Foreword: What’s Next? Counter-stories and Theorizing Resistance

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Foreword

What’s Next? Counter-stories and Theorizing Resistance.

Tayyab Mahmud*

Getting its history wrong is part of being a nation.¹

[1]n 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.²

First of all, epistemological decolonization, as de-coloniality, is needed to clear the way for new intercultural communication, for an interchange of experiences and meanings, as the basis of another rationality which may legitimately pretend to some universality.³

I. INTRODUCTION:

The question “What’s Next?” stood precluded for a generation amidst the triumphalistic declarations of “End of History.” The question had no space under the blazing epigraph of a neo-liberal phase of global capitalism: “There is No Alternative (TINA).” The fall of the Berlin Wall was deemed

* Professor of Law, Seattle University School of Law. This symposium would not have been possible without the leadership of Saru M. Matambanadzo, who spearheaded the planning of the LatCrit 2017 Conference in Orlando. I remain deeply indebted to the LatCrit community for their friendship, support, and intellectual engagements. Any errors are, of course, mine alone.

irrefutable testimony that Hegel’s blueprint of history’s upwards trajectory had arrived at its penultimate stage—liberal democracy as the capstone of a capitalist foundation. All questions of politics and power stood resolved. Globalization, fueled by financialized capitalism and orchestrated by “Washington Consensus,” was now both the road and the destination. “End of Ideology” was now a reality, political parties simply fund-raising machines and government simply a matter of managerial governance. Rapidly advancing information technology and tax-exempt charitable foundations would take care of any remaining challenges of collective life. Then amidst the celebration of the “End of History,” the bottom fell out of this house of cards. The “Great Recession” evaporated trillions of dollars into thin air and sent millions of human beings into unemployment and poverty. The financial crisis metastasized into pervasive fiscal crises, prompting declarations of “financial martial law” and renewed assaults on the working classes.\(^4\) Lower incomes and increased poverty rendered the

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2000s a “lost decade.”

A sluggish economy, high unemployment, and low wages are the “new normal.”

The construct of precarity is at large to signify labor conditions of “permanent insecurity and precariousness.”

The search for culprits turned into a rush to round up the usual suspects.

Personal greed, corrupt financiers, imprudent investors, and unworthy homeowners, are the favored targets.

The deep economic insecurity and incessant instability spawned by the Great Recession has created the opening for foundational critiques of the existing order to be formulated and an opportunity for voices long silenced to be articulated.

Where the global financial crisis created the space for critical voices, the political aftermath of the crisis has injected urgency into the “What Next?” question. Political orders across the world have taken a hard right turn. While the world’s largest democracy, India, yielded the reigns of the state


8 See Timothy J. Sinclair, Round Up the Usual Suspects: Blame and the Subprime Crisis, 15 NEW POL. ECON. 91 (2010).

9 See, e.g., GRETCHEN MORGENSON AND JOSHUA RANES, RECKLESS ENDANGERMENT: HOW OUTSIZED AMBITION, GREED AND CORRUPTION LED TO ECONOMIC ARMAGEDDON (2011). For the tendency to blame racial minorities, see andre douglas pond cummings, Racial Coding and the Financial Market Crisis, 1 UTAH L. REV. 1, 64–70 (2011).
to proto-fascists, the oldest democracy, Britain, instituted Brexit. From Austria to Brazil and from Ukraine to the USA, ultra-nationalism, xenophobia, protectionism, border control, militarism, and hyper-policing are at large. Hard-won civil, economic, and political rights are under assault. While climate change and environmental degradation threaten the very survival of the planet, and wars—both of the trade and weaponized varieties—knock at the door, a transnational superclass of “Davos Men” lords over the contemporary global, and at hand is an ominous resurgence of genetic and racial explanations of history. A new label, Alt-Right, has been coined to cover all the regressive forces in ascendency across the planet. While financialized capitalism is adjusting to the post-meltdown era, on April 18, 2018, sounding an alarm on excessive global debt, the International Monetary Fund (IMF) reported that with $164 trillion—three times the world’s GDP—owed, the world is deeper in debt than at the height of the financial crisis. This conjuncture cries out for transformative critiques and articulation of alternative visions of collective life. Hence the question: What’s Next?

The LatCrit 2017 Conference invited participants to explore this question with particular reference to “Resistance, Resilience and Community in the Trump Era.” This symposium presents a selection of papers delivered at


11 See, e.g., NICHOLAS WADE, A TROUBLESOME INHERITANCE: GENES, RACE AND HUMAN HISTORY (2014). This trend is closely related to the ubiquitous focus on climate and culture to the exclusion of power and political economy. See JEROD DIAMOND, GUNS, GERMS AND STEEL: THE FATES OF HUMAN SOCIETIES (1997); CULTURE MATTERS: HOW VALUES SHAPE HUMAN PROGRESS (Lawrence E. Harrison & Samuel P. Huntington 2000); FRANCIS FUKUYAMA, THE END OF HISTORY AND THE LAST MAN (2006).


13 For a detailed account of LatCrit XXI, see Saru Matambanadzo, Jorge Joig, & Sheila I. Velez Martinez, Foreword to LatCrit 2017 Symposium: What’s Next? Resistance,
the conference. One unifying thread of these papers is that they employ counter-stories as a method of socio-legal analysis and of developing critical social theory. This foreword will, first, engage the foundational challenge of post-Enlightenment critique to explore the possibility of transformative critique. Second, it will explore the epistemological valance of counter-stories as tools of social inquiry and guides for praxis. Third, it will demarcate the contours of capitalism, particularly in the neo-liberal era, that explicitly or implicitly frame all contemporary social inquiry. Fourth, it will interrogate the political uber-assemblage of modern imaginary, the nation, which furnishes the primary canvas for contending discourses about identity and association. Fifth, it will introduce the interventions that constitute this symposium. Finally, it will draw a few conclusions.

II. CRITIQUE: GENEALOGY AND CHALLENGES

With LatCrit being a critical project, it is useful to be reminded of the scaffolding and challenges of post-Enlightenment critique. Critique holds the promise of uncovering the structures and operations of power in the service of anti-subordination and emancipation. To remain honest to its task, however, critique must move along two tracks concurrently: a relentless critique of power and self-critique. Ongoing self-critique is indispensable to ensure that ontological, epistemological, and programmatic frameworks of critique are conducive to the attainment of its task. This becomes particularly urgent when the subject of inquiry forms part of limit horizons of an age. I designate as limit horizons hegemonic ontological categories that, over time, so imprint the imaginary\textsuperscript{14} of an age that even


\textsuperscript{14} I use the concept of the “imaginary,” developed by Jacques Lacan and Cornelius Castoriadis, as an inclusive category that refers to culturally specific images, symbols, metaphors, and representations which constitute various forms of subjectivity. \textit{See} Jacqueline Rose, \textit{The Imaginary} in \textit{The Talking Cure} (Colin MacCabe ed., 1981); \textit{Cornelius Castoriadis, The Imaginary Institution of Society} (Kathleen Blamey trans., 1987).
critique remains imprisoned in the normalcy of these categories—an imprisonment that curtails the transformative potential of critique. Rather than being incidental or accidental, imprisonment in limit horizons is always already a predicament for critique. The very inaugural moment of modern critique reflects this inherent vulnerability, as exemplified by Kant. No sooner than proclaiming the foundational injunction of the Enlightenment—”dare to know”—he proceeds to declare that:

The origin of supreme power, for all practical purposes, is not discoverable by the people who are subject to it. In other words, the subject ought not to indulge in speculations about its origin with a view to acting upon them, as if its right to be obeyed were open to doubt….Whether in fact an actual contract originally preceded their submission to the states authority, whether the power came first, and the law only appeared after it, or whether they ought to have followed this order - these are completely futile arguments for a people which is already subject to civil law, and they constitute a menace to the state.  

Thus, legitimacy of the state and the law, grounded in the originary myth of a social contract, acts as a limit horizon for Kant, and render knowing not so daring after all.

The ever-alive agenda of productive critique of the law and society is to identify liminal spaces where law, extra- legality, and illegality are braided to produce the other side of universality—”moral and legal no man’s land,  

\[\text{\textsuperscript{15} KANT’S POLITICAL WRITINGS 143 (Hans Reiss ed. 1991), quoted in \textsc{Slavo Zizek}, \textsc{For They Do Not Know What They Do: Enjoyment as a Political Factor} 204 (1991).}\]

\[\text{\textsuperscript{16} “The attributes of liminality or liminal personae (‘threshold people’) are necessarily ambiguous, since this condition and these persons elude or slip through the network of classification that normally locate states and positions in cultural space. Liminal entities are neither here nor there, they are betwixt and between the positions assigned and arrayed by law, custom, convention, and ceremonial.” \textsc{Victor W. Turner}, \textsc{The Ritual Process: Structure and Anti-Structure} 95 (1969).}\]

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where universality finds its spatial limit.” This warrants that outsider jurisprudence “rethink the lazy separations between past, present, and future.” Contemporary conflicts that appear as new iterations of the binary divides between civilized versus uncivilized, reason versus faith, and modernity versus fundamentalism, only confirm the “presence of the past.” This necessitates that critique must be positioned to shift focus, when needed, from “present futures to present pasts.” In sum, when faced with intractable conflicts, heed to the admonition: “Always historicize!”

Over the last two centuries, History, a linear, progressive, and Eurocentric history, has become the dominant mode of experiencing time and of being. In this History, time overcomes space: a condition in which the “other” of Europe in geographical space will in time resemble Europe.

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22 See generally GEORG WILHELM FRIEDRICH HEGEL, *THE PHILOSOPHY OF HISTORY* (J Sibree trans., 1956) (being the most important foundation for understanding linear, and necessarily teleological, progressive history). I use “History” to designate the hegemonic linear, progressive, Eurocentric history, while “history” is taken as the branch of knowledge that records and explains past events. For Hegel, the telos of History—the structure governing its progress through time—is the unfolding self-awareness of Spirit that is Reason. Hegel posits two moments of this self-awareness: that of Spirit embodied objectively in the rationality of religion, laws, and the State, and that of the individual subject. See generally id. Progressive self-awareness of the individual subject involves not only the recognition of the freedom of the self from the hold of nature and ascriptive orders, but most importantly, the realization of his oneness with the Spirit. For Hegel, this is true freedom, the end of History, and it culminates in the Prussian state where the real is the rational and the rational is the real. See productive discussions of Hegelian construct of History, see MICHEL DE CERTEAU, *THE WRITING OF HISTORY* (Tom Conley trans., 1988); Edward Soja, *POSTMODERN GEOGRAPHIES: THE REASSERTION OF SPACE IN CRITICAL SOCIAL THEORY* (1989); Robert Yourn, *WHITE MYTHOLOGIES: WRITING HISTORY AND THE WEST* (1990).
History enables not only the justification of the West’s world mastery, but also the appropriation of the “other” as a form of knowledge. If History is the mode of being, the condition that presents modernity as possibility, the nation-state is the designated agency, the subject of History that will realize modernity. This History is, of course, mindful of the racial and colonial divide that fractures humanity. It is only nations in the fullness of their History that realize freedom. Those without History, uncivilized non-nations, have no claims or rights. Therefore, civilized nations have the right to destroy non-nations and bring Enlightenment to them. Never was the racialized colonial script given more coherence than when inscribed in the grammar of History and nation. Social Darwinism is only an example of the mutually defining discourse of History, nation and race. The only justification for nationhood was whether a race could be shown to fit within the scheme of historical progress. The universalization of History subjects other social and epistemic forms into its own overarching framework and finds them severely deficient. Levinas sees this as an effect of the concept of totality in Western philosophy, which produces all knowledge by appropriating and sublating the “other” within itself.

27 See Hobsbawm, supra note 1, at 108; see also RICHARD HOFSTADTER, SOCIAL DARWINISM IN AMERICAN THOUGHT 172 (1955); GEORGE STOCKING, VICTORIAN ANTHROPOLOGY 32, 66, 235 (1987).
[T]he true spirit of conflict and conquest is at the origin and in the center of Western nationalism...[i]t has evolved a perfect organization of power...[i]t is like the pack of predatory creatures that must have its victims...[w]ith all its heart, it cannot bear to see its hunting grounds converted into cultivated fields.29

The task of turning to history presents critique and outsider jurisprudence yet another challenge—that of history itself. The rise of capitalism and attendant age of colonial expansion of Europe was coterminous with consolidation of History—the unilinear, progressive, Eurocentric, teleological history—as the dominant mode of experiencing time and of being.30 In History, time overcomes space—a process whereby the geographically distant Other is supposed to, in time, become like oneself; Europe’s present becomes all Others’ future. Embodying the agenda of modernity, History constitutes a closure that destroys or domesticates alterity of the Other. History, as a mode of being, becomes the condition that makes modernity possible, with the nation-state posited as the repository of agency (the subject of History) that would realize modernity. In Hegel’s canonical construction, nations attain maturity only when a people are fully conscious of themselves as subjects of History, and it is only such nations which realize freedom.31 Those outside History, “non-nations,” have no claims or rights; indeed, nations have the right to bring Enlightenment to non-nations. History thus becomes a master code that informs the “civilizing mission” of Europe, posited as a world-historical task.

This frame of History produced a defining mold to modern assemblage of race. For example, Social Darwinism, a progeny of the modern constructions of reason, progress, and science, fixed upon race as the

30 See Robert J. Young, White Mythologies: Writing History and the West (1990); see also Samir Amin, Global History: A View from the South (2010).
repository of attributes that enable or prevent evolution towards civilization. It, thus, combined with History to write a legitimating script for colonialism. In the name of enlightened civilization, a hierarchy of “advanced” and “backward” races was posited. Cast in terms of “natural selection” and “survival of the fittest,” evolutionary racism “offered strong ideological support for the whole colonial enterprise . . . savages were not simply morally delinquent or spiritually deluded, but racially incapable.”

Thus, evolutionary racialism was “used to justify the worst excesses of expropriation and colonial rule.” European “race-science” consolidated the double binary of fair/dark and civilized/savage, by positing a progressive series of human races with differential mental endowments and civilizational achievements and potential. With the diagnosis accomplished, prescription quickly followed: “[n]ations in which the elements of organization and the capacity for government have been lost . . . are restored and educated anew under the discipline of a stronger and less corrupted race.”

History, then, became a record of progress of superior races and, by that standard, the stagnant, backward races had no History.

The primary task of critique in general and outsider jurisprudence in particular is to interrogate and disrupt the master narrative of History. A necessary step in this direction is to uncover the historical record of subordination and oppression repressed by the Eurocentric narrative of progressive unfolding of law and progress-bearing modernity over the last five centuries.

33 Id. at 237.
36 For a detailed discussion, see ERIC R. WOLF, EUROPE AND THE PEOPLE WITHOUT HISTORY (1982).
III. COUNTER-STORIES AS CRITIQUE

Intersections of law with narrative and literature predate storytelling by outsider jurisprudence. Indeed, we are told that “Law is the intersection of language and power.” Narrative is a way of organizing, coping with, and even acting on the world. Stories carry power because they have the ability to convey truths even if the stories themselves are not the only ways of seeing the world. Stories represent experience and introduce alternative imaginaries. To make sense of law and to organize experience, people often tell stories. And these stories are telling.

Storytelling gives voice to untapped reservoirs of memory; memories buried under sedimented layers of hegemonic canons of socialization—often lost in the haze of ideology. Autobiographical storytelling is dangerous; the story can collide with everything previously believed, required, and sanctified. A story can touch what has never been touched; it can bring into relief what never come into the field of vision; and, it can oppose what never has been opposed. A story can be resistive, subversive and transformative, especially when it weaves a counter-narrative to settled


understandings, interpretations and worldviews. This potential spawns the transformative political dimension of storytelling.

The use of the “constitutive we” in the American legal tradition is prominent in the founding documents of American government, law, and nationhood. “We hold these truths to be self-evident,” begins the Declaration of Independence.39 “We the People,” begins the Constitution.40 These were texts of revolutionary times, when the assertion of a “we” was first an act of defiance, and then an act of construction. Constituting a “we” was an essential part of separating “us” from a firmly excluded and rejected “them.” Much of mainstream legal scholarship is written in consensual terms to an audience it constitutes as “we.” In the first sentences of the preface of Law’s Empire, for example, Ronald Dworkin writes: “We live in and by the law. It makes us what we are...We are subjects of law’s empire, liegemen to its methods and ideals, bound in spirit while we debate what we must therefore do.”41 And Robert Cover begins Nomos and Narrative with: “We inhabit a nomos—a normative universe. We constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void.”42 “We” talk does not just appear at founding moments, when the construction of a new community is urgent, however. “We” talk is a persistent feature of legal discourse.43 The “We” talk unavoidably tends to be a monologue, and thus elides that “to be means to communicate dialogically…a single voice ends nothing and resolves nothing. Two voices is the minimum for…existence.”44 To account for diversities,

39 The Declaration of Independence (U.S. 1776).
40 U.S. CONST. pmbl.
41 R. DWORKIN, LAW’S EMPIRE vii (1986).
42 Cover, supra note 37.
43 Karl Llewellyn was well aware of this tendency when he wrote “Nowhere more than in law do you need armor against...ethnocentric and chronocentric snobbery—the smugness of your own tribe and your own time: We are the Greeks; all others are barbarians....Law, as against other disciplines is like a tree. In its own soil it roots, and shades one spot alone.” KARL LEWELLYN, THE BRAMBLE BUSH 44 (1960).
intersectionalities, and multidimensionalities of all social formations, any productive public discourse must make room for multiple voices. This is where counter-stories come in.

The “We” discourse is part of “‘nationalist solidarity amnesia,’ a state-sanctioned form of national solidarity that supports, and is supported by, forgetting.” Consent to basic structures or abstract legal rules is not enough to ensure the experience of justice on the ground in concrete cases. The experience of justice is intimately connected with one’s perceptions of “fact,” just as it is connected with one’s beliefs and values. Beliefs and values do not exist in a world of pure abstraction, but rather always operate with and on specific assumptions about and perceptions of the state of the world. Social theorists have long known that people differently situated in the social world come to see events in quite distinct and distinctive ways.

Story-telling, by the outsider, the other, the marginalized, is loaded with transformative potential. If history is a story told by victors, stories from below, from the margins, are a counter-history. Renan famously said that nation-building “is an exercise in forgetting.” Not for nothing, narratives of history are exercises in erasure; erasure of pain, blood, and death that built social orders. What better antidote to forgetting and erasure than cultivation and articulation of memory. Stories from below and from the margins are articulated memories of the defeated and vanquished of yesterday. By confronting forgetting with memory, the calculus of yesterday’s victories and defeats is disrupted, and the settled equilibrium between victors and vanquished is unsettled. Out of this unsettling new possibilities raise their insistent heads: possibilities of re-readings of history; possibilities of de-naturalizing the present; and possibilities of reimagining futures. Above all,

storytelling makes decolonization of imaginaries possible, and, thus, opens
the path towards the decolonization of imagination. Furthermore, taking
cognizance of subaltern agency and deploying memory in transformative
storytelling is an evocative site to engage the mutually constitutive
relationship of the personal and the political. Being and the political are not
static, contained, and unencumbered states or categories. The instability and
contradictions of hegemonic discourses of consensus 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.”

At work in counter-stories is an “enabling
violation” of “the colonized,” which animates subaltern agency to
transform “conditions of impossibility into possibility.”

Outcrits in general and LatCrit in particular took the path of storytelling
forward. Richard Delgado designates storytelling from a critical vantage

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47 Homi Bhabha, Signs Taken for Wonders: Questions of Ambivalence and Authority under a Tree Outside Delhi, May 1817, 12 CRITICAL INQUIRY 144, 156 (1985).
49 GAYATRI CHAKRAVORTY SPIVAK, IN OTHER WORLDS: ESSAYS IN CULTURAL POLITICS 201 (1988).
point “counterstorytelling.” Margaret Montoya calls the practice “Latina autobiography,” and designated it “an important cite of resistance.” Sumi Cho and Robert Westley call counter-stories “subjugated knowledge.” Lindsay Pérez Huber locates counter storytelling under the concept and methodology of testimonio, and Marc–Tizoc Gozalez sees the counter-stories as archives of “critical ethnic legal histories.” The expectation and aim of counter storytelling is to “shatter complacency and challenge the status quo” by telling stories about the normally silenced views of people from “outgroups” on social reality and thereby directly challenging (in viewpoint, content, tone, and style), the majority in-group’s “stock stories.” The objective is to “subvert the dominant ideology…[To] challenge and expose the hierarchical and patriarchal order that exists


54 Lindsay Pérez Huber, Beautifully Powerful: A LatCrit Reflection on Coming to an Epistemological Consciousness and the Power of Testimonio, 18 AM. U. J. GENDER SOC. POL’Y & L. 839, 848 (2010).


56 Delgado, supra note 51, at 2412, 2414, 2430, 2434.
within the legal academy and pervades the larger society.” Counter-storytelling is mindful of W.E.B. Dubois’s admonition: “Don’t you understand that the past is the present; that without what was, nothing is?” Counter-stories recast the past, and, thereby, reconstitute the present, and help us to reimagine the future. Counter-stories are not just addressed outwards; they are also a dialogue with oneself. As Jerome Culp urged us, “[w]e have to have a name, and in order to be understandable it has to have a history…if we are to be great, we have to be more than our histories, but at the same time have to learn from them.”

Counter-stories underscore the insistence of political power and cultural authority in the “irreducible excess of the syntactic over the semantic.” Counter-stories are the archive of counter-histories of the modern state written from the margins. These narratives display a situational consciousness, where the telling of the individual story and the individual experience cannot but ultimately involve an implied story of the collectivity itself. These narratives exemplify “wordliness,” where “sensuous particularity as well as historical contingency…exist at the same level of surface particularity as the textual object itself.” Narrators of counter-stories, of necessity, underscore their positioning at the margins. As Julia Kristeva asks, “How can one avoid sinking into the mire of common sense, if not by becoming a stranger to one’s own country, language, sex and identity?”

To the charge that counter-stories may be arbitrary fragments,

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57 Montoya, supra note 52, at 31 (citations omitted).
60 JACQUES DERRIDA, DISSEMINATION 221, 230 (1981).
one may answer in the words of Ernest Gellner, the canonical scholar of nationalism: “Nationalism is not what it seems, and above all not what it seems to itself...The cultural shreds and patches used by nationalism are often arbitrary historical inventions. Any old shred would have served as well.” All footprints of life are fragmentary traces, but traces themselves bear witness to the drama of history. Counter-stories, even when based on fragmentary traces, embody cultural difference that emerges as resistance to hegemonic modes of representation. Counter-story narratives assist “self-presentation,” a dramaturgical projection of a coherent self in society. These narrative are mindful that “there is no innocent political methodology for intercultural interpretation.” Counter-stories respond to the imperative that when participants in distribution struggles aim at redistribution of material resources, “cultural interpretations play a constitutive role.” Counter-stories reject the Occidental Eurocentric proprietary and exemplary claim to the universal as an ontological completeness. They disrupt the canonical “Western myths of origin, history, identity, and temporality.” They help fashion ontological and epistemological departures that overturn “conceptual structures which become entrenched and which are used to exclude and undermine alternative ways of looking at the world.”

65 **ERNEST GELLNER, NATION AND NATIONALISM** 56 (1983).
66 **P. GILROY, THERE AIN’T NO BLACK IN UNION JACK** (1987).
To be true to its vocation, the critical counter-stories project will have to posit a subject not reduced to a mere property and effect of discourse and a consciousness not equated with hegemony. We need to “think beyond narratives of originary and initial subjectivities and to focus on those moments or processes that are produced in the articulation of cultural differences.” Of great utility here is Antonio Gramsci’s model of a fragmented composite subject that is constituted as an “inventory of traces” of multiple and fragmented hegemonies. Similarly useful is to theorize a desiring subject who elides complete determination by the symbolic order by virtue of the surplus of the “[r]eal” over any symbolization. Counter-stories help us to explore the ever-present tension between specific structures of domination and “lines of flight”—desires that escape hegemonic formations and thus bear the potential of transformation. Counter-stories plot the fault lines between domination and desire where the “individual repeatedly passes from language to language.” Counter-stories dig under modern technologies of power and bring into relief the surviving “‘polytheism’ of scattered practices[,] dominated but not erased by the triumphal success of one of their number.” Counter-stories are nothing less

73 Homi K. Bhabha, The Location of Culture 1 (1994).
74 See Selections from the Prison Notebooks of Antonio Gramsci 324 (Quintin Hoare & Geoffrey Nowell Smith eds. & trans., 1971) (describing “starting-point of critical elaboration”).
78 Michel De Certeau, The Practice of Everyday Life 48 (Steven Rendall trans., 1984).
than “insurrection of subjugated knowledges”\textsuperscript{79} that are a tool to “bring[ ] hegemonic historiography to crisis.”\textsuperscript{80}

IV. CAPITALISM AND ITS DISCONTENTS

Counter-stories neither emerge nor are articulated in a void. They unfold against the backdrop of the hegemonic order of the social formation and are situated against the backdrop of the hegemonic ideological ensemble of the time. Consequently, to evaluate the worth of counter-stories, it is imperative that foundational markers of hegemonic order and ideological ensemble be located. Only this will ensure that ontological, epistemological, and programmatic frameworks of critique are conducive to the attainment of its agenda. Hegemonic order and ideological assemblage serve as limit horizons of the age. Limit horizons are ontological categories that so imprint the imaginary of an age that even critique remains imprisoned in the normalcy of these categories—an imprisonment that curtails the transformative potential of critique. Capitalism and nationalism are foundational order and ideological ensembles at this conjuncture and must be accounted for to facilitate evaluation of contemporary counter-stories.

For over 400 years, capitalism at different stages of its unfolding has furnished the primary moorings of the modern world.\textsuperscript{81} Hegemonic ideology portrays capitalism as a combination of entrepreneurial spirit and free wage labor that facilitates freedom from scarcity and liberal democracy. The historical record shows otherwise.

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\textsuperscript{79} THOMAS KEENAN, FABLES OF RESPONSIBILITY: ABBERATIONS AND PREDICAMENTS IN ETHICS AND POLITICS 140 (1997) (quoting Michel Foucault).
\textsuperscript{80} GAYATRI CHAKRAVOTY SPIVAK, SUBALTERN STUDIES: DECONSTRUCTING HISTIOGRAPHY, in IN OTHER WORLDS: ESSAYS IN CULTURAL POLITICS 198 (1988) [hereinafter IN OTHER WORLDS].
\textsuperscript{81} For a comprehensive analysis of the nature and functioning of capitalism, see ANWAR SHAIKH, CAPITALISM: COMPETITION, CONFLICT, CRISIS (2016). For a detailed analysis of the structural relationship between capitalism and inequality, see THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY (2014).
\end{flushright}
Capitalism was born in “the long sixteenth century,” “dripping with blood and mud from head to toe.” “Discovery” of the Americas created the field of possibility for the emergence and consolidation of capitalism, a world system since its inception. Plunder of precious metals and deployment of African slaves gave birth to capitalism as a new and global mode of production. Between 1500 and 1800, more than eight million slaves were transported from Africa to the Americas to work in mines and on plantations. Slave labor and bullion extraction from Latin America, including 134,000 tons of silver between 1493 and 1800, triggered capitalism. The very use of the word *capital*, in the sense of bases for capitalism as a new mode of production, first came into vogue in the era of capital-intensive but slave-hungry Antillean sugar plantations. This historical record underscores the global nature of capitalism and refutes the presumption that capitalism necessarily procreates wage labor, free market, and liberal legality.

Accumulation by dispossession signifies that capitalism always relies on nonmarket legal and extralegal coercive forces to facilitate asymmetrical distribution of economic gain and pain. In the geography of global

83 MARX, 1 CAPITAL at 760.
capitalism, embracing different scales and spaces, accumulation by extra-economic means is facilitated by myriad legal and extra-legal regimes. These regimes range from global to local and formal to customary. Accumulation by dispossession was initiated by “ex-novo separation between producers and means of production”\(^8^8\) secured by the extra-economic coercive power of the state and the law. For example, Enclosure Acts\(^8^9\) and Game Laws\(^9^0\) 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 as primitive accumulation, canonical critical political economy had relegated it to the prehistory of capitalism.\(^9^1\) 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.”\(^9^2\) These interventions highlight the continuing role of coercive political force in underwriting the purportedly extra-political realm of the market, and underscore that “production of value that enters into the circuits of capitalist accumulation through parasitization of formally

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\(^8^8\) Massimo De Angelis, *Separating the Doing and the Deed: Capital and the Continuous Character of Enclosures*, 12:2 HISTORICAL MATERIALISM 57, 63 (2004).


\(^9^1\) 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 87, at 608, 610–12.

noncapitalist processes is a deeply embedded feature of capitalism.”93 Moreover, these insights alert us that, since its origin, capitalism has been a global phenomenon that co-opts rather than displaces noncapitalist modes of production, and results in uneven development of different geographical zones within its ambit.94 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 infrastructure, gendered and often racialized household and reproductive labor,95 instrumental use of race, class, and nationality in immigration and land-ownership laws that consolidated agro-capital in California,96 and new appropriation of the commons for private accumulation whereby “the global commons are being enclosed.”97 The entire panoply of forms of value extraction by means other than commodified or “free” wage labor, makes for accumulation by dispossession. The unavoidable result of accumulation by dispossession is destruction, disruption, dislocation, insecurity, and instability of collective and individual life—the grounds of precarious existence.

93 Glassman, supra note 87, at 617.
97 Hartsock, supra note 95, at176; HARVEY, supra note 87, at 146–48.
Accumulation by dispossession also produces a reserve army of labor. While the “creative destruction” of capitalism destroys traditional entitlements and subsistence economies and estranges direct producers from their means of labor, all those dislocated are not absorbed in new production process based on wage labor. This unabsorbed labor is the so-called “surplus humanity”—populations separated from their non-capitalist means of subsistence but not integrated into the productive circuits of wage labor on a stable basis. They 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.”

This is the remainder of the “sacrifice of ‘human machines’ on the pyramids of accumulation.” This reserve army of labor remains an enduring and indispensable feature of capitalism. At all stages and in all zones of its existence, capitalism produces and maintains “a disposable industrial reserve army, which belongs to capital just as absolutely as if the latter had bred it at its own cost.”

Even after its incipient stage, capital accumulation requires some measure of unemployment. Mainstream economists speak of the “natural

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98 See JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM & DEMOCRACY, 82–84 (1957).
103 Karl Marx, 1 Capital 783–84 (1976).
104 The unemployed serve as an instrument of economic and political control over the working class. They can serve as a backlog of strikebreakers during boom times, expelled
rate” of unemployment, and its offsprings—”the non-accelerating inflation rate of unemployment,”105 and the “labor force reserve.”106 The reserve army of labor helps prevent significant wage increases and the corresponding decline of profits.107 This dovetails with disciplinary uses of the poor and the underclass in capitalism at large.108 The disciplinary function is underscored by the fact that reserve army is often sutured with regional inequality and racial and gender divides.109

Economists of all stripes recognize that the question of employment is not simply a matter of “free” labor markets, and that public policy plays a critical role in calibrating and managing unemployment.110 Fiscal and
monetary policies are the primary instruments of this calibration. In the neoliberal era, these policy instruments are aimed at guarding against inflation rather than unemployment. Note that “[m]onetary policy involves a tradeoff between inflation and unemployment. Bond-holders worry about inflation; workers, about jobs.”111 It is no surprise, then, that in the neoliberal era, the global working class has grown by at least two-thirds to over 3 billion—with half or more of this number making up the global reserve army.112 Pervasive precariousness of employment and existence are a natural result.

(Alfredo Saad-Filho and Deborah Johnson eds., 2005). Michal Kalecki was the first to clearly state, in an appropriately titled chapter “Political Aspects of Full Employment,” that a capitalist economy can be sustained at full employment but only if challenges to capitalists’ social and political hegemony could be contained by means of public policy. MICHAL KALECKI, SELECTED ESSAYS ON THE DYNAMICS OF THE CAPITALIST ECONOMY 138–45 (1971). The “challenge” was to devise a “solution,” even if a fascist one, to capitalism’s unemployment problem whereby workers would have jobs, but they would not be permitted to exercise the political and economic power that would otherwise accrue to them in a full-employment economy. Pollin, supra note 100, at 5. In the absence of state intervention, employment depended on the confidence of the capital, which gave the latter a powerful indirect control over government policy: everything which may shake the state of confidence must be carefully avoided because it would cause an economic crisis. But once the Government learns the trick of increasing employment by its own purchases, this powerful controlling device loses its effectiveness.


111 JOSPEH E. STIGLITZ, FREEFALL: AMERICA, FREE MARKETS, AND THE SINKING OF THE WORLD ECONOMY 142 (2010). The monetary policy objectives as stated in the Federal Reserve Act require the Federal Reserve to “maintain long term growth of monetary and credit aggregates...so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates.” STEPHEN H. AXILROD, INSIDE THE FED: MONETARY POLICY AND ITS MANAGEMENT, MARTIN THROUGH GREENSPAN TO BERNANKE 14 (2011). For key economic objectives and monetary policy indicators between 1960 and 2010, see id. at 209–10, Figs. B.1, B.2.

The neoliberal counter-revolution, afoot on a global scale, furnishes the context of contemporary counter-stories.113 Neoliberalism aims to secure unfettered rights to private property and profits, it expands and deepens the logic of the market, it collapses the distinctions between culture and economy, it undermines state sovereignty and national autonomy, and it links local and global political economies to facilitate transnational accumulation of capital114. Through new regimes of trade, finance, and property rights, a state’s sovereignty transfers to international institutions and dominant states.115 The result is the acceleration of accumulation by dispossession, enlargement of the surplus army of labor, and expansion of...
the informal sectors of economies.116 Rural and urban areas are sutured in new networks to accelerate siphoning of value.117 Every year since 2007, ten million hectares of arable land pass from public to private hands while 925 million people risk starvation in the face of increasing food prices.118 Deeper penetration of market forces accelerates the migration of uprooted rural farmers to urban areas.119 With the state rolled back, privatization becomes “the cutting edge of accumulation by dispossession.”120 As flexible production shrinks regulated formal economies, informal shadow economies 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.121 This informal economy cultivates “myriad secret liaisons with outsourced multinational production systems.”122


120 David Harvey, Limits To Capital 157 (2015).


Neoliberalism is an ensemble of interconnected ideas and practices. It rests on a theory of capitalist market fundamentalism—markets are optimal and self-regulating, and if allowed to function without restraint, they optimally serve all economic needs, efficiently utilize all resources, and generate full employment for everyone.\textsuperscript{123} It mandates tight fiscal and monetary policies, unbridled private property rights, unencumbered markets, and free trade.\textsuperscript{124} It is an ideology of the market and private interests as opposed to state intervention to safeguard collective interests.\textsuperscript{125} It envisages the state limited to minimal executive and juridical functions necessary to secure private property rights and to support freely functioning markets.\textsuperscript{126} By extension, neoliberalism deems globalization of free markets as the best way to extend these benefits to the whole world.\textsuperscript{127}

The neoliberal project aims to unfold a new social order across the globe to reverse the setbacks that the economic power and political hegemony of the wealth-owning classes had suffered on account of Keynesian welfare in the West, socialism in Eastern Europe, and nationalism in the global


\textsuperscript{124} See Thomas I. Palley, From Keynesianism to Neoliberalism: Shifting Paradigms in Economics, Neoliberalism: A Critical Reader 20–29; Anwar sheikh, The Economic Mythology of Neoliberalism in id. at 41–49.

\textsuperscript{125} David Harvey, Neoliberalism as Creative Destruction, 610:1 ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI. 22 (12007).


Neoliberalism makes increasing recourse to the law to displace social welfare systems through liberalization, deregulation, and privatization, and uses the discipline of expanded markets to remove barriers to accumulation that earlier democratic gains had achieved. 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 the transnational accumulation of capital. Through new regimes of trade, finance, and property rights, sovereignty of states transfers to international institutions and dominant states. The hidden hand of the market continues to work in concert with the iron fist of the state in the service of accumulation by dispossession. Indeed, the ubiquitous “low-intensity conflicts” across the


129 For articulation of the case for neoliberal global political economy and related accounts of the law, see ROBERT KEOHANE, AFTER HEGEMONY (1984); Kenneth Abbot, et. al., The Concept of Legalization, 54 INT’L ORG. 401 (2000).


Global South appear necessary to create a good investment climate for
global capital.\textsuperscript{132}

In the neoliberal era “[t]here’s a lot of money in poverty, and a few Nobel
Prizes too.”\textsuperscript{133} Here philanthropic foundations of global capital lead the
way, with elite universities of the Global North not far behind.\textsuperscript{134} The
approach to poverty is framed by an insidious companion of neoliberal
privatization— “NGO-ization of Everything.”\textsuperscript{135} Creating the illusion of a
“Third Way,”\textsuperscript{136} ostensibly at a remove from the public and private sectors,
corporate and foundation-endowed NGOs allow global capital to even
“buy[] into resistance movements, literally as shareholders buy shares in
companies, and then try to control then from within.”\textsuperscript{137} Partial to
technocratic responses to problems, NGO-ization elides historical, structural
and political causes of poverty. The multiple manifestations of poverty are
discrete problems hermetically sealed into their own silos, to be managed
by supposedly apolitical technocrats. Fragmentation of solidarities between
the subordinated within various manifestations of poverty is a direct result.
All the while, ideology, discourses, and processes of NGO-ization facilitate
abdication by and immunity to the state about matters related to poverty.

\textsuperscript{132} See generally, ARUNDHATI ROY, CAPITALISM: A GHOST STORY 13 (2014).
\textsuperscript{133} Id. at 27.
\textsuperscript{134} For a detailed study of private foundations in setting the agenda for public policies, see
LINSEY MCGOEY, NO SUCH THING AS A FREE GIFT: THE GATES FOUNDATION AND THE
PRICE OF PHILANTHROPY (2015); JOAN ROELOFS, FOUNDATIONS AND PUBLIC POLICY:
THE MASK OF PLURALISM (2003); and GERALD COLBY, THEY WILL BE DONE:
CONQUEST OF THE AMAZON, NELSON ROCKEFELLER AND THE EVANGELISM IN THE AGE
OF OIL (1996). For decisive involvement of university-based scholars in choreographing
the turn to neoliberalism in the Global South and Eastern Europe, see JUAN GABRIEL
VALDES, PINOCHET’S ECONOMISTS: THE CHICAGO SCHOOL OF ECONOMICS IN CHILE
(1995) and JAPHY WILSON, JEFFREY SACHS: THE STRANGE CASE OF DR. SHOCK AND
MR. AID (2014).
\textsuperscript{135} Roy, supra note 132, at 33.
\textsuperscript{136} See Joan Roelofs, The Third Sector as a Protective Layer for Capitalism, 47 Monthly
Rev. 16 (1995).
\textsuperscript{137} Roy, supra note 132, at 33.
This abdication and immunity do not, however, entail withering away of the state.

Neoliberalism does not displace the state as much as it reformulates it and restructures its options.\textsuperscript{138} The neoliberal project is to turn the “nation-state” into a “market-state,”\textsuperscript{139} one with the primary agenda of facilitating global capital accumulation unburdened from any legal regulations aimed at assuring the welfare of citizens. Social formations in the global South, situated in an asymmetrical relationship with global capitalism, are a particular target of this project. The neoliberal regimes, with their bedrock principles of private property rights and free trade, are a coercive mechanism to get states in the global South to adopt neoliberal economic and social policy frames conducive to global capital.\textsuperscript{140} The enabling mechanism is “[t]he extension of the normative force of international standards by the device of conditionality.”\textsuperscript{141} These regimes advance particular understandings of development and poverty that “disregard the social context of provision, the lived experiences of the poor and dismiss

\textsuperscript{138} Many perceptive observers reject the “state shrinking and declining” argument as political posturing of neo-liberals. In particular, they point to the expansion of the coercive apparatuses of the state and the shift of the state from a managerial mode befitting the Fordist era towards a neoliberal entrepreneurial mode. See, e.g., David Harvey, \textit{From Managerialism to Entrepreneurialism: Transformation in Urban Governance in Late Capitalism}, 71 (B) GEOGRAFISKA ANNALER 3 (1989).

\textsuperscript{139} Anthony Carty, \textit{Marxism and International Law: Perspectives for the American (Twenty-First) Century?} in \textit{INTERNATIONAL LAW ON THE LEFT} 169-70 (Susan Marks ed., 2008).

\textsuperscript{140} These regimes include the WTO multilateral agreements including the Agreement on Trade Related Intellectual Property Rights (TRIPS), the Agreement on Trade Related Investment Measures (TRIMS), the General Agreement on Trade in Services (GATS), the Agreement establishing the Multilateral Investment Guarantee Agency (MIGA), and bilateral investment protection treaties (BITS). Together these regimes provide global capital ease of entry and investment, protection from national performance requirements, protection of expansive intellectual property rights, generous compensation in cases of expropriation, insurance against non-economic risks, and mechanisms to avoid national laws and dispute resolution fora.

and/or reinforce the way in which deprivations are constituted.”

The mandate is to privatize public assets, roll back social services, and allow unbridled mobility of capital. Now “[s]trait-jacketed within the global logic of capital and market and the global regime of property rights,” states in the global South “can no longer act as development states and engage in the management of poverty on their own.” Instead, non-state actors representing interests of global capital play an active role in designing legal orders that circumscribe state sovereignty and autonomy. Mandates of privatization make education, health, infrastructure, utilities, housing, and a range of state enterprises available for private appropriation. By its insistence on the rollback of the state, privatization becomes “the cutting edge of accumulation by dispossession.”

Neo-liberalism spawned the latest iteration of modernity’s suturing of law with global space by way of another master-narrative: globalization—a newly fashioned ensemble of norms, practices, and discourses to facilitate the geopolitics and geoeconomy of financialized capitalism.

Mainstream
discourse about globalization represents the world as a seamless integrated whole, and globalization as inevitable. 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.”

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.” 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.” All this points to the apt summation that globalization of the neoliberal era is a “barely reworked variant” of imperialism.

We have to move away from the 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. It is this multiplicity and unevenness that has generated today’s crises and

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149 See, e.g., Francis Fukuyama, The End of History and the Last Man (Free Press 1992).
conflicts, presenting new challenges to intersections of law and geography at a global scale. 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 the 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.”

Vigilance is warranted in the face of growing “cultural racism,” wherein “biological hierarchy” may seem to be displaced by “new cultural definitions of ‘race’ which are just as intractable.” At large “new rhetorics of exclusion” founded in a “cultural fundamentalism,” that see the Global North “swamp[ed]” by “people with a different culture.” For example, in Europe, the canonical bastion of liberal cosmopolitanism, where ostensibly “the first truly post-modern international political form” emerged, ever sharper boundaries between ‘European’ and ‘non-European’ are being drawn. Indeed, the Maastricht Treaty brackets

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“asylum,” “immigration,” and “nationals of third countries” in conjunction with “combating unauthorized immigration, residence and work…terrorism, unlawful drug trafficking, and other serious forms of international crime.”\(^{158}\) All this at a time when there are over 214 million international migrants in the world, of whom about half are migrant workers.\(^{159}\)

Popular resistance to neoliberal globalization is confronted with the shrinkage of space for political action. As neoclassical economic theory masquerades as the general theory of the social, lords of the universe raise the specter of “excess of democracy.”\(^{160}\) This “excess” is remedied by ever-new designs to move from government to governance and from representative to responsible government.\(^{161}\) To ensure that this “excess” does not spill over, the new imperium deploys its trump card: an accelerating state of permanent exception and war, placing an ever-increasing number 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, 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 are re-deployed unabashedly. Benign tropes of “the space of imperial sovereignty...is smooth,”\(^{162}\) and “the world is flat,”\(^{163}\) conveniently give

\(^{162}\) MICHAEL HARDT & ANTONIO NEGRI, EMPIRE 190 (2001).
way to “clash of civilizations,” with the “disconnectedness” between a “functioning core” and a “non-integrating gap” designated the “ultimate enemy.”\textsuperscript{164} We are now offered a “bifurcated world...inhabited by Hegel’s and Fujkuyama’s Last Man...[and] Hobbes’s First Man.”\textsuperscript{165} 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.”\textsuperscript{166} 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.”\textsuperscript{167} A “new paradigm” is enunciated for a war of “uncertain duration” against “the enemies of civilization.”\textsuperscript{168} One that “renders obsolete [and]...quaint” established rules of war.\textsuperscript{169} Belated acknowledgment that “[t]he hidden hand of the market will never work without a hidden fist,”\textsuperscript{170} leads to the prescription—”give war a chance.”\textsuperscript{171} 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

\begin{thebibliography}{99}
\bibitem{166} BARNETT, supra note 164, at 124.
\bibitem{167} ZBIGNIEW BRZEZINSKI, THE GRAND CHESSBOARD: AMERICAN PRIMACY AND ITS GEOSTRATEGIC IMPERATIVES 32, 40, 215 (Basic Books 1997).
\bibitem{170} THOMAS L. FRIEDMAN, THE LEXUS AND THE OLIVE TREE 373 (Farrar, Straus, Giroux 1999).
\bibitem{171} THOMAS L. FRIEDMAN, LONGITUDES & ATTITUDES: EXPLORING THE WORLD AFTER SEPTEMBER 11, 91 (2002).
\end{thebibliography}
and will require far greater living space than Tyranny.”¹⁷² Faced with this brutal response to the crisis of Empire, the global subalterns are creating new geographies of resistance against all odds.¹⁷³ Counter-stories are one of the foundational weapons of this resistance.

V. THE NATION AND ITS MARGINS

The phenomena of the nation and nation-state reflect a basic ambivalence concerning the question of authority that prevails in modern political discourse. On the one hand, this discourse ceaselessly questions the form and content of authority, its legitimacy, and proper boundaries. On the other, this discourse makes questions about the origin and ultimate grounds of the authority difficult to ask, let alone answer. The source of this ambivalence may be found in modern political discourse itself and in the critical spirit animating it. While it aspires to be critical, it imposes an inner limit to criticism—an inner limit demarcated by ontological limit horizons.

Since the French Revolution, the nation and nationalism have spread. Today, states everywhere legitimate themselves by using the ideology of the nation because the nation has become the normal, sole form of legitimate collective political existence. One implication of the nation-state furnishing the limit horizon of modern political existence is that of necessity, which circumscribes political struggles within the horizon of the state. Limit

¹⁷² GEOGRAPHY AND EMPIRE 271 (Anne Godlewska & Neil Smith eds., 1994) (quoting HENRY LUCE, The American Century (1941)).
By overwhelming the present, turn all history into history of the present. It is no surprise that “[h]istorical consciousness in modern society has been overwhelmingly framed by the nation-state.” In the modern imaginary, the nation, while remaining a “capital paradox of universality,” continues to masquerade as a limit horizon of collective political existence. The very form of the nation-state has come to be regarded as “the indispensable framework for all social, cultural, and economic activities.” This is despite the fact that the question “what is a nation?” posed by Ernest Renan in 1882, still searches for a satisfactory answer.

To appreciate the modern construct of a nation, one needs to be mindful of the mapping order of modern history. The late eighteenth/early nineteenth century, European proclivity of locating foundational legitimacy of the state in the latter’s congruence with the nation inaugurated the state-nation as a limit horizon. Beginning in the eighteenth century, the relationship between history and political order underwent a profound transformation from having been the very antithesis of order, the concepts of time and history became sources of sameness. Historical time is now tied to expectations of a new and different future, but of the future in which the most cherished traits of present identities are both conserved and refined. All that was solid may well have melted into air in this process, but everything fluid and gelatinous simultaneously became petrified. The period after the French Revolution has been noted as “a period when concepts of authority were removed from the dimension of contingency and inscribed

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within the dimension of continuity.” The net result of this change was that the concepts of state and history became closely intertwined. Not only was the state turned into a historical being and history interpreted as the successive unfolding of the state in time, but also the presence of the state became the condition of the possibility of history.

This historical understanding of the state and the state-centric understanding of history are closely related to another major change in the structure of social-political concepts: the fusion of the concepts of state and nation. From Vico to Herder, the nation was conceptualized as grounded in and reflecting manifest and irreducible differences between people. The evolution of specific political communities is then described as if their individual histories conformed to a general scheme in spite of their actual diversity. Each community is seen to have an individual trajectory within this universal history. National history secures for the contested and contingent nation the false unity of a self-same national subject evolving through time. Status of the nation in the modern imaginary evidences that Enlightenment’s “untruth...consist[s]...in the fact that for Enlightenment the process is always decided from the start.” Anderson designates this phenomenon “reversed ventriloquism,” the process whereby the voice of history is orchestrated by the nation in the present. Because History is understood as the gradual realization of reason and the rise of the modern

180 Max Horkheimer & Theodor Adorno, Dialectic of Enlightenment 24 (John Cumming trans., 1993).
nation-state, it takes on meaning and intelligibility only from the vantage point of the nation-state. If the present is only intelligible in the light of History, the present also signifies that nation-statehood has become an inescapable part of the modern condition and the sole source of its intelligibility.\textsuperscript{182} It is not surprising that the idea of the nation-state was conceptualized as a natural species of being.\textsuperscript{183} A conceptual limit horizon can hope for no better.

We have to be mindful that even today, “coherence is sought in a nation through the excluding of what is thus ‘other’ to it.”\textsuperscript{184} Balibar frames this process of coherence as one of exclusion in racial terms: a division of humanity “into two main groups, the one assumed to be universalistic and progressive, the other supposed irremediably particularistic and primitive.”\textsuperscript{185} As explicit racist divisions become politically discredited, a cultural divide is posited between the nation and its “other.” Gilroy terms this “cultural racism,” wherein “biological hierarchy” stands displaced by “new, cultural definitions of ‘race’ which are just as intractable.”\textsuperscript{186} Lately, at large are “new rhetorics of exclusion” founded in a “cultural fundamentalism.”\textsuperscript{187}

Today, related questions of identity, recognition, and participation unavoidably confront “a fundamental ambivalence about the normative

\textsuperscript{182} See generally Hegel, supra note 22; see also Shlomo Avineri, Hegel’s Theory of the Modern State (1972); Fred R. Dallmayr, G.W.F. Hegel: Modernity and Politics (1993).
\textsuperscript{183} See generally John S. Dryzek & David Schlosberg, Disciplining Darwin: Biology in the History of Political Science, in Political Science in History: Research Programs and Political Traditions (James Farr et al. eds., 1995).
\textsuperscript{184} Fitzpatrick, supra note 176, at 125.
\textsuperscript{185} Etienne Balibar, Is There a Neo-Racism in Etienne Balibar & Immanuel Wallerstein, Race, Nation, Class: Ambiguous Identities 25 (Christ Turner trans., 1991).
\textsuperscript{186} Paul Gilroy, There Ain’t No Black in the Union Jack: The Cultural Politics of Race and Nation 60 (1987).
horizons of collective identity in the modern polity.”

No national culture pre-existed the centralization of power and the political organization of social life into a coherent whole. Beneath the rhetoric of unity, solidarity, Enlightenment rationality, and modern nationhood remain grounded in exclusions and conflict because the Global North has always been constituted through the negation of otherness and active de-humanization of difference.

Nations are not created in a communicative void. Their spatiotemporal existence has always been in counter-distinction with their others: rival ethnic groups, racial difference, colonizers, and former rulers. Nations depend on narration addressed both inwards and outwards. National identities are fostered through imagining, which enables individuals to see themselves as part of an invisible cultural whole. Imagined communities are seen products of print-capitalism, which created a popular platform of nationhood through effective democratization of communication, with the discourse available and address to all potential members of the community, because “it is always open to new speakers, listeners and readers.” The nation operates as a closed community in order to preserve its coherence. The fiction of fixity, the myth of an unchanging, perennial, and primordial nation is always supported by the construction of exclusive histories. This univocal and inclusive picture of national narration is rejected by post-colonial theorists as being “modular,” informed by the experience of the

190 Id. at 5; EDWARD SAID, ORIENTALISM (1978); EDWARD SAID, CULTURE AND IMPERIALISM (1994).
192 ANDERSON, supra note 181.
193 Id. at 146.
Global North, and blind to nation-building in the post-colonial Global South.\textsuperscript{195} In the colonized formations, nationalist enunciations are the product of bifurcated discourses addressed to the nation and its rulers, in which different arguments are strategically mobilized for different interlocutors. This conception of nationalist narration places it in a field of conflict and contestation. This conflict is productive in that it produces for the subaltern dialogically something new.\textsuperscript{196} Similarly, Fanon, emphasizing the role of recognition in identity-formation, urges the colonized to reject the colonizer’s suggestion that the colonized wear a “white mask” and be like to colonizers.\textsuperscript{197} Here non-recognition and misrecognition are a sign of oppression; a repressed community attains national status when it develops an internal, independent, voice.\textsuperscript{198} The task of critique and counter-stories is to disrupt the discourse of the bounded nation and national frontier. We have to recognize that

The frontier is both an opening and a closing. It is at the frontier that there takes place the distinction from and liaison with the environment. All frontiers, including the membrane of living beings, including the frontier of nations, are, at the same time as they are barriers, places of communication and exchange. They are the place of dissociation and association, of separation and articulation.\textsuperscript{199}

Critique must underscore the impossibility of viewing the nation as a uniform symbolic force, because “neither centers, borders, cultural

\textsuperscript{195} Partha Chatterjee, Nationalist Thought and the Colonial World 20–22 (1986).
\textsuperscript{196} Peter Hitchcock, Dialogics of the Oppressed (1993).
\textsuperscript{197} Frantz Fanon, Black Skin, White Masks (1970); Frantz Fanon, The Wretched of the Earth (1967).
\textsuperscript{198} Charles Taylor, Philosophical Arguments 225 (1995).
products, nor language can fix national identity.”200 In its irresolution, the construct of the nation is not alone today; “sense of words like ‘nation’, ‘people’, ‘sovereignty’...[and] ‘community’ are leaking out of so many cracked vessels.”201 The task at hand is to read the nation and nationalism in ways that create an estrangement effect, whereby the texts of the nation and nationalism are deprived of their seemingly natural and self-evident air to lay bare their contrived and contingent nature. The need is to trigger alternative narratives of the nation that contest the hegemony of Eurocentric History. Counter-stories embody this critical project.

VI. LATCRIT 2017 COUNTER-STORIES

Jerome McCristal Culp, Jr., law professor, scholar, and a leading voice in enunciating Critical Race Theory, was a critical part of the LatCrit organization and community.202 Since his untimely departure, the Jerome McCristal Culp, Jr. Memorial LatCrit Lecture is a plenary event at every LatCrit conference. At LatCrit XXI, Professors Angela P. Harris203 and

200 R. Bennett, National Allegory or Carnivalesque Heteroglossia? in Bakhtin and the Nation 183 (San Diego Bakhtin Circle 2000).
201 ON JEAN-LUC NANCY: THE SENSE OF PHILOSOPHY 13 (Darren Sheppard et al. eds., 1997).
202 His life and work reflected many of the ideals that animate the project known as LatCrit. His work in Critical Race Theory, especially his work on race and autobiography and the possibility of a black subject position from which to engage in critique, inspired the new generation of legal scholars entering the academy in the early 1990s. Professor Culp’s relentless critique of institutions and individuals serves as a model for how one can simultaneously be a part of institutions and communities while working to transform them.
203 The vast corpus of Professor Angela P Harris’ scholarship includes the following: Care and Danger: Feminism and Therapy Culture, in STUDIES IN LAW, POLITICS, AND SOCIETY, SPECIAL ISSUE—FEMINIST LEGAL THEORY, (Maxine Eichner & Clare Huntington eds., 69th ed., 2016); CRIMINAL LAW: CASES AND MATERIALS (with Cynthia Lee) (3rd ed., 2014); RACE AND RACES: CASES AND RESOURCES FOR A MULTIRACIAL AMERICA (with Juan Perea, Richard Delgado, Jean Stefancic & Stephanie Wildman) (West Publishing 3rd ed., 2014); RACE AND EQUALITY LAW (Ashgate Press 2013); Critical Race Theory in LAW AND SOCIAL THEORY (Reza Banakar & Max Travers eds., 2013); PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (with Carmen Gonzalez, Yolanda Flores Niemann, & Gabriella
Margaret Montoya E. Montoya,²⁰⁴ two from among the rank of pioneers of Critical Race Theory and LatCrit, jointly delivered the Memorial Lecture. Their respective parts of the joint lecture open this symposium issue.


²⁰⁴ Professor Margaret E. Montoya’s published works include HLS 200: A Latina’s Story About the Bicentennial, HARV. LATINx L. REV. (forthcoming 2018); Addressing Implicit Bias to Improve Cross-Cultural Care (with Brenda Pereda, M.D.) CLINICAL OBSTETRICS & GYNECOLOGY J. (forthcoming 2018); The Story Behind a Letter in Support of Professor Derrick Bell, 75 U. PITTSBURGH L. REV. 1 (2014) (jointly authored with Cheryl Nelson Butler, Sherrilyn Ifill, Suzette Malveaux, Natsu Taylor Saito, Nareissa L. Smith
Professor Harris explores three “rhymes, rhythms and harmonies” between Professor Culp and Professor Montoya, who she characterizes as “two pillars of critical race theory.” She highlights their central role in the development of LatCrit, their career as tellers of personal, autobiographical stories, and the substantive themes that connect their work: the concept of racialized space, a commitment to feminist method, and a commitment not just to tearing down the old, but building the new. She then ties these themes to the question posed by the 2017 LatCrit Conference—“What Next?” While underscoring the urgency of the task ahead for outcrits, she emphasizes the responsibility towards community and the social at large. The call is to build theory and praxis responsive to histories, predicaments and dreams of the marginalized and the oppressed. She inspires all outcrits to ever remain mindful that

[C]ritical theorists are creative people—people who are trying to dream the future into being. As creative people, we have a chance for the things we make to live on beyond our physical bodies…all of us who live in human bodies have an afterlife. Everything that we say and do lives on in the lives of those who come after us, whether we are aware of our influence or not.

Professor Montoya characterizes LatCit as her “academic home…refuge, safe space, and spa for my mind, heart, and spirit,” one that opened “a space for me and my voice.” After acknowledging Prof. Culp’s use of

“autographical moments,” she proceeds to “braid together fragments of [Professor Culp’s and Professor Harris’] stories.” She recounts how these stories are an enduring testament to “LatCrit-inflected antisubordination theory and practice.” She then introduces the concept of “fractal fragments”—mathematical structures or objects that exhibit similarities across different scales of focus. So when we write personal stories “we instantiate the concept of fracticality. The stories function as shorthand for the many details across many units.” She finds fractal fragments “a particularly effective technique for communicating multilayered information, such as the lived experience of subordinated people…The context and subtext of our individual stories, our fractal fragments…link to other stories.” [6] She proceeds to offer a thoughtful and moving call to arms to the LatCrit community to walk along the path brought into relief by critical pioneers like Professors Culp and Harris.

Professor Jose Gabilondo takes up the question of transgender equality and proposes that one’s understanding about one’s gender be treated the same as religious faith because both beliefs about faith and about one’s gender are subjective, constitutive of the person, and subject to no test of truth, coherence, or consistency. He traces how the word gender came to supplant the word sex when what is meant is one’s somatic state and the conflation of gender, sex, and sexual orientation. The result, he argues, is confusing verbal ambiguity with existential freedom and the position that self-declaration alone determines one’s gender, regardless of corroborating somatic indicators of sex. He is concerned that this ambiguity leads to positing sexual orientation as flued, even compulsory fluidity. He believes that the case for transgender equality would be strengthened by limiting gender to mean only one’s self-awareness and self-interpretation of one’s sexed characteristics. He proposes a truce in the cultural and policy battles around rights of the transgender along constitutional guidelines of exercise of religion—the state should protect free exercise of gender while avoiding endorsing any particular idea about what gender is or how it arises. He then
lays out how this approach would apply to two areas of current conflict—whether to compel the use of unsexed pronouns and access to public bathrooms. He acknowledges that at this point his proposal lacks backing of political or a recognized Constitutional right to exercise of gender. However, he is confident that incremental steps in the direction he proposes are viable. Finally, he invites more thoughtful and systematic discussion of issues that attend the question of transgender equality. While Prof. Gabilondo’s article strictly would not be counted as story-telling, it is unmistakably inflected by his personal struggles of growing up as a gay teenager. Indeed, he expressly refers of these struggles as the backdrop to his residing the unstable category “man,” and his embrace for “the new space for gender.”

The article by Professor Daniel G. Solorzano, Professor Lindsay Perez Huber, and Ms. Layla Huber-Verjan breaks new ground in legal scholarship by the very fact it is authored by three individuals whose intersecting lives span there generations. Indeed, this gives their interwoven personal stories an added punch. While they place themselves within the CRT tradition of “counterstorytelling,” they expressly distinguish their story from the canonical counter-stories of CRT with composite characters engaged in a storyline. They narrate how exposure to Critical Race Theory placed the question of microaggression on their agenda of inquiry. Their direct engagements with education policy, litigation, and pedagogy related to racism and personal interactions signaled the urgency to assemble effective responses to racial microaggressions. The fruit of these labors is the concept and practice of microaffirmations—subtle verbal and non-verbal strategies that people of color consciously engage with other people of color that affirm each other’s value, integrity, and shared humanity.

The counter-story of Professors Brenda Williams, Edwin Lindo, and Marck-Tizoc Gonzalez, one that may prove to be a landmark in outsider jurisprudence, makes the mutually constitutive assemblage of the personal and the political palpable. The article builds around a first-hand account of
putting one’s life on the line in pursuit of justice. The narrative reports and build on Prof. Lindo’s hunger strike to protest extrajudicial killings of five persons of color by the police in San Francisco. Here justice emerges located beyond the zone of the law in a field of contestation and struggle. Reaching as far back as the fifth century and as far away as India and Ireland, the article reports the use of hunger strikes as a time-honored weapon of the weak. Resistance and struggle emerge as practices of self-sacrifice. The article deftly braids personal with the political and theory with praxis.

VIII. CONCLUSION

LatCrit assigns us the task of deploying critique as a strategic practice. Note that “strategy suits a situation; a strategy is not a theory.”205 And theory itself “is exactly like a box of tools... by means of which...to move ‘obstacles’ or ‘blockages’ and to lever open discursive space for political/intellectual work.”206 LatCrit aims to align with the subordinated, identifying them as our community. Community “is not historical as if it were a permanently changing subject within...a permanently flowing time...But history is community, that is, the happening of a certain space of time-as a certain spacing of time, which is the spacing of a ‘we.’”207 We must take seriously Nancy’s challenge, namely that “history—if we can remove this word from its metaphysical, and therefore historical, determination—does not belong primarily to time, nor to succession, nor to causality, but to community, or being-in-common.”208 We must refuse to live a life of “living without an alternative,” mindful that a “world without

208 Id. at 149.
alternatives needs selfcriticism as a condition of survival and decency.”

We should bear in mind that far from being a rigid, all-encompassing, and unchallenged structure, “[a] lived hegemony is always a process...continually to be renewed, recreated, defended, and modified.”

There are always non-hegemonic or counter-hegemonic values at work to resist, restrict, and qualify the operations of the hegemonic order. If we accept that no hegemony can be so penetrative and pervasive as to eliminate all grounds for contestation or resistance, this leaves us with the question of how we are to identify and configure such grounds. One tool available to critical theory is counter-stories to construct subjectivity through negation and the related conceptualization of experience. The project involves an effort to recover the experiences, the distinctive collective traditions, identities, and active historical practices of subaltern groups in a wide variety of settings—conditions and practices that have been silenced and erased by hegemonic historiography. The nation-state is never quite able to eliminate alternative constructions of belonging and identity. These alternative constructions must be marshaled to fashion a counter-narrative to allocate subjecthood and marginalization differentially. Counter-stories are, and will remain, a most valuable tool in this struggle.

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