of unevenness in political and economic registers, see generally SAMIR AMIN, *ACCUMULATION ON A WORLD SCALE: A CRITIQUE OF THE THEORY OF UNDERDEVELOPMENT* (1974) and *LIMITS TO CAPITAL*, *supra* note 27.

<sup>110</sup> *LIMITS TO CAPITAL*, *supra* note 28, at 137-82.

<sup>111</sup> KENICHI OHMAE, *THE NEXT GLOBAL STAGE: CHALLENGES AND OPPORTUNITIES IN OUR BORDERLESS WORLD* 59 (2005). Ohmae dates the birth of the global economy rather precisely, 1985. *Id.* at 28.

<sup>112</sup> See TOM STANDAGE, *THE VICTORIAN INTERNET: THE REMARKABLE STORY OF THE TELEGRAPH AND THE NINETEENTH CENTURY’S ON-LINE PIONEERS* (1998).

pantelegraph.<sup>113</sup> Long-distance trading and credit networks existed well before the European's voyages of discovery.<sup>114</sup> Colonial intersections of law and geography inscribed new terms of engagement for both these existing networks and new networks that were fashioned in the colonial era. For example, for India, engagement with the "beyond" was not new. Intercontinental migrations, conflicts, and trade across the Indian Ocean and the Mediterranean and South China Sea zones predated Vasco de Gama's landing in Calicut by centuries.<sup>115</sup> Colonialism and its aftermath did not change the engagement with the "beyond," but rather the terms of this engagement. It reworked trade routes and geographies of power, turning India into "the pivot of Empire."<sup>116</sup> People had traded and interacted, prompted by needs and desires dictated by their respective grounded contexts. Those situated "beyond" were alternatively deemed equal, lesser, strange or perhaps even savage. But no one claimed the mandate to change the other; there was no burden to rescue, reform, and civilize. Insertion of the colony in the geopolitics and geoeconomy of capitalism transformed the terms of engagement in foundational ways. Henceforth, interactions with the "beyond" were mandated and orchestrated by needs and desires emanating from oceans away. Who will interact with whom, when, and how became the project of elaborate legal regimes designed and enforced by colonial powers. Now, any gains from the interactions were not to

<sup>113</sup> ANDREW HEROD, *GEOGRAPHIES OF GLOBALIZATION: A CRITICAL INTRODUCTION* 70 (2009); PAUL HIRST & GRAHAME THOMPSON, *GLOBALIZATION IN QUESTION: THE INTERNATIONAL ECONOMY AND THE POSSIBILITIES OF GOVERNANCE*, 9-10 (1996).

<sup>114</sup> See, e.g., Felix A. Chami, *Roman Beads from the Rufiji Delta, Tanzania: First Incontrovertible Archaeological Link with the Periplus*, 40:2 *CURRENT ANTHROPOLOGY* 237 (1999); HARAPRASAD RAY, *TRADE AND DIPLOMACY IN INDIA-CHINA RELATIONS: A STUDY OF BENGAL DURING THE FIFTEENTH CENTURY* (1993); Wang Gungwu, *Merchants without Empire: The Hokkien Sojourning Communities*, in *THE RISE OF MERCHANT EMPIRES: LONG-DISTANCE TRADE IN THE EARLY MODERN WORLD, 1350-1750* 400-21 (J. D. Tracy ed., 1990); JOSEPH HARRIS, *THE AFRICAN PRESENCE IN ASIA: CONSEQUENCES OF THE EAST AFRICAN SLAVE TRADE* (1971); CLAUDE MARKOVITS, *THE GLOBAL WORLD OF INDIAN MERCHANTS, 1750-1947: TRADERS OF SIND FROM BUKHARA TO PANAMA* (2000).

<sup>115</sup> See, e.g., SANJAY SUBRAHMANYAM, *EXPLORATIONS IN CONNECTED HISTORY: MUGHALS AND FRANKS* (2005); SANJAY SUBRAHMANYAM, *EXPLORATIONS IN CONNECTED HISTORIES: FROM THE TAGUS TO THE GANGES* (2005); HOLDEN FURBER ET. AL., *MARITIME INDIA* (Sanjay Subrahmanyam ed., 2004).

<sup>116</sup> DURGA DAS, *INDIA: FROM CURZEN TO NEHRU AND AFTER* 44 (1969) (quoting Lord Curzon). See also THOMAS R. METCALF, *IMPERIAL CONNECTIONS: INDIA IN THE INDIAN OCEAN ARENA 1860-1920* (2007).

accrue to the colony but were to be siphoned off. Systems of production and attendant social relations were transformed. Global accumulation coordinated different modes of production to make extraction “efficient.”<sup>117</sup> Commoditization of goods and labor was grafted onto non-capitalist modes and relations of production. What was to be produced, by whom, and under what regime of ownership were regulated in great detail. Law and geography intermeshed unavoidably in this new scheme of things and provided the essential fuel for global accumulation by dispossession.

## V. COLONIAL INDIA, TRADE, AND DISPOSSESSION

But those toothsome winter crops were steadily shrinking in acreage: now the factory’s appetite for opium seemed never to be sated. Come the cold weather, the English sahibs would allow little else to be planted . . . .<sup>118</sup>

In the good old days people used to say there were only two things to be exported from Calcutta: thugs and drugs—or opium and coolies as some would have it.<sup>119</sup>

The colonial trade regimes that inserted India into the circuits of global capital accumulation, and their impact, are an evocative example of accumulation by dispossession. The British trading interests secured concessions to trade with India in 1617. The British East India Company established political control over the fertile Delta of Bengal in 1757, and began the process of colonizing India.<sup>120</sup> Over the next century, British colonial rule in India expanded westward, and reached its western reaches by

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<sup>117</sup> See WOLPE, *supra* note 36; AMIN, *supra* note 108 and WALLERSTEIN, *supra* note 36.

<sup>118</sup> GHOSH, SEA OF POPPIES, *supra* note 11, at 27.

<sup>119</sup> *Id.* at 70.

<sup>120</sup> For detailed studies of the East India Company, see NICK ROBINS, THE CORPORATION THAT CHANGED THE WORLD: HOW THE EAST INDIA COMPANY SHAPED THE MODERN MULTINATIONAL (Pluto Press 2006); H. V. BOWEN, THE BUSINESS OF EMPIRE: THE EAST INDIA COMPANY AND IMPERIAL BRITAIN, 1956 - 1833 (Cambridge Univ. Press 2008) (2006); SUDIPTA SEN, EMPIRE OF FREE TRADE: THE EAST INDIA COMPANY AND THE MAKING OF THE COLONIAL MARKETPLACE (Univ. of Penn Press 1998).



1850. Colonial rule ended in 1947.<sup>121</sup> Over the intervening two hundred years, colonial rule transformed the agricultural and manufacturing economies of India to serve the interests of the colonizers.<sup>122</sup>

As late as 1830, India and China produced more manufactured goods than Europe.<sup>123</sup> Between 1664 and 1700, Britain imported 6.4 million pounds [110 billion in today's valuations] worth of textiles from Asia, mostly India, and exported 11.3 million [205 billion today] worth of goods.<sup>124</sup> By 1700, India accounted for nearly half of Britain's trade.<sup>125</sup> Between 1760 and 1780, profits from Britain's trade with India and the West Indies doubled the capital available for investment within Britain.<sup>126</sup> In 1880 alone British financiers earned eight million pounds [8 billion in current valuation] in interest payments from their Indian loans.<sup>127</sup> By the 1880's British investments in India totaled 270 million pounds [272 billion today], constituting about one-fifth of the entire British overseas investment.<sup>128</sup> Between 1892 and 1896, the average British exports of goods to India were worth 37.8 million pounds [32.9 billion today], and imports from India amounted 22.7 million [19.8 billion today].<sup>129</sup> Of the seventy-eight million pounds [47

<sup>121</sup> For the chronology and pattern of spatial expansion of British colonial rule in India, see GRAHAM P. CHAPMAN, *THE GEOPOLITICS OF SOUTH ASIA: FROM EARLY EMPIRES TO THE NUCLEAR AGE* Fig. 4.1 at 74, Fig. 4.2 at 81. (3d. ed., Ashgate 2009). See also ARCHIVES OF EMPIRE VOL. I: FROM THE EAST INDIA COMPANY TO THE SUEZ CANAL 227, 230 (Barbara Harlow & Mia Carter eds., Duke Univ. Press 2003).

<sup>122</sup> See GROWTH, STAGNATION OR DECLINE? AGRICULTURAL PRODUCTIVITY IN BRITISH INDIA (Sumit Guha ed., Oxford Univ. Press 1992); Irfan Habib, *Studying a Colonial Economy—Without Perceiving Colonialism*, 19:3 MOD. ASIAN STUD. 355, 368 (1985); Peter Harnetty, *Crop Trends in the Central Provinces of India, 1861-1921*, 11:3 MOD. ASIAN STUD. 341, 347 (1977); CREDIT, MARKETS AND THE AGRARIAN ECONOMY OF COLONIAL INDIA (Sugata Bose ed., Oxford Univ. Press 1994); D.A. Washbrook, *Progress and Problems: South Asian Economic and Social History, c. 1720-1860*, 22:1 MOD. ASIAN STUD. 57, 90 (1988).

<sup>123</sup> HEROD, *supra* note 113, at 131.

<sup>124</sup> KIRTI N. CHAUDHURI, *THE TRADING WORLD OF ASIA AND THE ENGLISH EAST INDIA COMPANY* 507, 547 (Cambridge Univ. Press 1978).

<sup>125</sup> JOHN KEAY, *THE HONOURABLE COMPANY: A HISTORY OF THE ENGLISH EAST INDIA COMPANY* 170 (Harper Collins 1991).

<sup>126</sup> ERNEST MANDEL, *II MARXIST ECONOMIC THEORY* 443-5 (Brian Pearce, trans., Merlin Press 1968).

<sup>127</sup> S. B. SAUL, *STUDIES IN BRITISH OVERSEAS TRADE 1870-1914* 56 (Liverpool Univ. Press 1960).

<sup>128</sup> NIALL FERGUSON, *EMPIRE: THE RISE AND DEMISE OF THE BRITISH WORLD ORDER AND THE LESSONS FOR GLOBAL POWER* 215 (Basic Books 2003).

<sup>129</sup> A. W. Flux, *The Flag and Trade: A Summary review of the Trade of the Chief Colonial Empires*, 62 J. ROYAL STAT. SOC'Y 489, 495 (1899).

billion today] worth of goods imported into India, (exclusive of gold) in 1906, only thirty-one percent came from outside the British Empire.<sup>130</sup>

The story of cotton, a major component of India's pre-colonial agriculture and manufacturing, illustrates the impact of colonialism evocatively.<sup>131</sup> India, historically a major producer and exporter of textile, exported over 100 million yards annually in 1700, and seventy-eight percent of all Asian imports to Britain—primarily textiles—came from India.<sup>132</sup> To give protection to its own incipient textile industry, Britain legislated a ban on import of Indian white calico.<sup>133</sup> By 1813, a seventy-eight percent import duty on all Indian calicoes and a thirty-one percent on muslin were imposed.<sup>134</sup> As a result, by 1840 Indian textile exports fell forty-eight percent.<sup>135</sup> Calcutta, which in 1813 exported two million pounds worth of cotton goods, by 1843 was importing cotton goods worth that amount.<sup>136</sup> From being a textile exporter, India was turned into an exporter of raw cotton, and exports grew from 34.5 million pounds in 1816 to more than 615 million pounds in 1866, constituting forty-five percent of all cotton imported into Britain.<sup>137</sup> In the meantime, British exports of textiles to India grew from one million yards in 1814 to 315 million in 1850, and 1.4 billion in 1880 and 2.04 billion in 1896.<sup>138</sup> As a result of these dramatic changes in trade patterns, between 1850 and 1880 3.6 million jobs were lost in the Indian handloom sector, and by 1896 Indian produced only eight percent of cloth consumed internally.<sup>139</sup> During the eighteenth century, India enjoyed a competitive

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<sup>130</sup> T. Morison, *Review of India and the Empire: A Consideration of the Tariff Problem by M. de P. Webb*, 18:71 THE ECON. J. 424 (1908).

<sup>131</sup> See generally THE FIBRE THAT CHANGED THE WORLD: THE COTTON INDUSTRY IN INTERNATIONAL PERSPECTIVE, 1600-1990S (D. A. Farnie & D. J. Jeremy eds., Oxford Univ. Press 2004).

<sup>132</sup> HEROD, *supra* note 113, at 122.

<sup>133</sup> *Id.*

<sup>134</sup> ROBINS, *supra* note 120, at 148.

<sup>135</sup> K. N. Chaudhuri, *India's Foreign Trade and the Cessation of the East India Company's Trading Activities, 1828-40*, 19:2 ECON. HIST. REV. (n.s.) 345, 347 (1966).

<sup>136</sup> HEROD, *supra* note 113 at 122. See also, ROBINS, *supra* note 120, at 148; MANDEL, *supra* note 126, at 372.

<sup>137</sup> Peter Harnetty, *Imperialism and Free Trade: Lancashire and India in Mid-Nineteenth Century*, 6 J. BRIT. STUD. 70, 93 (1966).

<sup>138</sup> D. A. FARNIE, THE ENGLISH COTTON INDUSTRY AND THE WORLD MARKET, 1815-1896 91 (1979); PAUL BAIROCH, ECONOMICS AND WORLD HISTORY: MYTHS AND PARADOXES 89 (1993).

<sup>139</sup> ANGUS MADDISON, CLASS STRUCTURE AND ECONOMIC GROWTH: INDIA AND PAKISTAN SINCE THE MOGHULS 57 (1971); HEROD, *supra* note 113, at 122.

advantage in textile production and weavers in India had higher incomes than their British counterparts.<sup>140</sup> Imposition of seventy to eighty percent tariff on Indian exports to Britain and manipulation of taxation—charging six to eighteen percent duties on inter-regional movement of Indian textiles while allowing British goods free movement—undercut Indian producers and facilitated consolidation of industrial revolution in Britain.<sup>141</sup> Concurrently, the manufacturing base of India declined. By one estimate, between 1813 and 1822, five to six percent of resources otherwise available for investment in Bengal were siphoned off by colonial trading regimes.<sup>142</sup> This siphoning of value was done under a system of trade whereby colonies were thrown open to machinations of global capital while colonizer societies industrialized behind secure walls of protectionism.<sup>143</sup> The much-heralded principle of free trade “became a mantra after much of the competition in places like India had already been destroyed by decidedly unfree trade.”<sup>144</sup> The impact of these changes on Indian economy and society is captured well by the colonial Governor General’s acknowledgement that “[t]he misery hardly finds parallel in the history of commerce. The bones of the cotton-weavers are bleaching the plains of India.”<sup>145</sup>

This record shows that the role of colonialism in accumulation by dispossession was a direct one. As cotton and other commercial crops gained ascendancy, farmers switched from producing subsistence crops to cash crops, grain output declined steadily,<sup>146</sup>

<sup>140</sup> Prasannan Parthasarathi, *Rethinking Wages and Competitiveness in the Eighteenth Century: Britain and South India*, 158 PAST AND PRESENT 79, 82 (1998). See also PRASANNAN PARTHASARATHI, *THE TRANSITION TO A COLONIAL ECONOMY: WEAVERS, MERCHANTS AND KINGS IN SOUTH INDIA, 1720-1800* (2001).

<sup>141</sup> AMIYA KUMAR BAGCHI, *THE POLITICAL ECONOMY OF UNDERDEVELOPMENT* 80 (1982); H. B. LAMB, *The “State” and Economic Development in India*, in *ECONOMIC GROWTH: BRAZIL, INDIA, JAPAN* 468 (Simon Kuznets, et al. eds., 1955).

<sup>142</sup> BAGCHI, *supra* note 141, at 81.

<sup>143</sup> HEROD, *supra* note 113, 124-5. See HA-JOON CHANG, *KICKING AWAY THE LADDER: DEVELOPMENT STRATEGY IN HISTORICAL PERSPECTIVE* (2002); HA-JOON CHANG, *BAD SAMARITANS: THE MYTH OF FREE TRADE AND THE SECRET HISTORY OF CAPITALISM* (2008). Today, postcolonial societies are being forced to adopt trade and industrial policies that industrialized economies shunned in order to consolidate industrialization. See *THE POLITICS OF TRADE AND INDUSTRIAL POLICY IN AFRICA: FORCED CONSENSUS* (Charles C. Soludo, et al, eds., 2004); ERIK REINERT, *HOW RICH COUNTRIES GOT RICH AND WHY POOR COUNTRIES STAY POOR* (2008).

<sup>144</sup> HEROD, *supra* note 113, at 125.

<sup>145</sup> *Id.* at 123.

<sup>146</sup> *Id.* at 135.

life expectancy fell twenty percent between 1871 and 1921, and population growth turned negative in many regions.<sup>147</sup> As a result of disarticulation between domestic production and distribution, while between 1875 and 1900 Indian grain exports increased from three million tons a year to ten million,<sup>148</sup> the 1876-7 and 1896-1900 famines killed seventeen to twenty million.<sup>149</sup> In the last half of the nineteenth century India's national income fell fifty percent,<sup>150</sup> leading to the conclusion that "[i]f the history of British rule in India were to be condensed into a single fact, it is this: there was no increase in India's per capita income from 1757 to 1947."<sup>151</sup>

This was the context that animated the drama of SOP: the forced switch to cash crops like opium, the colonial monopoly of opium production and trade,<sup>152</sup> and the dispossession and displacement of subsistence producers.

## VI. SUBJECTIVITIES AND RESISTANCE IN THE GLOBAL GEO-LEGAL SPACE

But those toothsome winter crops were steadily shrinking in acreage: now the factory's appetite for opium seemed never to be sated. Come the cold weather, the English sahibs would allow little else to be planted; their agents would go from home to home, forcing cash advances on the farmers, making them sign *asámi* contracts. It was impossible to say no to them: if you refused they would leave their silver hidden in your house, or throw it through a window. It was no use telling the white magistrate that you hadn't accepted the money and your thumbprint was forged: he earned

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<sup>147</sup> THE CAMBRIDGE ECONOMIC HISTORY OF INDIA, VOL. 2: C. 1757-C. 1970 501-02, 490 (Dharma Kumar ed., 1983).

<sup>148</sup> MIKE DAVIS, LATE VICTORIAN HOLOCAUSTS: EL NINO FAMINES AND THE MAKING OF THE THIRD WORLD 299 (2001).

<sup>149</sup> THE CAMBRIDGE ECONOMIC HISTORY OF INDIA, *supra* note 147, at 502.

<sup>150</sup> HEROD, *supra* note 113, at 135.

<sup>151</sup> DAVIS, *supra* note 148, at 311.

<sup>152</sup> *See generally* CARL TROCKI, OPIUM, EMPIRE AND THE GLOBAL POLITICAL ECONOMY: A STUDY OF THE ASIAN OPIUM TRADE 1750-1950 (1999); PETER WARD FAY, OPIUM WAR, 1940-1842 (1998).

commissions on the opium and would never let you off.<sup>153</sup>

Everything in the city, it seemed, came down to one thing. Outsourcing. Which meant doing things in India for Americans over the phone. Everything flowed from it – real estate, wealth, power, sex. So I would have to join this outsourcing thing, one way or the other.<sup>154</sup>

Colonizers put in place specific regimes of coercive governance to facilitate the siphoning of value and dispossession of the colonized. Numerous specific instances of this phenomenon that entailed interpenetration of law and geography furnished the stage for the unfolding of subjectivities in the two novels. The first involves property regimes that are inevitably corporeal and material. By marshaling bodies and spaces into prescribed practices, property regimes demarcate the performative possibilities of both. The audaciously named *Permanent Settlement of Bengal* (1793), inaugurated a new rule of private property in Bengal. It transformed the existing system of landholding by turning pre-colonial revenue collectors into landowners, and by disarticulating landownership from group claims and community rights.<sup>155</sup> Revenue was henceforth collected in cash rather than in kind. Commodification of agriculture and use of credit by farmers ensued. Rather quickly, cash crops displaced staples and many lands passed into the hands of creditors, forcing peasants to become available as wage labor. This is the back-drop of *SOP*. Agricultural lands in the region given over to poppy production, employment at the opium factory, and the passing of Deeti's holdings to moneylenders were all made possible by the property regime inaugurated in 1793.

Here, a particular interplay between law and geography is worth noting. Geography played a critical role in colonial technologies of governance that produced territorially coherent units such as "India."<sup>156</sup> Colonizers were "anxious to inaugurate

<sup>153</sup> GHOSH, *SEA OF POPPIES*, *supra* note 11, at 27.

<sup>154</sup> ADIGA, *THE WHITE TIGER*, *supra* note 1, at 255.

<sup>155</sup> At work here were colonial designs to transform Indian society under principles drawn from British Whig political and European Physiocratic economic theories. See RANAJIT GUHA, *A RULE OF PROPERTY FOR BENGAL: AN ESSAY ON THE IDEA OF PERMANENT SETTLEMENT* (1996).

<sup>156</sup> Colonial administrators realized early that existing maps were "very inaccurate . . . only of service while India was an unknown region . . . [These

some system for . . . correcting and revising received geography of Bengal.”<sup>157</sup> The survey of Bengal, initiated in 1763, and the resulting *Bengal Atlas* (1779) and the *Map of Hindoostan* (1782), were deemed works of “the first importance both for strategic and administrative purposes.”<sup>158</sup> Theoretical debates of geographers and geologists of Britain and continental Europe during the nineteenth century drew extensively on this work.<sup>159</sup> The Great Trigonometrical Survey of India (1878), guided by the “flawed . . . certainty and correctness granted by the Enlightenment’s epistemology” finally helped colonizers produce “their India.”<sup>160</sup> This process furnished the grounds for the colonial production of India, that had “hardly ever been a single, integrated political entity,”<sup>161</sup> as a bounded political unit, and substantiated that “an imagined epistemology could intervene to shape the political definition of actual territory.”<sup>162</sup> The work of these geographers was indispensable to the design of the Permanent Settlement and the ensuing property ownership and revenue collection regimes.

The second instance involves the indentured labor system whereby between 1834 and 1937, thirty million left India as part of a global division of labor.<sup>163</sup> Abolition of slavery by the British Act

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maps] ceased to be tolerable when that vast country became a British imperial possession, requiring to be administered.” CLEMENTS MARKHAM, A MEMOIR ON INDIAN SURVEYS 399 (1895).

<sup>157</sup> ZAHEER BABER, *THE SCIENCE OF EMPIRE: SCIENTIFIC KNOWLEDGE, CIVILIZATION, AND COLONIAL RULE IN INDIA* 140 (1996)(quoting CLEMENTS MARKHAM, *MAJOR JAMES RENNELL AND THE RISE OF MODERN ENGLISH GEOGRAPHY* 43-44 (1901)).

<sup>158</sup> *Id.* at 142.

<sup>159</sup> *See id.* at 143-146.

<sup>160</sup> MATTHEW H. EDNEY, *MAPPING AN EMPIRE: THE GEOGRAPHICAL CONSTRUCTION OF BRITISH INDIA 1765-1843* 2, 16-17 (1999).

<sup>161</sup> *Id.* at 16 (quoting B. B. MISSRA, *THE UNIFICATION AND DIVISION OF INDIA* (1990)).

<sup>162</sup> THOMAS RICHARDS, *THE IMPERIAL ARCHIVE: KNOWLEDGE AND THE FANTASY OF EMPIRE* 16 (1993). India as a geographically bounded political unit emerged from British Acts of Parliament between 1858 and 1899. *See* Sanjay Chaturvedi, *Process of Othering in the Case of India and Pakistan* 93:2 *TUDSCRIFT VOOR ECONOMISCHE EN SOCIALE GEOGRAFIE* 149-50 (2002); *THE OXFORD HISTORY OF INDIA* 673-82 (Pervival Spear ed., 3d ed. 1958). *See also* LAWRENCE JAMES, *RAJ: THE MAKING AND UNMAKING OF BRITISH INDIA* 316-321 (2000). Gandhi in the 1930s acknowledged that the “Indian nation was a creation of the empire-builders. Independent India inherited the colonial nation.” B. Sengupta, *India in the Twenty-First Century* 73 (2) *INT’L AFFAIRS* 297, 299 (1997). *See also*, Sumathi Ramaswamy, *Visualising India’s Geo-Body: Globes, Maps, Bodyscapes*, in *BEYOND APPEARANCES: VISUAL PRACTICES AND IDEOLOGIES IN MODERN INDIA* 151 (Sumathi Ramaswamy ed., 2003).

<sup>163</sup> Kingley Davis, *The Population of India and Pakistan* 99 tbl. 35 (1951). *See also* HUGH TINKER, *A NEW SYSTEM OF SLAVERY: THE EXPORT OF INDIAN*

of Emancipation of 1833, created a manpower crisis in the plantation colonies. The void was filled by “a new system of slavery”—indentured labor from India who “cost . . . not one-half that of a slave.”<sup>164</sup> Elaborate legal regimes, including prescribed indenture agreements, immigration controls, and residency regulations, attended this system that spanned the globe. In *SOP*, this system created the field of possibility for Deeti and Kalua to escape Bihar for Calcutta, sign up as *girmityas*, and board the *Ibis*, bound for Mauritius.

The third instance is furnished by the regimes of neo-liberal restructuring of national and global economies put in place over the last twenty-five years. India came into this fold in 1991, when privatization and deregulation of the national economy displaced state-ownership of leading industrial and financial units. This was augmented by the World Trade Organization (“WTO”)-mandated liberalization of trade and international flow of capital. In *TWT*, this created the field of possibilities for Balram to move first from Bihar to Gurgaon and then to Bangalore to set up a taxi company servicing the outsourced call-centers in that city.

The fourth instance is the deployment of two particular technologies of discipline and control: fingerprinting and overseas penal colonies. The British first used fingerprinting as a technology of control in Bengal and deployed it for revenue collection and crime control.<sup>165</sup> In *SOP*, fingerprints came into play in Deeti’s loss of land to moneylenders and the agreement of her indenture. In *TWT*, fingerprints facilitate voter fraud and fraudulent affidavits. In a notorious interplay of law and geography, a global network of overseas penal colonies became a hallmark of British colonialism during the eighteenth and nineteenth centuries. These incipient zones of exception played a complex role in crime control and population management both at home and overseas. From India, convicts were transported to the Andaman Islands and other settlements that doubled as penal colony and plantation. In *SOP*, Neel, a landowner who lost his lands to creditors, is transported to Mauritius after a forgery conviction secured through fraud.

Both *SOP* and *TWT* are also stories of subaltern resistance. What role does the intersection of law and geography play in the unfolding of subaltern subjectivity and resistance? Subjectivity being the effect of subjection to operations of power, it is

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LABOUR OVERSEAS 1830-1920 (1974); Tayyab Mahmud, *Migration, Identity, & the Colonial Encounter*, 76 OR. L. REV. 633, 639-56 (1997).

<sup>164</sup> S. G. CHECKLAND, *THE GLADSTONES: A FAMILY BIOGRAPHY 1764-1851* 318 (1971).

<sup>165</sup> See WILLIAM J. HERSCHEL, *THE ORIGIN OF FINGER-PRINTING* (1916).

constituted through “curves of visibility . . . [and] enunciation”<sup>166</sup> produced by the surrounding order. The subject, the one subjected to power, performs her subjectivity in the terrain demarcated by material and discursive structures of the prevailing order. The performativity of the subject also entails resistance.<sup>167</sup> But this resistance, while not imprisoned in the prevailing limit-horizons, has to contend with these. Even in lines of escape of subjectivity these limit-horizons remain in play. The parallel here is the relationship between norm and exception.<sup>168</sup> The exception is an exception to the norm. It is not of the norm, but nothing without it. It is beyond the norm, but takes its identity in relation to the norm. Space being a constitutive dimension of social relations, it operates concurrently as a “*field of action*” and a “*basis for action*.”<sup>169</sup> In the age of empire, where the subjection of the subject has global spatial dimensions, the resistant agency of the subaltern subject in its spatiality is also global; both in its possibilities and performance.

The global colonial order of the nineteenth century and WTO-globalization of the twenty-first, respectively, furnish the basis and fields of action for subaltern resistance in *SOP* and *TWT*. In *SOP*,

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<sup>166</sup> GILLES DELEUZE, *What Is a Dispositif?*, in MICHEL FOUCAULT, *PHILOSOPHER* 160 (T.J. Armstrong ed., 1992).

<sup>167</sup> Foucault has argued that “[w]here there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power.” MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY VOLUME 1: AN INTRODUCTION* 95 (Robert Hurley trans., 1978). Building on Foucault’s insight about the relationship between power and resistance, Butler argues that the conditional but creative possibilities of resistive performance are “a relation of being implicated in that which one opposes, turning power against itself to produce alternative political modalities, to establish a kind of political contestation that is not ‘pure opposition’ but a difficult labor of forging a future from resources inevitably impure.” JUDITH BUTLER, *BODIES THAT MATTER* 241 (1993). Said, however, takes the position that “[i]n human history there is always something beyond the reach of dominating systems, no matter how deeply they saturate society, and this is obviously what makes change possible.” EDWARD SAID, *THE WORLD, THE TEXT, AND THE CRITIC* 246-47 (1983).

<sup>168</sup> See GIORGIO AGAMBEN, *STATE OF EXCEPTION* (Kevin Atell trans. 2005). Creation of a space of exception is a question of the boundaries and borders of law, in that the sovereign decision and the exception are “never decisively placed within or without the legal system *as they are precisely the moving border between the two*.” Andrew Norris, *The Exemplary Exception*, 119 *RADICAL PHILOSOPHY* 6, 10 (2003). The critical result is that those placed in the zones of exception are included as objects of power but excluded from being subjects. See also Peter Fitzpatrick, *Bare Sovereignty: Homo Sacer and the Insistence of Law*, in *POLITICS, METAPHYSICS, AND DEATH: ESSAYS ON GIORGIO AGAMBEN’S HOMO SACER* 49 (Andrew Norris ed., 2005).

<sup>169</sup> HENRY LEFEBVRE, *THE PRODUCTION OF SPACE* 191 (Donald Nicholas-Smith trans., 1991).



Zachary, an octoroon from Maryland, becomes a sailor on a British ship to escape slavery and re-classes himself. Deeti avails herself of the possibilities offered by the indenture system to escape threats to her life in Bihar. In *TWT*, Balram escapes his miserable village by becoming part of the outsourced call-centers, the hallmarks of the new information age. He cuts his teeth in New Delhi, playing a bit role in the corruption racket that goes by the name of public oversight of private business. This takes us to accumulation by dispossession in the neoliberal era.

## VII. GEOGRAPHIES OF NEOLIBERAL ACCUMULATION AND DISPOSSESSION

These people were building homes for the rich, but they lived in tents covered with blue tarpaulin sheets, and partitioned into lanes by lines of sewage.<sup>170</sup>

The jails of Delhi are full of drivers who are there behind bars because they are taking the blame for their good, solid middle-class masters. We have left the villages, but the masters still own us, body, soul, and arse.<sup>171</sup>

Since the late 1970s, a neoliberal counter-revolution is afoot on a global scale.<sup>172</sup> To secure unfettered rights to private property and profits, it expands and deepens the logic of the market, collapses the distinctions between culture and economy, undermines state sovereignty and national autonomy, and links local and global political economies to facilitate transnational accumulation of capital.<sup>173</sup> Through new regimes of trade, finance,

<sup>170</sup> ADIGA, *THE WHITE TIGER*, *supra* note 1, at 222.

<sup>171</sup> *Id.* at 145.

<sup>172</sup> See DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* (PublicAffairs 2007); ROBERT SKIDELSKY, *KEYNES: THE RETURN OF THE MASTER* (2009); Costas Lapavistas, *Mainstream Economics in the Neoliberal Era*, in *NEOLIBERALISM: A CRITICAL READER*, *supra* note 46, at 30-40; Gerard Dumenit & Dominique Levy, *The Neoliberal (Counter-) Revolution*, in *NEOLIBERALISM: A CRITICAL READER* 9 (Alfredo Saad-Filho & Deborah Johnson eds., 2005); William I. Robinson and Jerry Harris, *Towards a Global Ruling Class: Globalization and the Transnational Capitalist Class*, 64 *SCIENCE & SOCIETY* 11 (2000).

<sup>173</sup> See Boaventura de Sousa Santos, *Law: A Map of Misreading. Towards a Postmodern Conception of Law*, 14 *J. LAW & SOC'Y* 297 (1987); A. CLAIRE CUTLER, *PRIVATE POWER AND GLOBAL AUTHORITY: TRANSNATIONAL*

and property rights, a state's sovereignty transfers to international institutions and dominant states.<sup>174</sup> The result is acceleration of accumulation by dispossession, enlargement of the surplus army of labor, and expansion of the informal sectors of economies.<sup>175</sup> Rural and urban areas are sutured in new networks to accelerate siphoning of value.<sup>176</sup> Deeper penetration of market forces accelerates migration of uprooted rural farmers to urban areas.<sup>177</sup> With the state rolled back, privatization becomes "the cutting edge of accumulation by dispossession."<sup>178</sup> As flexible production shrinks regulated formal economies, informal shadow economies

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MERCHANT LAW IN THE GLOBAL POLITICAL ECONOMY (Cambridge Univ. Press 2003); WILLIAM I. ROBINSON, A THEORY OF GLOBAL CAPITALISM: PRODUCTION, CLASS, AND STATE IN A TRANSNATIONAL WORLD (John's Hopkins Univ. Press 2004); HISTORICAL MATERIALISM AND GLOBALIZATION (M. Rupert and H. Smith eds., 2002)

<sup>174</sup> See B. S. Chimni, *International Institutions Today: An Imperial State in the Making*, 15 EUR. J. INT'L L. 1 (2004); Nico Kirsch, *More Equal than the Rest? Hierarchy, Equality and US Predominance in International Law*, in UNITED STATES HEGEMONY AND THE FOUNDATIONS OF INTERNATIONAL LAW 135, 161 (M. Byers and G. Nolte eds., 2003); Hannah L. Buxbaum, *Conflict of Economic Laws: From Sovereignty to Substance*, 42 VA J. INT'L L. 931, 957 (2002); J. BRAITHWAITE & P. DRAHOS, GLOBAL BUSINESS REGULATION 475-7 (2000); B.S. Chimni, *WTO and Environment: The Legitimization of Unilateral Trade Sanctions*, ECON. & POL. WKLY, Jan. 12, 2002, at 133; B. S. Chimni, *India and the Ongoing Review of the WTO Dispute Settlement System: A Perspective*, ECON. & POL. WKLY, Jan. 30, 1999, at 264. Upendra Baxi, *Mass Torts, Multinational Enterprise Liability and Private International Law*, 276 RECUEIL DES COURS 272, 297, 312 (1999); H. Zhenjie, *Forum Non Conveniens: An Unjustified Doctrine*, 48 NETH. INT'L L. REV. 143 (2001); M. Anderson, *Transnational Corporations and Environmental Damage: Is Tort Law the Answer?*, 41 WASHBURN L.J. 399 (2002).

<sup>175</sup> See David Harvey, *Neoliberalism as Creative Destruction*, 610:1 ANNALS AM. ACAD. POL. & SOC. SCI. 22 (2007); DANIEL YERGIN & JOSEPH STANISLAW, THE COMMANDING HEIGHTS: THE BATTLE BETWEEN GOVERNMENT AND MARKETPLACE THAT IS REMAKING THE MODERN WORLD (Simon & Schuster 1998);

<sup>176</sup> See P. J. TAYLOR, WORLD CITY NETWORK: A GLOBAL URBAN ANALYSIS (Routledge 2004); J. Friedman, *Where we stand: a decade of world city research*, in WORLD CITIES IN A WORLD-SYSTEM 21-47 (P. J. Knox and P. J. Taylor eds., 1996); Julie Skurski & Fernando Coronil, *Country and City in a Post-colonial Landscape: Double Discourse and the Geo-Politics of Truth in Latin America*, in VIEW FROM THE BORDER: ESSAYS IN HONOR OF RAYMOND WILLIAMS 231, 233 (Dennis Dworkin and Leslie Romnan eds., 1992)

<sup>177</sup> See LORI ANN THRUPP ET. AL., BITTERSWEET HARVESTS FOR GLOBAL SUPERMARKETS: CHALLENGES IN LATIN AMERICA'S AGRICULTURAL EXPORT BOOM (World Resources Institute 1995); JAN BREMAN, FOOTLOOSE LABOR: WORKING IN INDIA'S INFORMAL ECONOMY (2008); JAN BREMAN, WAGE HUNTERS AND GATHERERS: SEARCH FOR WORK IN THE URBAN AND RURAL ECONOMY OF SOUTH GUJARAT (Oxford Univ. Press 1994).

<sup>178</sup> HARVEY, *supra* note 30, at 147.

become the only source of livelihood for the urban poor. Today, the informal sector engages two-fifths of the economically active population of the global South.<sup>179</sup> This informal economy cultivates “myriad secret liaisons with outsourced multinational production systems.”<sup>180</sup>

In this general context, India took a turn to neoliberal restructuring in the early 1990s, ushering in an era of “liberalisation-privatisation-globalisation,”<sup>181</sup> and marking “a fundamental transformation of India’s economic strategy.”<sup>182</sup> Indian markets were opened up to an influx of capital, goods, services, and images from the outside. High though dubious growth rates, based almost entirely on performance of the service sector, were achieved quickly and have been sustained.<sup>183</sup> However, India presents “an important counterexample to the dominant orthodoxy,”<sup>184</sup> in that the post 1991 liberalization of the domestic economy and international trade is not associated with increased growth, it is simply a case of sustained growth that began a decade earlier.<sup>185</sup>

With the neoliberal turn in public policies, corporate capital assumed the leading political and moral sway over the social formation. This hegemony was deployed to influence governmental decisions “not through electoral mobilisation of political parties and movements but largely through the bureaucratic-managerial class, the increasingly influential print and visual media, and the judiciary and other independent regulatory

<sup>179</sup> U.N. HUMAN SETTLEMENTS PROGRAM [UN-HABITAT], *The Challenge of Slums: Global Report on Human Settlements* 103-04 (2003); JAN BREMAN, *THE LABORING POOR: PATTERNS OF EXPLOITATION, SUBORDINATION, AND EXCLUSION* 174 (2003).

<sup>180</sup> Mike Davis, *The Urbanization of Empire: Megacities and the Laws of Chaos*, 81:22 SOCIAL TEXT 9, 11 (2004).

<sup>181</sup> Mary E. John & Satish Deshpande, *Theorising the Present: Problems and Possibilities*, ECON. & POL. WKLY, Nov. 15, 2008, at 83, 84. See also K. N. Karba, *Planning and Economic Liberalization*, 31 ECON. & POL. WKLY, Oct. 5, 1996, at 2740-2740. Kuldeep Mathur, *Neo-liberal Agenda and Study of Institutions*, REV OF DEV. & CHANGE 167 (1996).

<sup>182</sup> Ashutosh Varshney, *Mass Politics or Elite Politics: India’s Economic Reforms in Comparative Perspective, in India in AN ERA OF ECONOMIC REFORMS* 230 (J. D. Sachs, et. al., eds., 2000).

<sup>183</sup> See MATTHEW MCCARTNEY, *INDIA: THE POLITICAL ECONOMY OF GROWTH, STAGNATION AND THE STATE, 1951-2007* (2009); PRABHAT PATNAIK, *THE MEANING OF CONTEMPORARY GLOBALIZATION, in CONTESTED TRANSFORMATIONS: CHANGING ECONOMIES AND IDENTITIES IN CONTEMPORARY INDIA* (Mary E. John, Praveen Kumar Jha and Surinder S. Jodhka eds, 2006)

<sup>184</sup> MCCARTNEY, *supra* note 183, at 235.

<sup>185</sup> *Id.* at 236.

bodies.”<sup>186</sup> The bureaucratic-managerial class now stood subordinated to corporate capital.<sup>187</sup> The latter is now in a position to set the terms of the political field to which other social groups are constrained to respond. As the market emerged as the new messiah, the welfare and development state went into a decisive retreat. The question of poverty and the poor went through a fundamental reframing. Any expressions of the state’s concern for the poor under the “current versions are clearly framed in minimalist and palliative terms . . . politically dictated afterthoughts forced on to the agenda by electoral compulsions.”<sup>188</sup>

During the same time, the number of paupers in the country increased by 56 million and deregulated food grain prices soared 58 percent between 1991 and 1994.<sup>189</sup> Real wages of the poorest quintile fell for the first time since 1947.<sup>190</sup> In Bangalore, the storied capital of the neoliberal high-tech boom where Balram found his piece of the neoliberal dream in *TWT*, slums grew twice as fast as the general population with an estimated 2 million poor squatting in 1000 filthy slums, and the city’s periphery became “the dumping ground for those urban residents whose labor is wanted in the urban economy but whose visual presence should be reduced as much as possible.”<sup>191</sup> Between 1997 and 2007, as WTO-mandated agricultural policies took root, 183,936 Indian farmers committed suicide; growing debt burden and increased switch to cash-crops are cited as the primary reason.<sup>192</sup> In 2007, the Planning Commission candidly admitted that WTO “compulsions” had induced removal of tariffs and subsidies for the agriculture

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<sup>186</sup> Partha Chatterjee, *Democracy and Economic Transformation in India*, ECON. & POL. WKLY, Apr. 19, 2008, at 53, 57.

<sup>187</sup> See Satish Deshpande, *Mapping the ‘Middle’: Issues in the Analysis of the ‘Non-Poor’ Classes in India*, in CONTESTED TRANSFORMATIONS, *supra* note 183, at 215.

<sup>188</sup> Mary E. John & Satish Deshpande, *Theorising the Present: Problems and Possibilities*, ECON. & POL. WKLY, Nov. 15, 2008, at 83, 84.

<sup>189</sup> JEREMY SEABROOK, IN THE CITIES OF THE SOUTH: SCENES FROM A DEVELOPING WORLD 63 (1996).

<sup>190</sup> For details, see EMPLOYMENT AND UNEMPLOYMENT SITUATION AMONG SOCIAL GROUPS IN INDIA, 61st ROUND (Department of Statistics, Government of India, 2006).

<sup>191</sup> Hans Schenk & Michael Dewitt, *The Fringe Habitat of Bangalore*, in LIVING IN INDIA’S SLUMS: A CASE STUDY OF BANGALORE 131 (Hans Schenk ed., 2001).

<sup>192</sup> P. Sainath, *Neo-Liberal Terrorism in India: The Largest Wave of Suicides in History*, COUNTERPUNCH, Feb 12, 2009, available at <http://www.counterpunch.org/sainath02122009.html> (last visited on Jan. 2, 2010).

sector resulting in a “major crisis.”<sup>193</sup> Indeed, Bertolt Brecht had observed accurately that “famines do not simply occur; they are organized by grain trade.”<sup>194</sup> In this context, the displaced and the marginalized are a “major component of the industrial reserve army in its various forms . . . structured and growing part of the urban economy in peripheral formations.”<sup>195</sup> This is the context of Balraj’s circuitous journey from his village in Bihar to Bangalore in *TWT*.

How does neoliberalism, an idea and a theory, displace historical commitments and expectations of a caring and patrimonial state, particularly when these commitments and expectations stand enshrined in the primary embodying of the social contract, the Constitution of India?<sup>196</sup> This is done by reconfiguring the social contract between the state and the subject, by reconstituting the grounds of eligibility for full citizenship, and by redrawing expectations of collective responsibility.<sup>197</sup> In India, as in many other places, over the last two decades corporate capital has secured dominance of the ruling power-bloc.<sup>198</sup> Representing the interests of elites and professionals of the formal economy, a reconfigured power-bloc now holds a “moral-political

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<sup>193</sup> PLANNING COMMISSION, REPORT ON THE DEVELOPMENT OF TRIBAL AREAS (Sivaraman Committee), National Committee on the Development of Backward Areas, (Government of India 2007). In the 1990s the rate of growth fell below the rate of population growth for the first time since the 1960s. The rate of growth of dryland crops grown and consumed by the poorest sections of the population dropped below zero. Mihir Shah, *Structures of Power in Indian Society: A Response*, ECON. & POL. WKLY, Nov. 15, 2008, at 78, 80.

<sup>194</sup> Susan Marks, *Introduction*, in INTERNATIONAL LAW ON THE LEFT: RE-EXAMINING MARXIST LEGACIES 13 (Susan Marks ed., 2008). See also AMARTYA SEN, POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION (1983).

<sup>195</sup> Henry Veltmeyer, *Surplus Labor and Class Formation on the Latin American Periphery*, in THEORIES OF DEVELOPMENT: MODES OF PRODUCTION OR DEPENDENCY? 212-13 (Ronald Chilcote & Dale L. Johnson eds., 1983) (internal citations omitted).

<sup>196</sup> The preamble and the directive principles of state policy of the Constitution of India speak of social, economic and political justice, adequate means of livelihood, distribution of ownership and control of material resources, prevention of concentration of economic wealth, equal pay for equal work for both men and women. For detailed discussion, see TRIMBAK KRISHNA TOPE, CONSTITUTIONAL LAW OF INDIA 1-11, 335-360 (2d. ed., Lucknow: Eastern Book Co. 1992).

<sup>197</sup> For an incisive analysis of how ideology functions in the era of late capitalism to curtail prospects of transformatory politics in formal democratic polities, see JODI DEAN, DEMOCRACY AND OTHER NEOLIBERAL FANTASIES: COMMUNICATIVE CAPITALISM AND LEFT POLITICS (Duke Univ. Press 2009).

<sup>198</sup> See PARTHA CHATTERJEE, THE POLITICS OF THE GOVERNED (Columbia Univ. Press 2003).

hegemony—the capitalist class has acquired a position to set the terms to which other political formations can only respond.”<sup>199</sup> To achieve such domination and hegemony in India, a polity that is a representative democracy and had a historical political alliance between the teeming poor and the nationalist elite, requires recalibration of the democratic process.

The recalibration entails turning electoral representative democracy into a “free market democracy.” For example, over ten billion dollars were spent in the 2009 general election in India, ninety percent of independent candidates lost, and the ruling coalition won a resounding mandate to continue on the path of neoliberalism by securing thirty-seven percent of the votes cast which work out to 10.3 percent of the country’s population.<sup>200</sup> Elections in India have been turned into a “heavily-sponsored, TV-friendly spectator sport . . . whereby an electorate has been turned into a market, voters are seen as consumers, and democracy is being welded to the free market. Ergo: those who cannot consume do not matter.”<sup>201</sup> As part of this process, an ideological reconstruction of poverty and inequality unfolded that furnishes the ethical grounds for the disavowal of the rights of the poor. Balram’s story of his life is a story of negotiating this milieu.

### VIII. GLOBALIZATION AND THE GEO-LEGAL CRISIS OF EMPIRE

The war, when it comes, will not be for opium. It will be for a principle: for freedom—for the freedom of trade and for the freedom of the Chinese people. Free trade is a right conferred on man by God, and its principles apply as much to opium as to any other article of trade.<sup>202</sup>

We are no different from the Pharaohs or the Mongols: the difference is only that when we kill people we feel compelled to pretend that it is for some higher cause. It is this pretence of virtue, I

<sup>199</sup> Partha Chatterjee, *Democracy and Economic Transformation in India*, 43 (16) ECON. & POL. WKLY, Apr. 19-25, 2008, at 53.

<sup>200</sup> ARUNDHATI ROY, FIELD NOTES ON DEMOCRACY: LISTENING TO GRASSHOPPERS 14-15 (Haymarket Books 2009)

<sup>201</sup> *Id.* at 17. For a case study of political marketing in the 1989 parliamentary election in India, see DILIP M. SARWATE, POLITICAL MARKETING: THE INDIAN EXPERIENCE 110-201 (1990).

<sup>202</sup> GHOSH, SEA OF POPPIES, *supra* note 11, at 106.

promise you, that will never be forgiven by history.<sup>203</sup>

The latest iteration of modernity's suturing of law with global space is today's master-narrative: Globalization—a newly fashioned ensemble of norms, practices, and discourses to facilitate the geopolitics and geoeconomy of late capitalism. Mainstream discourse about globalization represents the world as a seamless integrated whole,<sup>204</sup> and globalization as inevitable.<sup>205</sup> Globalization, like civilization, embodies modernity's claims about the direction and destination of history. The promise of progress and of overcoming space with time remains in place. However, global power relations remain embedded in the ensemble of globalization. Commitment to and participation in the global political economy is deemed the measure of a state's fitness for membership in the global community. The end of the Cold War is seen as capitalism's final victory over alternative models of collective life, thus signaling an "end of history."<sup>206</sup> The purported universality of capitalism, however, yields to its historical particularity in the claim that "the story of Western civilization is now the story of mankind, its influence so diffused that old oppositions and antitheses are now meaningless."<sup>207</sup> The geo-legal space of globalization remains hierarchically organized and internally differentiated in that relations between particular spaces are shot through with power inequalities and unevenness. In this context "the global village . . . is the fantasy of the colonizer, not the colonized."<sup>208</sup> We have to move away from conflation of structural tendency of capital towards homogenization with its actual historical realization. Rule of capital is not natural, unitary, or impelled by any unilinear logic. Rather, it adopts contradictory historical forms and generates multiple space-times.

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<sup>203</sup> *Id.* at 242.

<sup>204</sup> See, e.g., KENICHI OHMAE, *THE BORDERLESS WORLD: POWER AND STRATEGY IN THE INTERLINKED ECONOMY* (Harper Business 1990). For a critical reading of the discourse of globalization, see A. Leyshon, *True Stories? Global Dreams, Global Nightmares, and Writing Globalization*, in *GEOGRAPHIES OF ECONOMIES* 133-46 (R. Lee and J. Wills eds., 1997).

<sup>205</sup> BRYAN AND FARRELL, *supra* note 23, at 160.

<sup>206</sup> See, e.g., FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (Free Press 1992).

<sup>207</sup> JOHN ROBERTS, *THE TRIUMPH OF THE WEST* 431 (Little, Brown 1985).

<sup>208</sup> L. Spiegel, *The suburban home companion: Television and the neighborhood idea in postwar America*, in *SEXUALITY AND SPACE* 217 (B. Colomina ed., 1992).

It is this multiplicity and unevenness that has generated today's crises and conflicts, presenting new challenges to intersections of law and geography at a global scale.<sup>209</sup> Global financial markets, the cutting edge of late capitalism, face a meltdown of grounds secured by deregulation. Fossil-fuel driven industrialization reaches the limits of accommodation that environment can offer. Victims of neo-liberal restructuring of "national" economies seek alternative social compacts. Those subjected to globally differentiated sovereignties demand autonomy and self-determination. The post-colonial failures to reconcile indivisible sovereignty with demographic heterogeneity reach the breaking point. Refugees, migrant workers, "internally displaced persons," and trafficked persons swell the ranks of the "constitutionally unclaimed."<sup>210</sup> And the response to all this by the imperial global order: an accelerating state of permanent exception and war, placing an ever-increasing numbers of bodies and spaces on the other side of universality—a moral and legal no man's land.

Exceptions, lurking in the heart of storied universal norms of governance and conflict, are brought forth to save the global imperial order. Liberal constitutional protections shrink. Racist discourses of law and geography, forged on the anvil of colonialism are recycled in the service of the resurgent Empire. Identity bestowing binaries fashioned in the classical age of colonialism prove their utility again. The tropes of "the space of imperial sovereignty . . . is smooth,"<sup>211</sup> and "the world is flat,"<sup>212</sup> conveniently give way to "clash of civilizations," with the "disconnectedness" between a "functioning core" and a "non-integrating gap" designated the "ultimate enemy."<sup>213</sup> We are offered a "bifurcated world . . . inhabited by Hegel's and

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<sup>209</sup> For detailed analysis of the causes of the Great Recession and the on-going financial meltdown, see PAUL KRUGMAN, *THE RETURN OF DEPRESSION ECONOMICS AND THE CRISIS OF 2008* (2009); JOSEPH E. STIGLITZ, *FREEFALL: AMERICA, FREE MARKETS, AND THE SINKING OF THE WORLD ECONOMY* (2010); RICHARD D. WOLFF, *CAPITALISM HITS THE FAN: THE GLOBAL ECONOMIC MELTDOWN AND WHAT TO DO ABOUT IT* (2010); ROBERT SKIDELSKY, *KEYNES: THE RETURN OF THE MASTER* (2009).

<sup>210</sup> Siba N. Grovogui, *The Secret Lives of the 'Sovereign': Rethinking Sovereignty as International Morality*, in *THE STATE OF SOVEREIGNTY: TERRITORIES, LAWS, POPULATIONS* 261 (Douglas Howland and Luise White ed., 2008).

<sup>211</sup> MICHAEL HARDT & ANTONIO NEGRI, *EMPIRE* 190 (2001).

<sup>212</sup> THOMAS L. FRIEDMAN, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY* (2006).

<sup>213</sup> THOMAS P. M. BARNETT, *THE PENTAGON'S NEW MAP: WAR AND PEACE IN THE TWENTY-FIRST CENTURY* 124 (2004).



Fujikuyama's Last Man . . . [and] Hobbes's First Man."<sup>214</sup> Binary geographies of danger and safety are deployed that see "bloody boundaries" between a "functioning core" and a "non-integrating gap," with the "disconnectedness" between the two designated as the "ultimate enemy."<sup>215</sup> An inverted map of the world is unfolded to offer prescriptions for "[g]eostrategic success," namely, "prevent collusion and maintain security dependence among the vassals, . . . keep tributaries pliant and protected, and . . . keep the barbarians from coming together."<sup>216</sup> A "new paradigm" is enunciated for a war of "uncertain duration" against "the enemies of civilization."<sup>217</sup> One that "renders obsolete [and] . . . quaint" established rules of war.<sup>218</sup> We are told emphatically: "American Empire; Get Used to It."<sup>219</sup> Belated acknowledgment that "[t]he hidden hand of the market will never work without a hidden fist,"<sup>220</sup> leads to the prescription— "give war a chance."<sup>221</sup> B-52s must continually rain rule of law and liberty over ever-expanding zones of engagement. Of course, the war has to be in the name of liberty and freedom. After all, we stood warned some time ago that "[f]reedom requires and will require far greater living space than Tyranny."<sup>222</sup> Faced with this brutal response to the crisis of Empire, the global subalterns are creating new geographies of resistance against all odds.<sup>223</sup>

<sup>214</sup> ROBERT D. KAPLAN, *THE COMING ANARCHY: SHATTERING THE DREAMS OF THE POST COLD WAR* 24 (2000).

<sup>215</sup> BARNETT, *supra* note 213, at 124.

<sup>216</sup> ZBIGNIEW BRZEZINSKI, *THE GRAND CHESSBOARD: AMERICAN PRIMACY AND ITS GEOSTRATEGIC IMPERATIVES* 32, 40, 215 (1997).

<sup>217</sup> NATIONAL SECURITY STRATEGY OF THE UNITED STATES Introduction, Section 5(2002); Stephen P. Marks, *Branding the "War on Terrorism": Is there a "New Paradigm" of International Law?*, 14 MICH. ST. J. INT'L L. 113 (2006).

<sup>218</sup> *Memo from Alberto Gonzales, White House Counsel, to President George W. Bush* 2 (Jan. 25, 2002), available at <http://www.scribd.com/doc/8947254/Gonzales-Torture-Memo> (last visited on Mar. 3, 2010).

<sup>219</sup> Michael Ignatieff, *The American Empire The Burden*, N.Y. TIMES MAG., January 5, 2003, cover.

<sup>220</sup> THOMAS L. FRIEDMAN, *THE LEXUS AND THE OLIVE TREE* 373 (Farrar, Straus, Giroux 1999).

<sup>221</sup> THOMAS L. FRIEDMAN, *LONGITUDES & ATTITUDES: EXPLORING THE WORLD AFTER SEPTEMBER 11*, 91 (2002).

<sup>222</sup> GEOGRAPHY AND EMPIRE 271 (Anne Godlewska & Neil Smith eds., 1994) (quoting HENRY LUCE, *THE AMERICAN CENTURY* (1941)).

<sup>223</sup> See GEOGRAPHIES OF RESISTANCE (Steve Pile and Michael Keith eds., 1997); ENTANGLEMENTS OF POWER: GEOGRAPHIES OF DOMINATION/RESISTANCE (Joanne P. Sharp et. al. eds., 2000); GLOBAL FLASHPOINTS: REACTIONS TO IMPERIALISM AND NEOLIBERALISM (Leo Panitch and Colin Leys eds., 2007); GLOBALIZATION AND THE POLITICS OF RESISTANCE (Barry K. Gills ed., 2000);

In exploring geographies of resistance and transformative politics, the concept of “third space” offers a productive point of departure.<sup>224</sup> Initially coined to mark zones of resistance by the colonial subalterns, the “third space” concept pointed out that the instability and contradiction of colonial discourses furnish grounds for the emergence of hybridized subjectivities, triggering a process whereby “other ‘denied’ knowledges enter the dominant discourse and estrange the basis of its authority.”<sup>225</sup> At work here is an “enabling violation”<sup>226</sup> of “the colonized,” which animates subaltern agency to transform “conditions of impossibility into possibility.”<sup>227</sup> Balram’s and Deeti’s assertive negotiations with their contexts attest to this phenomenon. Critical geographers, building on the concept of the “third space,” eschew either/or choices and posit possibilities of “both/and also . . . a space of extraordinary openness.”<sup>228</sup> Others call for a “critical search for a third space that is complicitous neither with the deracinating imperatives of Westernization neither with theories of a static, natural and single-minded autochthony.”<sup>229</sup> A historical instantiation of such a “third space” as a zone of resistance to global capitalism and imperial overreaching is the path from the First Afro-Asian Conference at Bandung in 1955 to the World Social Forum at Porto Alegre in 2005.<sup>230</sup> The Porto Alegre project breaks out of the binaries of modernity as enshrined in international law and geography, and economic and political democracy with radical cultural and civilizational plurality. The

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NEW SOCIAL MOVEMENTS IN THE SOUTH: EMPOWERING THE PEOPLE (Ponna Wignaraja ed., 1993); JEREMY BRECHER, TIM COSTELLO AND BRENDAN SMITH, GLOBALIZATION FROM BELOW: THE POWER OF SOLIDARITY (2000); A MOVEMENT OF MOVEMENTS: IS ANOTHER WORLD REALLY POSSIBLE? (Tom Mertes ed., 2004).

<sup>224</sup> HOMI K. BHABHA, THE LOCATION OF CULTURE 37 (1994).

<sup>225</sup> Homi Bhabha, *Signs Taken for Wonders: Questions of Ambivalence and Authority under a Tree Outside Delhi, May 1817*, 12 CRITICAL INQUIRY 156 (1985).

<sup>226</sup> GAYATRI CHAKRAVORTY SPIVAK, THE SPIVAK READER 219 (Donna Landry & Gerald MacLean eds., 1996).

<sup>227</sup> GAYATRI CHAKRAVORTY SPIVAK, IN OTHER WORLDS: ESSAYS IN CULTURAL POLITICS 201 (1988).

<sup>228</sup> EDWARD W. SOJA, THIRDSPEACE: JOURNEYS TO LOS ANGELES AND OTHER REAL-AND-IMAGINED PLACES 5 (1996).

<sup>229</sup> R. Radhakrishnan, *Postcoloniality and the Boundaries of Identity*, 16 CALLALOO 750, 755 (1993).

<sup>230</sup> See JAMIE MACKIE, BANDUNG 1955: NON-ALIGNMENT AND AFRO-ASIAN SOLIDARITY (2005); VIJAY PRASHAD, THE DARKER NATIONS: A PEOPLE’S HISTORY OF THE THIRD WORLD (2007); BOAVENTURA DE SOUSA SANTOS, THE RISE OF THE GLOBAL LEFT: THE WORLD SOCIAL FORUM AND BEYOND (2006).

project is encapsulated in the foundational premise of the World Social Forum: Others Worlds are Possible. It puts into question designs to constitutionalize neoliberal global capitalism through “interstate treaties designed to legally enforce upon future governments general adherence to the discipline of the capital market.”<sup>231</sup> It is also a rejection of the repackaged discourses and strategies of “development” that are “uniquely efficient colonizers on behalf of central strategies of power.”<sup>232</sup> It helps uncover development discourse as yet another language of domination; deployment of power/knowledge that aims to bring the postcolonial world in ever-closer alignment with economic and cultural behavior conducive to accelerated accumulation of capital. It signals the imperative to imagine alternatives to development rather than modes of alternative development. Edward Said, while alert to global operations of subjugation, affirmed that “in human history there is always something beyond the reach of dominating systems, no matter how deeply they saturate society, and this is what makes change possible.”<sup>233</sup> Even as Empire reasserts its right to dominate, global capitalism is engulfed by a crisis triggered by its overreach. At this conjuncture, more than ever before, critical scholars must identify and expand geographies of resistance in fidelity to the foundational premise: Other Worlds are Possible.

## CONCLUSION

Law and space have an unavoidable relationship. Modern law and modern geography were braided in the global expansion of capitalism through colonialism and remain braided in the neoliberal phase of an imperial global order. The resulting geo-legal space is global, uneven, and home to normative orders that animate the enduring flows of domination and subordination across the globe. This geo-legal space furnishes the field of possibilities for both operations of power and subaltern resistance. Subjectivities created by this ensemble are unavoidably entangled with spatially distant forces. Both *SOP* and *TWT* attest to this.

<sup>231</sup> Leo Panitch, *Rethinking the Role of the State*, in GLOBALIZATION: CRITICAL REFLECTIONS 96 (J. Mittelman ed., 1996).

<sup>232</sup> Marc DuBois, *The Governance of the Third World: A Foucauldian Perspective on Power Relations in Development*, 16 ALTERNATIVES 1, 19 (1991). See also LIBERATION ECOLOGIES: ENVIRONMENT, DEVELOPMENT AND SOCIAL MOVEMENTS (Richard Peet and Michael Watts eds., 1996); Michael Watts, *Development I: Power, Knowledge, Discursive Practice*, 17 PROGRESS IN HUMAN GEOGRAPHY 257 (1993).

<sup>233</sup> EDWARD W. SAID, *THE WORLD, THE TEXT, AND THE CRITIC* 246-47 (1983).

Where colonialism and the East India Company furnished the field of possibilities for Deeti, neoliberalism and the WTO produced Balram. This geography of law refutes the so-called first law of geography as one more provincial construct masquerading as universal law. What the map cuts up, the story indeed cuts across.