Accumulation

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Anthony Farley brings a focus on class back to Critical Race Theory by exploring the intersection of race and class as a singular concept that finds its creation in the marking of difference through the primal scene of accumulation. Professor Farley’s Essay contends that the rule of law is the endless unfolding of that primal scene of accumulation. By choosing to pray for legal relief rather than dismantling the system, the slave chooses enslavement over freedom. Professor Farley discusses the concept of ownership as violence and explains that property rights are the means of protecting the master class until everything and everyone comes to be owned. The commodification of race and its twin concept of class through the market based system show how the rule of law is only the disguise for the rule of one group over another, white-over-black.

A wind crosses the world and unfolds in white. A sail appears on the horizon, crossing the far points of memory and speculation. And everything that is solid melts into air. Middle Passage, Manifest Destiny, New World Order, American Century, Infinite Justice, Enduring Freedom, so it goes, endless accumulations, endless enslavements, the endless sovereignty of capital. For some to own, others must be first be owned.

“Going back to class” is the title and the imperative of this symposium. To go back is to go back to the beginning, back to class. We are invited to go back to the beginning of our own training. We are also invited, by the Michigan Journal of Race & Law, to go back to the beginning of a certain mode of criticism, Critical Race Theory, and to return to it with the class analysis that it does not now possess.


* Associate Professor, Boston College Law School. I thank the organizers of Going Back to Class? The Reemergence of Class in Critical Race Theory at the University of Michigan Law School and the editors of the Michigan Journal of Race & Law. I had the opportunity to present some of the ideas in this Essay to other audiences; I thank them all: I was Keynote Speaker for the 4th Annual Canadian Critical Race Conference at Dalhousie University in Halifax, Nova Scotia in 2005, I was the Keynote Speaker at Constitution Day at Bunker Hill Community College in 2005, I gave a faculty colloquium at the University of Colorado in 2005, I was a speaker in the 2005 Law & Society series at Suffolk Law School, I was the Keynote Speaker at the 7th Annual Ron H. Brown Dinner at St. John’s University School of Law in 2005, I was Keynote Speaker at the Massachusetts Black Judges Conference at Boston College Law School in 2004, I was Keynote Speaker at the Law Professor Luncheon of the Northeast Black Law Student Convention in Brooklyn, NY in 2004, and finally, I was invited to address the Boston College NAACP in 2004. I thank Len Baynes, Frank Rudy Cooper, David Devine, David Hill, Sherene Razack, Daria Roithmayr, Cheryl Wade and everyone at the Massachusetts Black Judges Conference. I give very special thanks to Maria Grahn-Farley for her love and advice.
"The wealth of societies in which the capitalist mode of production prevails appears as an immense collection of commodities ..." Marx's words mark our present situation, and thus the past marks our beginning and our destination as we "go back to class." My symposium contribution begins with the slaves.2 My contribution begins with the commodity that speaks. My contribution begins at the zero hour of exploitation.3 That moment, the moment of capture, was the moment we were marked as Black. Thus classified, marked, as Black, we became a class, white-over-black. That moment, the moment of white-over-black, is the moment in which we were constituted as a race, as white-over-black.

There is no race, save as hierarchy, as white-over-black. White-over-black is a desire and a pleasure. White-over-black is the desire for hierarchy and the pleasure of hierarchy. The will to classify is the sadistic form of the desire for hierarchy. The will to be classified is the masochistic form of the desire for hierarchy. The will to classify is a desire of the flesh for there is no classification that is not first written on the body. White-over-black in the non-revolutionary situation means that all have come to an agreement regarding the satisfactions and dissatisfactions that will coordi-

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2. James Baldwin wrote of the slaves on November 19, 1970, in a way that informs this essay:
   
   One might have hoped that, by this hour, the very sight of chains on Black flesh, or the very sight of chains, would be so intolerable a sight for the American people, and so unbearable a memory, that they would themselves spontaneously rise up and strike off the manacles. But, no, they appear to glory in their chains; now, more than ever, they appear to measure their safety in chains and corpses.


American domination—the only domination from which one never recovers. I mean from which one never recovers unscarred. And since you are talking about factories and industries, do you not see the tremendous factory hysterically spitting out its cinders in the heart of our forests or deep in the bush, the factory for the production of lackeys; do you not see the prodigious mechanization of man; the gigantic rape of everything intimate, undamaged, undefiled that, despoiled as we are, our human spirit has still managed to preserve; the machine, yes, have you never seen it, the machine for crushing, for grinding, for degrading peoples?

Id. at 77.
nate the passage of bodies marked as white and bodies marked as black through institutional spaces or scenes. S/M are the terms of the social contract, the rule of law, governing the colorlined, non-revolutionary situation.

Race and class, the subjects of this symposium, are the far points of memory and speculation for the sentient commodity and its system, the system of capital. We are all still within that moment's endless unfolding. Emancipation did not take place. Every attempt to “go back” will be haunted by the concerns of the present just as the present is itself haunted by the concerns of the past. Any return to class will therefore have its haunts; in this case, we are haunted by the specter of the One Big Union, the General Strike, and the end of slavery. We are haunted by the specter of

4. James Baldwin’s words of over forty years past are true today, “You know, and I know, that the country is celebrating one hundred years of freedom one hundred years too soon.” JAMES BALDWIN, My Dungeon Shook: Letter to My Nephew on the One Hundredth Anniversary of the Emancipation, in THE FIRE NEXT TIME 1, 10 (Vintage International, 1993).


6. W.E.B. Du Bois observed:

Above all, we must remember the black worker was the ultimate exploited; that he formed the mass of labor which had neither wish nor power to escape from the labor status, in order to directly exploit other laborers, or indirectly, by alliance with capital, to share in their exploitation.


7. Warren Montag’s words may aide readers in search of ghosts:

[A]s Derrida points out, Marxism itself, like Hamlet’s father, first appeared on the scene (of history) in the form of a specter (the first noun in the Communist Manifesto) performing the act of haunting (the first verb in the text)—strange words indeed to find in the first sentence of the inaugural program of an international communist movement. Can what has not yet been or what is only now coming into being haunt (a term usually reserved for the presence of the past even in its non-being, or its being no longer) the present or presence? The figure suggests that the invulnerability and inevitability of communism derive from its already being a specter, from the fact that its first coming is already a return, its first appearance is already a repetition, its original presence already a representation of itself. It is thus irreducible to a present or presence which might become a past or absence: its very non-contemporaneity determines the possibility of its presence. The ‘spectrality’, as Derrida calls it, of Marxism, is its power, its being neither present nor absent, neither living nor dead.


8. The slaves who freed themselves from the plantation system may also one day free themselves from the wage system. Du Bois recorded the General Strike that won the Civil War and was the self-emancipation of the slaves:
communism. Recall the words set to the tune of John Brown's Body and the Battle Hymn of the Republic:

They have taken untold millions that they never toiled to earn.
But without our brain and muscle not a single wheel can turn.
We can break their haughty power; gain our freedom when we learn
That the Union makes us strong.

In our hands is placed a power greater than their hoarded gold;
Greater than the might of armies, magnified a thousand fold.
We can bring to birth the new world from the ashes of the old,
For the Union makes us strong. 5

What does it mean to go back to class? Law, as Critical Race Theory has seldom recognized, is the monopoly on violence that is used to keep white-over-black; recall the primal scene of accumulation. The monopolists of violence force us all to look at our feet as they beat us about our heads. The idea that emerges amidst the stars that swirl about the broken and bowed heads of the dispossessed is, ironically, the idea of the rule of law. The beaten imagine that the next blow will not come, and the next, and the next, and the next and soon these imaginings, and the blows, become a pleasure, an ecstasy, a closeted expectation, and a fundamentalism. These imaginings are juridical strivings for equality of right and due process, basic elements of the rule of law. The beaten Blacks, heads bowed, white-over-black, form prayers to the monopolists of violence, prayers for legal relief from the violence of dispossession. These prayers create an earthly god, the state, whom the defeated hope to appease with ever-more sickening displays of fidelity to the rule of law and to the future fairness of their masters. Without the prayers of the defeated and traumatized dispossessed there is no monopoly, no legal system, no market, no private ownership of the source of life (means of production), no white-over-black, no gods, no masters. Without the prayers of the dispossessed there is anarchy and communism. That is the future that is beyond the place we are now, beyond the primal scene of accumulation.

How came we to this place? The primal scene of accumulation is always traumatic. We recall the trauma of the inaugural accumulation—a trauma too great to be borne, a moment that seems to vanish like the

This was not merely the desire to stop work. It was a strike on a wide basis against the conditions of work. It was a general strike that involved directly in the end perhaps a half million people. They wanted to stop the economy of the plantation system and to do that they left the plantations.

Du Bois, supra note 6, at 67.

wind—only in the mode of repetition. Our traumatic repetitions—our knowing non-knowledge of what happened—unfolds in our struggle for equal justice under law. Not knowing is not emancipation.

C-M-C. Someone with only labor to sell chooses to sell it to an owner in exchange for a certain sum of money. If that sum is a living wage and if there is a market then the labor-seller will be able to buy the commodities required to live and, perhaps, to produce again, out of his body, more labor to sell and then more and then more. The choice is death or sale. The commodity sold is not labor. The commodity sold is the laborer, treated as a thing to be sold. Death is the only freedom of the market. Death is what happens when some have everything and others have only the skins that they are in.

Revolution within a modern industrial capitalist society can only mean the overthrow of all existing property relations and the destruction of all institutions that directly or indirectly support existing property relations. It must include the total suppression of all classes and individuals who endorse the present state of property relations or who stand to gain from it. Anything less is reform.


George Jackson's historical observations were prophetic:

The mass psycho-social national cohesiveness has trembled on the brink of disruption and disintegration over the last fifty years, threatening to fly apart. But at each crisis it was allowed to reform itself; with each reform, revolution became more remote. This is because the old left has failed to understand the true nature of fascism. We will never have a complete definition of fascism, because it is in constant motion, showing a new face to fit any particular set of problems that arise to threaten the predominance of the traditionalist, capitalist ruling class. But if one were forced for the sake of clarity to define it in a word simple enough for all to understand, that word would be "reform."


As described by Marx:

The direct form of the circulation of commodities is C-M-C, the transformation of commodities into money and the re-conversion of money into commodities: selling in order to buy. But alongside this form we find another form, which is quite distinct from the first: M-C-M, the transformation of money into commodities, and the reconversion of commodities into money: buying in order to sell. Money which describes the latter course in its movement is transformed into capital, and, from the point of view of its function, already is capital.

Marx, supra note 1, at 247–48.

Marx stated:
M-C-M'. 14 Someone with money purchases commodities in the form of labor and the means of production. If all goes well during production then the new commodities produced by those who labor will be exchanged for an amount of money in excess of the amount of money with which the process was begun. That the dispossessed are dispossessed of that value $M'$ may also be expressed as $M + \Delta m$, or surplus value. Some or all of that surplus value, $\Delta m$, may find its way back into the next cycle, $M'-C-M''$, and the next, $M''-C-M'''$, and so on and on to infinity. 15 The owners regard the capitalization of $\Delta m$ as a sign of their abstinence, as a virtue, and as a justification for their lordship over the earth and all that is in it. Surplus value is, in fact, the sum and substance of their rule. 16

What is in fact brought to market is not labour, but the labourer. What he sells to the capitalist is not his labour but the temporary use of himself as a working power. This is the immediate object of the contract which the capitalist and the worker conclude, the purchase and sale which they transact.


14. MARX, supra note 1, at 247-57.

15. "The complete form of this process is therefore M-C-M', where $M' = M + \Delta m$, i.e. the original sum advanced plus an increment or excess over the original value I call 'surplus value'." MARX, supra note 1, at 251.

16. Accumulation begets accumulation:

The more the capitalist has accumulated, the more is he able to accumulate. The surplus-value that makes up additional capital no. 1 is the result of the purchase of labour-power with part of the original capital, a purchase which conformed to the laws of commodity exchange and which, from a legal standpoint, presuppose nothing beyond the worker's power to dispose freely of his own capacities, and the money-owner's or commodity-owner's power to dispose freely of the values that belong to him; equally, additional capital no. 2 is merely the result of additional capital no. 1, and is therefore a consequence of the relations described above; hence each individual transaction continues to conform to the laws of commodity exchange, with the capitalist always buying labour-power and the worker always selling it at what we shall assume is its real value. It is quite evident from this that the laws of appropriation or private property, laws based on the production or circulation of commodities, become changed into their direct opposite through their own internal and inexorable dialectic. The exchange of equivalents, the original operation with which we started, is now turned round in such a way that there is only an apparent exchange, since, firstly, the capital which is exchanged for labour-power is itself merely a portion of the product of the labour of others which has been appropriated without an equivalent; and, secondly, this capital must not only be replaced by its producer, the worker, but replaced together with an added surplus. The relation of exchange between capitalist and worker becomes a mere semblance belonging only to the process of circulation, it becomes a mere form, which is alien to the content of the transaction itself, and merely mystifies it. The constant sale and purchase of labour-power is the form; the content is the constant appropria-
These processes require a market. A market requires certain rules. Promises must be kept and commodities must be bought and sold according to agreement, not simply taken, or there is no free market; no buying, no selling, only grabbing and getting.\textsuperscript{17} Buyers and sellers must meet as if they were free and as if they were equal. One buys, one sells, there are only sellers and buyers, and all exist in the free market only as buyers and sellers; that is, as entities-without-other-qualities, as monads. There can be no outside of the market. The market must therefore become the world.\textsuperscript{18}

The colorline appears as a flaw in the seemingly crystalline perfection of the market. The crystal is neither flawed nor perfect. The colorline is the constitutive contradiction of the market. Without the colorline there is no market. The market requires ownership, and this ownership is an ownership of people that is displaced onto an ownership of things. What are these \textit{things} other than the crystallized labors of laborers past, other than accumulated, dead, labor? The Middle Passage is the primal

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\textsuperscript{17} Marx observed:

Commodities cannot themselves go to market and perform exchanges in their own right. We must, therefore, have recourse to their guardians, who are the possessors of commodities. Commodities are things, and therefore lack the power to resist man. If they are unwilling, he can use force; in other words, he can take possession of them. In order that these objects may enter into relation to one another as commodities, their guardians must place themselves in relation to one another as persons whose will resides in those objects, and must behave in such a way that each does not appropriate the commodity of the other and alienate his own, except through an act to which both parties consent. This juridical relation, whose form is the contract, whether as part of a developed legal system or not, is a relation between two wills which mirrors the economic relation. The content of this juridical relation (or relation of two wills) is itself determined by the economic relation. Here the persons exist for one another merely as representatives and hence owners, of commodities.

\textit{Marx, supra} note 1, at 178.
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\textsuperscript{18} Supra note 1, at 729–30.
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scene of accumulation that became these United States. As I follow the mark of the Black it leads backwards along the timeline, as do all marks, to a primal scene. The scene is played out at the far points of memory and speculation; in this case, my case, the primal scene of accumulation is the Middle Passage and the marking of the body as white-over-black. The bearers of the mark do not meet as equals in the market, rather, they meet as white-over-black, white-over-black only, and that continually, thus continuously disrupting the flows of exchange and production. The colorline is itself a pleasure and a commodity. The fact that the pleasure dares not speak its name does not make the fact of desire less palpable. White-over-black is a desire, an orientation. It is the result of training. In our colorlined situation; that is, within the folds of the primal scene of accumulation that is the concern of this essay, institutions are white-over-black, white-over-black only, and that continually. Were it otherwise, then we would have no need to speak of the colorline save as a line that was broken. The line has not been broken. Desire and imagination extend that line to infinity, through all space and time. Bodies find their way through all institutional spaces by orienting themselves vis-à-vis each other, white-over-black. We can orient ourselves because we have the capacity to desire and the faculty of imagination. A person's orientation is both an ability and a desire. It is the ability to desire and an actual desire. White-over-black is an orientation that is the result of training the desire and imagination in white-over-black.

This training is the spirit of the law that closes the gaps, resolves the conflicts, and clarifies the ambiguities. This training is what enables those who are successfully trained to see the law as a system of rules that magically operate without desire—as a dance of sugarplum fairies or as a machine—but not as the grabbing and grasping and gobbling of as much as possible that it is in reality. The real only appears to us as the primal scene of accumulation. The reality of that primal scene is screened by fables such as the rule of law. This training is what enables those trained to white-over-black to see white-over-black as the North Star and thus orient themselves and everything else that would otherwise be but blooming, buzzing confusion. The relation between white-over-black and the rules through which that pleasure is realized may seem more or less direct, as with yesterday's segregation, or it may seem more or less indirect,


20. Samuel R. Delany poses a question: "Is anything ever eroticized other than class relations—or the signs of class relations, which, simply because they are not quite the same thing, allow for the necessary shift in class relations themselves despite the fixes of desire?" Samuel R. Delany, Sword & Sorcery, S/M, and the Economics of Inadequation: the Camera Obscura Interview, in SILENT INTERVIEWS ON LANGUAGE, RACE, SEX, SCIENCE FICTION, AND SOME COMICS: A COLLECTION OF WRITTEN INTERVIEWS 126, 135 (1994).
as with today’s neosegregation. The manifest content of a legal interpretation, like the manifest content of a dream, always and everywhere represents a latent wish. Wherever that wish or desire is distorted—as it always is in a law-governed situation, for law is only distortion of conflict and contradiction—then there is a conflict or contradiction. That conflict or contradiction is constitutive, for without the white-over-black, without the original accumulation, the state machine never begins its work of condensation, distortion, displacement and secondary revision. Without the successful monopolization of violence that is the state, the original accumulation never takes place. Without the original accumulation, the violent marking of the dispossessed, there is no market and no need for the rules that frame dispossession as the meeting of minds under conditions of freedom and equality. Without the constant and distorting Black presence, there is no faculty with which to imagine equality. The Black is capital’s faculty of imagination. The Black, the slave, has as its profession the imagination of equality. This is the work of dreams. The dream, like the law, is the disguise of the wish, and that disguise takes work. It takes the work of distortion, displacement, secondary revision, and much else besides these things.

A rule cannot determine the circumstances of its own application. There are always gaps, conflicts, and ambiguities. The rules, when well-crafted, appear to us as locomotives traveling on to infinity on rails of necessity. This craft, jurisprudence, is an alchemy. There are desires and lived relations that we disavow or repress. For example, we establish the rules of

21. The movement from slavery to segregation to neosegregation is not up from slavery, it is toward slavery. The passage from slavery to segregation to neosegregation is the form in which the perfection of slavery appears and masks itself. Slavery is perfect when the slaves themselves willingly become things. The perfect slave makes itself a slave by bowing down before the rule of law and this it can do only after its so-called emancipation. Perfecting slavery is what the slave does when it bows down before the law and prays for relief. Slavery was white-over-black. Segregation was white-over-black. Neosegregation is white-over-black to white-over-black to white-over-black—the cycles do not simply begin with slavery, they end in slavery. Or they end in revolution. Anarchy is the end of race, the end of property, the end of the rule of law, the end of the prehistory of humanity. Anarchy is the One Big Union, the General Strike, and the new world within the shell of the old.

22. V.I. Lenin, quoting Engles, noted that the existence of law or “the state” is itself an admission, albeit coded, that “society has become entangled in an insoluble contradiction with itself, that it has split into irreconcilable opposites which it is powerless to conjure away.” V. I. LENIN, STATE AND REVOLUTION 9 (Foreign Language Press, 2d ed. 1976) (1917). Furthermore:

The state is a product and manifestation of the irreconcilability of class contradictions. The state arises where and when and to the extent that class contradictions objectively cannot be reconciled. And, conversely, the existence of the state proves that class contradictions are irreconcilable.

Id.
the market, rules of freedom and equality, and these rules are supposed to repress the impulse to slavery and exploitation. We know this impulse well, it is the impulse of the entire market and all the life within; it is the primal scene of accumulation. The instrument of repression is the vehicle of return. The desires we repress through the rule of law are the desires that return to us upon that self-same vehicle. Pleasure makes us pursue our desire and imagination enables us to pursue our desire to infinity. We project our desires—our disavowed or repressed relationship of white-over-black—across the entirety of time and space and then judge our laws against these ideal forms of our own making. Laws are always interpreted against these uncanny and unearthly forms. We judge our laws from within the cave of our own unknowing and judge them according to the standards of our own disavowed desires.

The rules regarding equality and freedom would not be required were the dispossessed not marked for dispossession. Were there not an omnipresent and perpetual desire for and habit of repeating the original dispossession of the dispossessed, then the dispossessed would have no motive to imagine rules for equality and freedom. Rules for equality and freedom are nonsensical where all is common, they are imaginable only from a situation of dispossession. The omnipresent repetition of the original dispossession means that it has become an orientation, a way of being and a way of training for one and all. If the habit of hatred were not widespread and institutionalized, then the dispossessed would not need to imagine rules for equality and freedom; one need not imagine what one already is in fact. However—and this is vexing—the fact of habitual and institutionalized hatred means that the rule, any rule, will be read in the direction of the hatred that has become habit and institution. The rules, recall, are always available for any reading whatsoever, nothing in the rules themselves can fix their meaning or application. The line flowing out into infinity, into the mystic, is our own desire. Logic is the form taken by repressed desires. Only training and desire fix the rules in any particular direction or meaning. So the dispossessed produce the illusions by which they themselves are deluded. These are the laws of equality and freedom on which the market depends. The dispossessed produce rules fitted for each situation, for each crisis—and there are many crises. Each crisis is averted, and the system, the market, is saved for tomorrow because tomorrow there will be equality, and tomorrow and tomorrow, world without end. The slave thus builds a future for the future good will of its master and, at the same time, a cage for itself.

These endless cycles—C-M-C and M-C-M'—appear to us with neither beginning nor end. Our memories of a before-time, of a time-before-time, seem as unreal as a time before breathing. Our imaginations are compassed by the seeming lack of other possible worlds. All that is, all that can be, all that can ever be, all that has ever been, all, now appears to
be only that which can be accounted for on this timeline, a timeline that has left us, in the words of the great Jamaican poet Claude McKay, "hunted and penned in an inglorious spot."  

A commodity is exchanged for money and the money is exchanged for more commodities. Money is exchanged for commodities and the commodities are exchanged for money. The owner owns means of production—a factory, a forest, an entire world—and offers money in exchange for labor power of a certain time and intensity and direction. The owner is not one. The owner is legion. The legion makes the offer.

The offer cannot be refused. The means of production are owned and that means that they are owned by some and not by all. Those who do not own the means of production—a factory, a forest, an entire world—either die or accept the offer. Hunger, thirst and the elements prey upon those without sustenance and shelter. Further, as people do not live by bread alone, there are many things besides these bare necessities that are required to keep the miseries at bay—roses, for example.

Consent is the offspring of the weapon and the flesh. The offer of a labor contract presupposes a world that is owned by some but not by all. The offer presupposes a world of property. The world of property is one in which violence sustains the class relation whose avatar is the legal relation that is expressed by the offer-acceptance-consideration of the contract.

The social contract negotiated by the subaltern’s struggle for law is a Faustian bargain. Non-knowledge of the fact that the devil always takes his due is the most certain hell. The subaltern creates its own hell. The subaltern unconscious speaks in a Faustian voice through its struggles for equal justice under the law, recall the words of Goethe’s Mephistopheles, “I’d give myself over to the devil, if I were not he himself.”

Some own and some do not. Once upon a time, beyond the time out of mind wherein Social Contracts are said to have been drafted and signed, there was cooperation and a forest full of wonderful things to be found or cultivated or gathered. There were various inventions and enchantments that helped in making life more and more wonderful, and there was as much and as good for all to have and hold as each desired and work that was not the expression and fulfillment of desire was unknown. Once upon a time, but neither now nor on any now-imaginable timeline. No, none of these things are to be found within the original accumulation’s domain of possibilities. There is the original accumulation and there are its endless repetitions; the veils our lived relations wear to hide themselves from our eyes, the uncanny, the self-deception that is the

24. Mark 5.1–20 (King James); Luke 8.26–39 (King James).
rule of law. Within the illusions of the primal scene of accumulation there are meetings of the mind that result in contracts; there are offers and acceptances and considerations, there are Malthusian spurs and invisible hands guiding all toward some ultimate end we are told is for the best in what is presented to us as not merely the only but the best of all possible worlds.

What is to be done? Not knowing is not emancipation. We have a knowing non-knowledge of the primal scene of accumulation. The original accumulation is always a universe, complete onto itself, a monad, and the monads have no windows. What follows is the unfolding of the Middle Passage.

Tooth and talon, iron and steel, blankets and smallpox, free trade and helicopter gunship; all manner of instrumentalities, natural and not, have been used in the performance of the initial accumulation: in the marking of bodies, in the primal scene, in the primitive moment of accumulation. The scene of the inaugural dispossession is untimely, always untimely. It is the emergence of time. The unfolding of this dispossession, its endless unfolding, is the timeline—present/past/future—that the dispossession itself establishes.

The trauma of the mark—the dispossession or negation—cannot be borne. Who can bear it? Who can bear being nothing? How can nothing be? The duration of this impossibility, this negation that limits us, that closes us in, that horizons us, this unbearable world that we shoulder, is something we ourselves have projected in order to make sense of the unthinkable negation—in order to make it intelligible, in order to bear the unbearable burden of objecthood, death. Lost in the labyrinthine ways of our own minds, we mistake symptoms of trauma for the laws of nature and nature's god.

Time, space, and the concepts and categories of the understanding are not innocent. They are symptoms of hegemony. They are the always-belated appearances, apparitions, avatars of the traumatic primal scene of accumulation. They are the forms taken by our unacknowledged disavowals of our lived and exploitative relations. Law, political economy, culture, and so on, seem to tumble out history requiring the equilibrating metaphysicians with their nets to sort things out and set things right. They imagine starry heavens above, moral law within and a goal toward which all history must move. All their imaginings are naught but disavowals of the lived and exploitative relations that give these imaginings the form of logical certainties.

Space, time, causation and all of the categories and concepts of the understanding; all of these come from original accumulation. They are the Big Bang of the original accumulation. The original accumulation is the unseeable frame of all possible events, of all space and time. It is repeated in the endless enclosures. The enclosures are not real in themselves, the
rationality they seem to represent is only the dream that disguises the desire for perpetual exploitation.

In non-revolutionary situations, that is, in situations of unbroken state-monopolized direct or indirect violence, the exploiter and the exploited, together, and each secret from the other, desire to perpetuate their exploitative relationship. The exploiter and the exploited are both possessed by a desire for exploitation. The exploiter loves exploiting the exploited and the exploited love being exploited by their exploiters, and these desires—inculcated and shaped by the lived relation between the top and the bottom—are sublimated in rules of order or laws. These sublimations are no more vivid than in the rules that manifestly declare that all are equally protected by and subject to the laws of the land. The achievement of this sublime state of perpetual peace is a constant struggle.

The slaves struggle for equality. They do so, however, within the unfoldings of the primal scene of accumulation. Their struggle occasions the unfolding of the primal scene. They struggle for equality of right. The slaves' struggle is the struggle for law. The rule of law is nothing other than the endless unfolding of the primal scene of accumulation.

The slaves dream of rights equal to the ceiling of their ambition, the paradise of ownership just above the black forest of their outstretched arms. Recall:

... the more productive capital grows, the more it extends the division of labour and the application of machinery; the more the division of labour and the application of machinery extend, the more does competition extend among the workers, the more do their wages shrink together. In addition, the working class is recruited from the higher strata of society; a mass of small business men and of people living upon the interest of their capitals is precipitated into the ranks of the working class, and they will have nothing else to do than to

26. This essay focuses on exploitation in the non-revolutionary situation, on the way that exploitative relationships are sublimated as equality and due process and rule of law and thus perpetuated and perpetually hidden from scrutiny. Exploitation sometimes results in a revolutionary situation, an end to the monopoly on violence. Just as exploitation sometimes results in law, so too does it sometimes result in revolution. In both situations, the agents are the exploited themselves. As Assata Shakur observed:

Black revolutionaries do not drop from the moon. We are created by our conditions. Shaped by our oppression. We are being manufactured in droves in the ghetto streets, places like attica, san Quentin, Bedford hills, Leavenworth, and sing sing. They are turning out thousands of us. Many jobless Black veterans and welfare mothers are joining our ranks. Brothers and sisters from all walks of life, who are tired of suffering passively, make up the BLA. There is, and always will be, until every Black man, woman, and child is free, a Black Liberation Army.

stretch out their arms alongside of the arms of the workers. Thus the forest of outstretched arms, begging for work, grows ever thicker, while the arms themselves grow ever leaner. 27

The forest is enchanted by rights. In the dark, a black planet imagines ways in which the opportunities of its substitute sun, for which it yearns in all of its myriad branches, are compromised by a colorline and then imagines that the compromise could be otherwise. Equal rights are imagined by the slaves, the ones who bow down before the law and by bowing lend their spirits to the law. All of it is magic thinking.

Race is a mark on the body. Before the mark there can be neither ownership nor class. Before the mark there can be no division of labor, no hierarchy, no law. Hierarchy only occurs within the space and time occasioned by the accumulation that was, in the primal scene, organized around the mark. Space and time and the concepts and categories of the understanding are nothing in themselves; hence, the many paradoxes of so-called pure reason, space and time are rather and merely, the traumatic unfolding of the primal accumulation.

Accumulation marks the transition from violence to right. The mark is the inaugural violence of right. Class formation is racial formation and racial formation is class formation. The mark must be made on the flesh. The mark must be made on the flesh because before the property relation there is only the skin we are all in. It is within that skin that we all begin. Hierarchy must be written on the body before it can be reified or sublimated as property. Before the mark there is only the one. After, there are legion. Before the mark there is only the flesh we have in common. After the mark there are races and sexes, powers and principalities, deaths and possessions. The mark divides the whole into the many. The mark divides all into haves and have-nots. The name of the former is legion. The latter are possessions. Everything after the mark becomes death and possession.

Death and possession, twins born of the same mark, twins born of the union of the legions and their possessions, thus make their appearance in the world. The have-nots are themselves the possessions of the haves. The haves are possessed. They must accumulate ever more or they perish in capitalist competition. Their possessions are the have-nots.

The mark is the end of violence and the beginning of right. The mark is the end of right and the beginning of violence. Violence is the beginning and the end of right. Right is the beginning and the end of violence. The violence is onto death. The violence transforms life into object, into possession, into property, into death. The right transforms this transformation, but only in appearance. The right makes death appear to be life. The science of right is the deceit of Death—"All these things will I

give thee, if thou wilt fall down and worship me.” 28—and also the secret of its sovereignty.

Not knowing is not freedom. Ignorance is not emancipation. Repression is not liberation. What is enlightenment? asked Kant. 29 Having the courage to know! came the answer. 30 Per Kant, knowledge of the “universal laws” governing the phenomena brings with it the:

hope that if we attend to the play of freedom of the human will in the large, we may be able to discern a regular movement in it, and that what seems complex and chaotic in the single individual may be seen from the standpoint of the human race as a whole to be a steady and progressive, though slow, evolution of its original endowment. 31

What is the original endowment but the primal accumulation? The evolution of capital—M-C-M' to M'-C-M'' to M''-C-M''' and so on and on and on—is the demise of the human. This is fitting for capitalism because capitalism is the rule of death over life—living laborers are made to serve accumulated, dead, labor, and they become their labor. They become the death that calls them to labor. They become the death that is the slave’s calling.

The struggle for liberty, equality, and fraternity; the struggle for these things on the terrain of law, folds back upon itself. Each instrument of repression becomes the vehicle by which the passion for inequality returns, and so it goes, white-over-black, again and again and again. Within the event-horizon of the juridical, nothing is possible and resistance is futile.

The slave creates its master. This is the secret of the world. Slavery is perfected only after Emancipation. This is so because only Emancipation allows the slave to fully and completely choose enslavement. The slave chooses enslavement when it bows down before the state to pray for legal relief. The slave bows down and thus perfects its own slavery. This is the alchemy of race and rights: 32 “The devil showed the witch the way, but the devil

29. IMMANUEL KANT, What is Enlightenment?, in ON HISTORY 3 (Lewis White Beck trans., 1981) (1784). Per Kant:

Enlightenment is man’s release from his self-incurred tutelage .... Self-incurred is this tutelage when its cause lies not in lack of reason but in lack of resolution and courage to use it without direction from another .... “Have courage to use your own reason!”—that is the motto of enlightenment.

30. Id.
cannot stoop to brew the potion.” Patricia Williams writes:

To say that blacks never fully believed in rights is true. Yet it is also true that blacks believed in them so much and so hard that we gave them life where there was none before; we held onto them, put the hope of them in our wombs, mothered them and not the notion of them... The making of something out of nothing took immense alchemical fire—the fusion of a whole nation and the kindling of several generations.

Williams writes of the alchemy of race and rights as a form of progress. It is not. It is the tragic repetition of the primal scene of accumulation. Generations of slaves threw themselves into the fire. The many thousands gone, in William’s words, “the kindling of several generations,” have been burned in a hell of their own creation. The white-over-black of the primal scene of accumulation remains the same and the slaves are no closer to emancipation; worse, with every new equality, with every new equation, they lose consciousness of just how put down they are and by whom:

**Witch:**  
See how its done!  
Make ten from one  
The two must go,  
And three is so,  
When four is lost,  
You earn the most.  
From five to six,  
By the witch's tricks,  
Come seven and eight  
In excellent state!  
And nine is lame  
And ten is tame—  
All in the witches numbers-game.

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33. von Goethe, supra note 25, at 155 (lines 2376-77).
34. Id. at line 2392.
35. Williams, supra note 24, at 163.
36. Id.
37. The drama continues:

**Faust:**  
I think the witch is running a high fever.

**Mephistopheles:**  
You've barely heard the half of it.  
I know it well—it is the tenor of her book;  
I used it once and wasted time with it

von Goethe, supra note 25, at 167-69 (lines 2553-57).
"All these things will I give thee, if thou wilt fall down and worship me."38

The slave bows down before the law when it prays for legal relief. The slave’s prayer for equality of right, for due process, for the rule of law, is always already granted. The rule of law is the slaves’ own creation. It is the sigh and submission of the oppressed creature. The slave imagines a world in which it is not made to bear the mark. It imagines a world in which rights are equal and it fashions its prayer in the form of a rule. And then it gives that rule to its rulers. Its rulers, of course, rule against it. And so the slave must begin again and again and again, ever into the mystic. The slave creates the law, the monopoly of violence that keeps white-over-black, by bowing down in prayer for legal relief. The slave’s fundamentalist faith in the future good will of its master makes unnecessary the General Strike of tomorrow and tomorrow and tomorrow. Thus is the immortality of the original accumulation and its avatars, law and property, assured.

Rules do not determine the circumstances of their own application. Rules regarding the application of rules do not determine the circumstances of their own application. Furthermore, a rule for the application of rules cannot solve the problem of indeterminacy for that rule; the rule for the application of rule will also be incapable of determining the circumstances of its application and so on. The rule of law is an idea produced in the slave by the unbearable suffering occasioned by the dispossession, by the original accumulation. The rule will always be directed against the slave and the slave has knowing, non-knowledge of that fact. If the habit of directing all against the slave were not general and institutionalized then the slave would never have imagined the rule. Since the habit of directing all against the slave is general and institutionalized the rule will be read against the slave. The rule, recall, cannot determine the circumstances of its own application. Its meaning is a result of our training.

Our institutions show us the sum of our training. Our institutions, under the colorline, are colorlined. The rule formulated by the slave to repress the desire for white-over-black becomes the vehicle for the return of that same desire. The slave formulates the rule, pursues the alchemy of race and rights, chases after phantoms, in order to hide from its own shameful desire for the perpetuation of slavery. The slave, like the master, has been trained in white-over-black. Recall Faust’s fright at a peculiar dog that enters his laboratory where he pursues his alchemical experiments; “I think he’s softly weaving coils of magic for future bondage round our feet.”39 Faust dismisses his own fright; “I cannot find a trace of any ghostly thing. It’s all his training.”40 Faust heeds the words of his friend Wagner: “A simple dog well-trained to heed commands may even earn a learned man’s affection. Yes indeed, he quite deserves your favor as a student and a fellow

38. Matthew 4:9 (King James). See also, Luke 4:7 (King James).
40. Id. at lines 1172–73.
The slave’s pursuit of the juridical form is its own coded desire for continued slavery. What dedication:

Wavering forms, you come again;
Once long ago you passed before my clouded sight.
Should I now attempt to hold you fast?
Does my heart still look for phantoms?
You surge at me! Well, then you may rule . . . . 42

The word for world is forest or plain or valley or mountain or something else that is forever. And then the forever of the world is smashed into then and now and tomorrow and tomorrow and tomorrow. And then the world of forever is smashed into mine and yours, his and hers, theirs and ours, possessor and possession. These broken bits, the relationships, are taken to be elemental, constituent parts of a whole. But the whole which they appear to constitute is not the same whole that was smashed to make them. It is not the original whole but rather a false unity pulled over our eyes to blind us to what has been and what might be.

The mark is and then all else is not. The mark is and then all else is for naught. The mark is and all else becomes nothing, for nothing can come before the mark. The mark produces its own past and its own future and its own present. Possession becomes the world’s past and its future and its present. Death thus becomes the world. The mark is the end of the world.

The mark is a wound. Those who would own must gather together as one in order to mark the others for dispossession. The mark of dispossession must be written on the body because that is where the dispossessed are to be penned. The dispossessed are the prisoners of their bodies. The mark appears as the key. Race is the mark of dispossession, it is written on the skin or found there ready-made. The dispossessed Other is never allowed to stray outside of the prison of the skin (e.g. a Black doctor, a Black criminal, a Black). The mark changes the skin and that within into a thing, a possession, a commodity.

Prior to the mark, the skin we are in holds us all in common. We are all flesh. Flesh is one. Flesh is each and everyone in common. The violence of the mark is directed against the common, the commons. The violence of the mark aims at the transformation of the commons into the property of some and not others, into mine and yours and neither his nor hers. The violence of the mark means that ours becomes not theirs. Property follows the mark. Law is the repressed memory of this deathly injury and its mode of repetition.

The dispossessed reproduce the mark through their struggle for law. The rule of law is the traumatic repetition of the mark.

41. Id. at lines 1174–77.
42. Id. at lines 1–5.
Those who would own gather together as one, as Leviathan, as a corporate body, in order to oppose those soon-to-be marked as Other to the owners. One who would own must first become one with others who share the desire to own. One person cannot own another because any such slavery, with its Jacobins and Maroons, murders sleep for any would-be master. When sleep comes to the master, freedom comes for the slave. While the master sleeps, the captive may overwhelm or escape. To overcome the Terror and Maroonage of sleep, the one who would own must first become many and the many must then become as one. The many become one through the mark. The many become one in order to own. Ownership of things presupposes ownership of people and the transformation of people into things, which amounts to the same thing, and such ownership requires violence.

Property requires slavery. Ownership of things is first of all ownership of people. The institution of property requires the institution of property relations. Property relations are relations between people that are looked upon as if they were relations between people and things.

The would-be owner enters the commons and says “This is mine!” The statement, “This is mine!” is only sound and fury until its signification is fixed by violence. Such signifying violence, no matter how strong its individual perpetrator may be, may always be returned or evaded by its victim while its originator sleeps, and thus come to naught. And sleep does come. Thus, the one who would own must first become the many and then the many, the ones who would own, must become as one. The many become as one through the mark. They must do so in order to own because ownership of things is first ownership of people-turned-into-things and such ownership requires a violence that does not fade with the sleep of its author. The violence of ownership is a fire that must be constantly tended. Leviathan, the monopoly of violence, the state, does not sleep. Leviathan is a jealous and punishing god. The dispossessed are its chosen people. Leviathan exists only as a result of their prayers.

Property relations are relations between people, between owners and non-owners, in which the owners come to own the non-owners’ labor-power. This power resides only within the skin of the non-owners, as if that power were a thing separate or separable from its fleshy host and therefore alienable. One owns a thing, for example, land, and some other does not own that particular thing. The property, land, is a relation between owner and non-owner that is treated as if it is a relation between each and the land. The owner and non-owner exist in a hierarchal relation to each other that may be observed through the lens of the property said to be the possession of the former and not the latter. The relation, the dominion of the owner over the non-owner vis-à-vis that land, is set in

See, e.g., V.I. Lenin, State and Revolution (Foreign Languages Press 1976) (1917).
place by violence directed against the non-owning class by the owning class. The violence is a special violence that performs its task by indirection; it is directed against the non-owning class as if it were directed against everyone and it is directed on behalf of the owning class as if it were directed for the property. The property right, and its place in the matrix of class relations laid down in law, is protected as if such protection were the protection of the peace of all through the protection of some mysterious quality residing within the property. The owning class is protected as if such protection were the protection of all people and not merely the protection of a master-class residing within and above the dispossessed, a master-class that dare not speak its name.

Ownership is enclosure. The commons is divided—smashed and then fitted—into endlessly varied enclosures. Everything comes to be owned, even the conditions required for life itself. Some own only the skin that they are in. Under conditions of general ownership, that is, where ownership has expanded to the point at which the maintenance of life itself requires submission to the rule of ownership, the force of circumstances leads those who own nothing but the skin that they are in to sell that which resides only within their skin, their labor-power, their bodies, themselves. This force of circumstances is capitalism. Capitalism is enclosure. This is mine or ours and not hers or theirs. Enclosures presuppose an original accumulation, a Middle Passage or a Manifest Destiny, to give two examples. The original accumulation presupposes a marking of the flesh, Black and Red, to give two examples corresponding to those of the preceding sentence. The original accumulation creates past, present, and future out of the ruptured timelessness of the commons.

When the means of production are not owned by all, when life is not lived in common, when life is not lived according to the maxim from each according to her abilities and to each according to her needs; when there is possession and dispossession, then some are necessarily left without the means by which to reproduce their lives. And this lack, this force of circumstances, this dispossession, leads the dispossessed to sell themselves on the market. In this moment, the original capture, the original accumulation, the original dispossession, is represented as freedom, freedom of contract, freedom of choice, freedom. Dispossession is death but the dead do not always know that they are dead. Revolution is an awakening back into life, but that is to take a great leap forward from this point in this exposition. Those who have been dispossessed of all but the skin that they are in have, in fact, also been dispossessed of that skin, but not of the (false) idea that it (that skin) is (still) theirs in which to dwell. They have been dispossessed of themselves and the mark of dispossession is what they bear on their skins. They, the marked ones, are made by the force of circumstances represented in the mark to experience dispossession and death as choice, as life, as subjectivity, as freedom. These, their so-called
freedoms, are experienced when they, seemingly as an act of choice or of will, join in the workers' commonwealth of toil. They join the commonwealth of dispossession by entering into agreements with their masters. This is the great acceptance, the slaves' affirmation of slavery. These are all the days before the General Strike.

The owners offer the dispossessed the opportunity to work. The dispossessed bargain with owners for certain wages, hours and working conditions. The dispossessed compete against each other to become the possessions of the owners. And this feels like freedom to the dispossessed, who have nothing other than dispossession, the death they already died, to compare to this shadow of another shadow. The dispossessed do not know that they are already the possessions that they will become. This is the way that the eternal, the totality, is smashed into a past, a future and a present of capital.

The dispossessed and the owner reach an agreement, a shadow of the Social Contract, the shadowy source of the Social Contract, and under its terms the dispossessed agree to perform a task for the owner for a certain value. The value that the owner provides to the dispossessed will be less than the value that the dispossessed provides to the owner. This is not an exchange; rather, it is an exploitative relationship that is represented and treated as an exchange between the owner and dispossessed alike.

The dispossessed works for an owner and the owner derives a value therefrom. Part of that value is absorbed by the production to yield the new value (such as consumption of the materials used in the course of production). Part of that value is promised to the dispossessed in exchange for labor-power. Time appears as a measure of value: If the dispossessed works from 9 am to 5 pm then it may be the case that the dispossessed has generated a value from 9 am to 11 am that accounts for the value of whatever other instruments of production are involved in the work performed. It may be the case that from 11 am to 2 pm the worker has generated an additional value in the amount of the value that the owner has promised to provide the dispossessed “in exchange” for the labor performance. The performance of labor, the performance of dispossession, however, does not end at 2 pm; it continues until, let us say, 5 pm. A question appears: What happens to the surplus value generated by the worker between 2 pm and 5 pm?

The dispossessed is dispossessed of that value. That surplus value, its accumulation by the owner, is the expression of the disavowed relation of the owner to the possession; the dispossessed is the possession of the owner. Dispossession, then, is the relationship between the owners and the dispossessed. The dispossessed are not free. This, their lack of freedom, however, they disavow. The dispossessed are property but this, too, they disavow. The dispossessed disavow their dispossession. The struggle for law is their (failed) dispossession of their own dispossession.
The dispossessed work for free but they are not free. Their free work can never make them free. The dispossessed do not freely perform their free work; rather, they perform according to the force of circumstances, the force of the original dispossession, within the fold of the original or primal accumulation, all of which is a tale foretold in the hieroglyphic of the mark that designates those who are to have nothing but the skin they are in.

In the beginning, the mark must be made or found ready-made on the skin. In the beginning, there is the one; all flesh is as one, undivided, undifferentiated. The one becomes the many after and through the mark. The mark is forced upon the flesh that it divides into owner and owned. The mark, its violence, the force of circumstances, the original or primal accumulation, is traumatic. It is, therefore, unremembered or repressed. The trauma of the primal scene, the original accumulation, is unremembered in the mode of repetition.

The owners are the inheritors of the primal accumulation. The dispossessed are the inheritors of the primal dispossession. The primal accumulation is accomplished through the marking of others for dispossession. The line between owner and owned, between person and thing, is fixed by the mark. On one side are things (fixed and variable capital), and on the other side are owners, capitalists.

The primal scene of accumulation is the beginning of the class contradiction between markers and marked. As on a darkling plain, ignorant armies clash over equal rights and rule of law. Rights cannot be equal. There is no rule of law save as the disguise for the rule of one group over another. What is called class is not class. What is called race is not race. Slaves chase after shadows of their original dispossession. Slave criticisms, including most critical race theories, are but reenactments of the original dispossession by those inhabiting the universe created, bound, and bounded within the horizon of dispossession. White-over-black to white-over-black to white-over-black, world without end.

The slave pretends to itself that it has captured its tormenter:

**FAUST:**  You my prisoner? Well I'll be damned!  
It seems I've turned a handsome profit!

**Mephistopheles:**  The dog knew nothing when he first jumped in;  
But now the tables have been turned;  
The devil's caught and he cannot leave the house.

**FAUST:**  Why can't you slip out through the windows?  

**Mephistopheles:**  A hellish law stands in the way:  
Wherever we steal in we must steal out.
We’re free to choose the first, but the second finds us slaves.

FAUST: So Hell itself has its legalities? 

The slave pretends that it has turned the tables on Mephistopheles. The slave thinks it can bargain with the devil for a Social Contract. The slave mistakes the part that it plays in the drama. The slave is itself the devil to whom it offers up its soul. The slave is caught within the windowless monad of its soul, the soul it surrenders to fashion the very system by which it is tormented. Hell itself has its legalities. The spirit is surrendered. The slave gives up the ghost. The specter begins its haunt. The system of capital acquires a spirit. The slave leaves its marked flesh behind but it can never get far enough away from the skin it is in. Indeed, all it has is that self-same skin which, by force of necessity, it must alienate in the market. And it is that very market that the slave maintains through the enabling-fictions of freedom and equality, legality and rule of law that it is its profession to produce. The master feels freedom in the seemingly frictionless transit of his thoughts through the subaltern classes at his command. The slave feels its freedom in and through its seeming escape from the flesh to the noumenal world as it universally legislates for the kingdom of ends, a kingdom that is always coming but never comes. So the instrument of repression is the vehicle of return and desire has its way. The desires of the master become flesh and that flesh begets thought and that thought is naught but the thought of the flesh, its pleasures and its chastisements, forever and ever and ever.

44. Supra note 25, at 88–89 lines 1406–13.