

## CRITICAL RACE THEORY AND MARXISM: TEMPORAL POWER

*Anthony Paul Farley\**

*Hope is the thing with feathers  
That perches in the soul—  
And sings the tune without the words—  
And never stops—at all—<sup>1</sup>*

Modern progress is “the thing with feathers.”<sup>2</sup> Cruelty to children is its line of flight. It “never stops—at all.”<sup>3</sup> But it never gets anywhere. And if it is true that it never asks for anything, that is only because it has already taken everything, and more.<sup>4</sup>

Modern progress is neither modern, nor progressive. It was doomed from the beginning.<sup>5</sup> The beginning is not remembered.

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<sup>1</sup> EMILY DICKINSON, *Hope is the thing with feathers*, in *THE COMPLETE POEMS OF EMILY DICKINSON* 254 (Thomas H. Johnson ed., 1976).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> KARL MARX, *CAPITAL* (Volume I) 915 (Ben Fowkes trans., 1990) (1867).

<sup>5</sup> The Industrial Workers of the World sang of this already experienced and endlessly repeated doom:

We have fed you all for a thousand years  
For that was our doom, you know  
From the days when you chained us in your fields  
To the strike a week ago.

But nothing is lost, nothing is forgotten. The traumatic beginning is preserved, but only in the mode of repetition. Repetition is not progress.

This Essay on modern progress spins out of Marxism a theory of time about which Marxism itself has remained largely unconscious. Marxism is a theory of the *already-taken*. Critical Race Theory has as its animating spirit, its haunt, a related—but up until now only latent—temporal theory of the *already-taken*. The unconscious, we learn from psychoanalysis, does not know time; it is timeless. The authority of law comes to us from this same time out of mind. The four corners of this Essay's theory of the *already-taken* are Marxism, Critical Race Theory, psychoanalysis, and jurisprudence. The *already-taken* is the unconscious of law.

There are things that sometimes happen in childhood, cruel things, that are forever. These cruel things forever pursue us with “deliberate speed, majestic instancy,”<sup>6</sup> or so it seems. These things that are forever become so by catching us unawares, before we are prepared to be anything but overwhelmed. The injury to the child is forever: “To separate them . . . solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”<sup>7</sup> If *childhood* is a name for not-yet-prepared-for-the-Furies, then *forever* is a name for the memory that eludes us.

The experiences we have as a group are neither the same as nor the sum of our individual experiences. *We*, to the extent we are *the people*, have a capacity for shared experience, a collective unconscious, a pool of dreams, a common sky. If we can look at the larger object to find out more about the smaller object, then it may also be possible to look at the object that is closer to find out more about the object that seems to be more distant. Like waves and particles, this debate goes on and on. But if philosophy matters at all, then this debate, with its long history since Plato's *Republic*, authorizes this Essay's movement back and forth from the individual to the collective in search of lost time.<sup>8</sup>

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Poem by An Unknown Proletarian and Music by Rudolph von Liebich, *We Have Fed You All for a Thousand Years*, in *REBEL VOICES: AN IWW ANTHOLOGY* 28, 29 (Joyce L. Kornbluh ed., 1998).

<sup>6</sup> FRANCIS THOMPSON, *THE HOUND OF HEAVEN* 39 (Nabu Press 2010) (1893).

<sup>7</sup> *Brown v. Board of Ed.*, 347 U.S. 483, 494 (1954).

<sup>8</sup> One recalls Socrates and his interlocutor on the subject of justice:

What of the above-mentioned common sky? There were certain cruelties that fell upon us—as if from the sky—when we were not yet ready. We cannot now *recall* these cruelties, but the wretchedness of our present condition points us in the direction of a past that must have been filled with them. What were the cruelties that fell upon us so heavily? We did not know what to *call* them when they originally occurred—we were surprised, speechless—and so we do not have a way to recall them now. What we cannot remember, we repeat.

Repetition is the mode in which we preserve that which overwhelms us. That which overwhelms us sets itself up in our soul as a repetition of what seems to have been the original catastrophe. We become a permanent wave of our own undoing.<sup>9</sup> But the precise nature of our own trauma continually eludes us. We give chase, but only through repetition. We become what we do and this fact of repetition makes what was said of us, “they know not what they do,”<sup>10</sup> true. What we do is repeat the disaster that originally left us traumatized. Through repetition we become the very disaster that was our original, albeit unremembered, disaster. It was unspeakable. It remains unsaid. But the cruelty from which we imagine ourselves escaped is what we become, and that which we continually make of ourselves.

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Is not the city larger than the man?

It is larger, he said.

Then, perhaps, there would be more justice in the larger object, and more easy to apprehend. If it please you, then, let us first look for its quality in states, and then only examine it also in the individual, looking for the likeness of the greater in the form of the less.

THE REPUBLIC: 368c-369a, in THE COMPLETE DIALOGUES OF PLATO 615 (Edith Hamilton and Huntington Cairns eds., 1973).

<sup>9</sup> Political melancholia, well-articulated by the Pixies, resembles a wave:

Cease to resist, giving my goodbye  
 Drive my car into the ocean  
 You'll think I'm dead, but I'll sail away  
 On a wave of mutilation  
 A wave  
 Wave.

THE PIXIES, *Wave of Mutilation*, on DOOLITTLE (4AD 1989).

<sup>10</sup> Luke 23:34 (King James).

There are cruelties that happen to us as individuals (“[a]nd I only am escaped alone to tell thee”<sup>11</sup>) and there are cruelties that happen to us as collectives (“[l]et my people go”<sup>12</sup>). What happens in the individual can happen to the collective and so, as the long story of philosophy verifies, each is a window to the other. The individual is not the unity it is often imagined to be (“[m]y name is Legion”<sup>13</sup>), nor are the borders of the collective as distinct as they are often imagined to be (“[t]hings fall apart”<sup>14</sup>). Nevertheless, it is useful to speak of the individual (“I think, therefore I am”<sup>15</sup>) and the collective (“[w]e the people . . .”<sup>16</sup>) when what is hard to see in the one is easy to make out in the other.

Our beginning was the scene of an unspeakable event. That unspeakable event keeps repeating. Capital arrived in the world “dripping . . . with blood and dirt.”<sup>17</sup> If, as Margaret Thatcher infamously put it, “There is no alternative”<sup>18</sup> to capitalism, then there must not have been a time before capitalism. Capital, like trauma, is outside of history, outside of the world of things that change, or so it claims by asserting that there is no alternative. The fact that capitalism presents itself to us as a horizonless world should give us pause. But it does not give us pause: We are on the clock—repeating and not living—and so we go on and on not thinking at all about *Modern Times*, just repeating.<sup>19</sup>

Marxism has as its zero degree the disclosure of the unspeakably cruel event that threw the modern world up all around

<sup>11</sup> Job 1:15-17, 19 (King James).

<sup>12</sup> Exodus 5:1 (King James).

<sup>13</sup> Mark 5:9 (King James).

<sup>14</sup> WILLIAM BUTLER YEATS, *The Second Coming*, in THE COLLECTED POEMS OF WILIAM BUTLER YEATS 200 (Richard J. Finneran ed., 1996); CHINUA ACHEBE, THINGS FALL APART (1958).

<sup>15</sup> For an extended discussion of Descartes and slavery, see Anthony Paul Farley, *Johnnie Cochran’s Panther: An Essay on Time and Law* 33 T. MARSHALL L. REV. 51 (2007).

<sup>16</sup> For an extended discussion of the Thomas Jefferson’s *Declaration of Independence*, Mary Shelley’s *Frankenstein*, and slavery, see Anthony Paul Farley, *Perfecting Slavery*, 36 LOY. U. CHI. L.J. 225 (2004).

<sup>17</sup> MARX, *supra* note 4, at 926.

<sup>18</sup> William K. Tabb, *Transnationalization, Class and the State*, in THE POLITICS OF GLOBALIZATION 98-99 (Samir Dasgupta & Jan Nederveen Pieterse eds., 2009) (a critique of Thatcher’s neoliberal doctrine that *there is no alternative* to capitalism).

<sup>19</sup> *Modern Times* brilliantly and humorously depicts capital’s destruction of time. See *Modern Times* (Charlie Chaplin Dir., United Artists 1936).

us. Its name is Legion,<sup>20</sup> but three were introduced in *Capital's* first volume with these birthnames: genocide in the New World, colonialism in the Orient, and the conversion of the Dark Continent into a hunting ground for slaves. These three mass murders were race-making moments. These three mass murders were the original accumulation, the first capital. These three mass murders made capitalism a world system.

Modernity is the repetition of the original accumulation. We are, in other words, still in that original moment to the extent that we are modern and have always been modern. Time has not passed. We passed out of the time of the real and into the false eternity of the spectacle. As psychoanalysis revealed:

A condition has long been known and described which occurs after severe mechanical concussions, railway disasters and other accidents involving a risk to life; it has been given the name "traumatic neurosis." The terrible war which has just ended gave rise to a great number of illnesses of this kind . . . The chief weight in their causation seems to rest on the factor of surprise.<sup>21</sup>

Before World War I, Josef Breuer and Sigmund Freud observed, "Hysterics suffer mainly from reminiscences."<sup>22</sup> After the war to end all wars, Freud wrote:

In the war neuroses, too, observers . . . have been able to explain certain motor symptoms by fixation to the moment at which the trauma occurred. I am not aware, however, that patients suffering from traumatic neurosis are much occupied in their waking lives with memories of their accident. Perhaps they are more concerned with *not* thinking about it.<sup>23</sup>

History is this way for us as a collective. We are much concerned with "*not* thinking about it."<sup>24</sup> Uranus is castrated by Cronos. The open sky is violated by the desperate hours. Call the perpetrator and

<sup>20</sup> Mark 5:9 (King James).

<sup>21</sup> SIGMUND FREUD, *Beyond the Pleasure Principle* (1920), in THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD, VOL. XVIII (1920-1922), at 12 (James Strachey ed., 1971) [hereinafter FREUD, THE STANDARD EDITION].

<sup>22</sup> JOSEF BREUER AND SIGMUND FREUD, *Studies on Hysteria*, in FREUD, THE STANDARD EDITION, VOL. II, *supra* note 21, at 7, 221.

<sup>23</sup> FREUD, *Beyond the Pleasure Principle*, in FREUD, THE STANDARD EDITION, VOL. XVIII, *supra* note 21, at 13.

<sup>24</sup> *Id.*

the violated by their Greek names or by any other names and the scene remains the same: blood rains down on the water, and from that meeting the *Furies* are born. The Furies—unceasing Alecto, resentful Tisiphone, avenging Megaera—immortals all, are born of that meeting of blood and water, and are forever punishing violations of the order that allows “no alternative.”<sup>25</sup>

James Baldwin understood the Furies:

History, *as no one seems to know*, is not merely something to read. And it does not refer merely, or even principally, to the past. On the contrary, the great force of history comes from the fact that we carry it within us, are unconsciously controlled by it in many ways, and history is literally present in all that we do. It could scarcely be otherwise, since it is to history we owe our frames of reference, our identities, and our aspirations. And it is with great pain and terror that one begins to realize this.<sup>26</sup>

The time that seems to pass only *seems* to pass. Baldwin understood false time. Baldwin understood that this false time of ours is not even “ours”; it is the time of the spectacle.<sup>27</sup> We belong to it, not the other way round. What is the “spectacle”? The spectacle is the system’s endless hymn of self-praise. When we have been here 10,000 years / bright shining as the sun / we will have no less time to sing its praise / than when we’d first begun. That is the spectacle. We are within the false time of the spectacle, within the repetitions.

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<sup>25</sup> Tabb, *supra* note 18, at 98-99.

<sup>26</sup> JAMES BALDWIN, *The White Man’s Guilt* (1965), in JAMES BALDWIN’S COLLECTED ESSAYS 722, 723 (1998) [hereinafter JAMES BALDWIN’S COLLECTED ESSAYS].

<sup>27</sup> Guy Debord observed:

Workers do not produce themselves; they produce a force independent of themselves. The success of this production, that is, the abundance it generates, is experienced by its producers only as an abundance of dispossession. All time, all space becomes foreign to them as their own alienated products accumulate. The spectacle is a map of this new world—a map drawn to the scale of the territory itself. In this way the very powers that have been snatched from us reveal themselves to us in their full force.

GUY DEBORD, *THE SOCIETY OF THE SPECTACLE* 23 (Donald Nicholson-Smith trans., 1994) (1967).

The repetitions are spectacular time. We do not live spectacular time, we only repeat, and repetition is not living.

The death event that produces the first capital begins with a mark made or found ready-made on the body:

The discovery of gold and silver in America, the extirpation, enslavement and entombment in the mines of the indigenous population of that continent, the beginnings of the conquest and plunder of India, and the conversion of Africa into a preserve for the commercial hunting of blackskins, are all things which characterize the dawn of capitalist production.<sup>28</sup>

Before the great death event all flesh is common. After the event a mark, insignificant in itself, is made to signify life or death. The mark is a line, a colorline, which separates life from death and connects *now* with *then*. After the mark life becomes *having* and *not having* becomes its opposite. After the murders reach a certain mass, death follows in an unbending line from now till then, and *then* becomes a hole in the universe, a hole through which we fall and are *now* falling, forever.<sup>29</sup>

The New World was not new before the killing. The blacks were not black before the killing. The colonized were not colonized before the killing. The murders constitute and mark a new species. The production of race is the production of a race that is to *have* and another race, subordinate to the first, that is to *have not*. The abundance belonging to the *One* and the lack that is the chief property of the *Other* are conjoined twins, born of the same unspeakable event. The black can trace its origin only as far back as a bill of sale. James Baldwin, speaking in London, was clear on this point:

I tried to explain that if I was originally from [an African point of origin] I couldn't find out where it was because my entry into America was a bill of sale. And that stops

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<sup>28</sup> MARX, *supra* note 4, at 915.

<sup>29</sup> Anthony Paul Farley, *Shattered: Afterword for Defining Race, A Joint Symposium of the Albany Law Review and the Albany Journal of Science and Technology*, 72 ALB. L. REV. 1053 (2009) (a mass death events—e.g., genocide, colonialism, slavery—creates a singularity, an unthinkable opening or hole in the universe, akin to the black hole, through which we, the so-called living, fall, spinning around and around, forever).

you from going any further. At some point I became *Baldwin's Nigger*.<sup>30</sup>

But is the same for the white? The *bill of sale* is the official screen memory of the mass murder that is the origin of capital. The *bill of sale* is the alpha and omega of law. The *bill of sale* is a death certificate, ours. The *bill of sale* is the recording angel assigned to the children of slaves and children of slavemasters. The legality of that *bill of sale* is what keeps the chains, the genealogies of property that bind now to then, and all of us to the repetitions, together.

Law is the work of screening the original accumulation from consciousness. The *bill of sale*, a paper that somehow connects a person to a property, is an atomic proposition of law. To see the connection between a person and a property as *legal* requires us to see that connection, the *legal* connection, as something other than “pain and terror.”<sup>31</sup> This is so even though the connection is in fact nothing other than pain and terror, nothing but the *why* of the mass murders that gave rise to the first capital, nothing more than talon and tooth, and nothing other than a matter for the Furies.

The *bill of sale* is part of a system. The *bill of sale*, its system, designates haves and have-nots. Those who have, have. Those who have not, have not. Like law and right, having and not having are inherited. The original sin of property—the original accumulation—thus repeats itself in our progeny.

What does the slave inherit upon legal emancipation? The slave inherits nothing. The ex-slave, now a laborer, enters the marketplace with nothing. Having nothing, the ex-slave has nothing by way of bargaining power. The move from chattel slavery to wage slavery is therefore not a move at all. Legal emancipation is not progress. The wage system is not progress. The movement from status to contract is not progress. All of this is only slavery repeated as wage-slavery.

We are still within the time of the spectacle, the time of slavery, the time of the undiscovered country. Slavery to contract is the non-progress of white-over-black to white-over-black. White over black is slavery, slavery is death, death only, and that continually. The slave, having nothing of her own, finding herself in the world that regards her labor-power as a commodity among other

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<sup>30</sup> *Baldwin's Nigger: A Film Recording of a Discussion at the West Indian Student Centre London*, produced and directed by Horace Ove (1969).

<sup>31</sup> BALDWIN, *The White Man's Guilt*, in JAMES BALDWIN'S COLLECTED ESSAYS, *supra* note 26, at 722, 723.



commodities, is compelled to go to the marketplace to sell her skin, her skin is what her labor power is wrapped in. Because the slave has nothing by way of bargaining power, the slave can expect nothing from the marketplace, as Marx observed, “but a hiding.”<sup>32</sup>

The Furies are our compulsion to repeat. We are possessed by a screen memory. The screen memory of the *bill of sale* is legality or rule of law. Rule of law is the system’s enabling myth. The myth presents law’s authority as something other than the genocide, colonialism and slavery.

There is no such thing as race unless there is first an act of mass murder that attaches the mark of race to capital. That is the sin of capital; capital requires mass murder and it makes race out of that mass murder. The race born of this is always divided in two, one race with an abundance and the other race with a lack. The latter race, the one with the lack, is forced by force of arms to silently suffer or to work for a legal equality that must, as a matter of maintaining what appears in the form of race, the very sign under which they gather, appear to be the order of the universe, be denied in ever more clever ways. Striving for equality within the boundaries authorized by the very system that has attached race to lack, the race with the lack succeeds only in forgetting:

The patient cannot remember the whole of what is repressed in him, and what he cannot remember may be precisely the essential part of it . . . He is obliged to *repeat* the repressed material as a contemporary experience instead of . . . *remembering* it as something belonging to the past. These reproductions, which emerge with an unwished for exactitude, always have as their subject some portion of infantile sexual life . . . that are invariably acted out in the sphere of the transference, of the patient’s relation to the physician.<sup>33</sup>

Psychoanalysis, the talking cure, has as its object of study—the queer contents—the unspeakable event. The unspeakable event, in other words, is what we talk about when we talk about psychoanalysis. That is why psychoanalysis, to the extent it operates as a cure, has always to do with “other words,” words other than what we *meant* to say. The cure for the individual may be the cure for the group. The talking cure proceeds by freeing the analysand’s

<sup>32</sup> MARX, *supra* note 4, at 280.

<sup>33</sup> FREUD, *Beyond the Pleasure Principle*, in FREUD, THE STANDARD EDITION, *supra* note 21, at 18.

speech from the usual constraints of propriety and relevance. Once free to roam the enclosure of the analytic space, the analysand's speech sometimes returns to its source. When the analysand's speech returns it does so in the shape of whatever it was the analysand had previously not allowed herself or himself to know. Thoughts and feelings from one moment in time are transferred onto the person of the analyst. The transferred thoughts and feelings, transferred to the person of the analyst, may show the analysand, by not fitting, just how much *work* she or he has done to make those feelings appear to fit. The theatre of transference 'shows' the analysand a way out of her or his temporal tangle.

There is a temporal power that is exercised within time. There is also a temporal power that is said to be eternal, and exercised outside of time. This Essay concerns neither the power that is exercised within time, nor the power that is said to be exercised outside of time. *Temporal power*, as that term is used herein, is the power that is exercised over time itself. This is an essay about temporal power.

Time is created. Time can also be destroyed. If modernity is the "drawing of a line," then color and time are not parallel, they are self-same, the one is also the other one. Trauma is another word for destroyed time. So is repetition. The repetitions are another mode by which we destroy time. We live the horizonless trauma and experience constant repetition of unremembered experience as the passage of time. But it is not the passage of time, it is only repetition. Modern progress is a line of destroyed time, a line drawn in sand that has already slipped away. Modern time is not time; it is destroyed time, spectacular time. Modern progress is not progress at all. Life moves on. But progress does not move. Modern progress does not progress. Modern progress can only repeat, endlessly, and repetition, however endless it may be, is not life, it is a line, a timeline, every segment of which is as identical to the rest.

It does not have to be this way:

This earth divided  
We will make whole  
So it can be  
A common treasury for all.<sup>34</sup>

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<sup>34</sup> LEON ROSSELSON, *The World Turned Upside Down, on THE WORLD TURNED UPSIDE DOWN: ROSSELSONGS: 1960-2010* (PM Press 2011).

Memory is a first step to making this earth whole. And this is what is to be remembered about the genealogies of property represented by “the bill of sale”:

By theft and murder  
They took the land  
Now everywhere the walls  
Rise up at their command.<sup>35</sup>

The Furies overwhelm us, but we do not know their names. We do not even know that we have been overwhelmed. These cruelties are forever, but we do not yet know what immortality means. We think that we are “full of the hope that the dark past has taught us”<sup>36</sup> Frantz Fanon wrote of the “moment when tenacity becomes morbid perseverance.”<sup>37</sup> At such a moment, “[h]ope is then no longer an open door to the future but the illogical maintenance of a subjective attitude in organized contradiction with reality.”<sup>38</sup> What is childhood, properly speaking, but the moment when “the door” is in reality open to the future? A dead child is a dead childhood and a childhood must and cannot be replaced, and so “our need for consolation is insatiable.”<sup>39</sup>

We who dwell within slavery’s global shadow were strangled in our crib. That was the original accumulation. Genocide in the Americas strangled us in our crib. Colonialism strangled us in our crib. Slavery strangled us in our crib. The original accumulation strangled us in our crib. The original accumulation was an

<sup>35</sup> *Id.*

<sup>36</sup> This phrase from the James Weldon Johnson poem, “*Lift Every Voice and Sing*,” was set to music by his brother, John Rosamond Johnson, in 1905 and first performed as a poem on Abraham Lincoln’s Birthday on February 12, 1900, by 500 segregated black schoolchildren. Johnson wrote the poem in order to introduce Booker T. Washington, the famous advocate of black compromise with segregationist white power. Once set to music, however, it became known as the “black national anthem.” From 1905 to now, it has sung by African Americans on ceremonial occasions. The poem, which arrived in the world the same year as Sigmund Freud’s *Interpretation of Dreams*, is a window into what W. E. B. Du Bois called “The Souls of Black Folk.” See generally SIGMUND FREUD, *The Interpretation of Dreams* (1900), in FREUD, *THE STANDARD EDITION*, VOL. IV; *supra* note 21; W. E. B. DU BOIS, *THE SOULS OF BLACK FOLK* 3 (1989) (1903).

<sup>37</sup> FRANTZ FANON, *Letter to the Resident Minister* (1965), in *TOWARD THE AFRICAN REVOLUTION* 52, 53 (Haakon Chevalier trans., 1988).

<sup>38</sup> *Id.*

<sup>39</sup> STIG DAGERMAN, *Vårt behov av tröst är omätligt* [“Our Need for Consolation is Insatiable”], in *ESSÄER OCH JOURNALISTIK* (Norstedts 1983) [hereinafter DAGERMAN, *Our Need for Consolation*].

unspeakable crime, a wave of mutilation. We do not and cannot know the infinite structures of feeling that were destroyed by the original accumulation. We do not have the words. Even the languages of the dead were taken. What happened was and remains unspeakable, even for the dead, and so we do not remember; instead, we repeat, which is not living.

No one can be ready for the original accumulation. If there is any measure or name for not ready, or not-yet-ready, then it is childhood. *We the people* were, therefore, in our crib when the unspeakable cruelties of the original accumulation fell upon us. The Furies fell upon the child we were. The child we were had no hope of understanding what was happening when it was taken up, when the Furies fell upon it. How to put the original accumulation into words when the words themselves were taken out of the commons and away to the undiscovered country? Language itself, and therefore memory, was thus enclosed, buried. Without words we are without memory and without memory we are but repetition, and repetition is not living. The child was killed.

The child was not killed *then*, not exactly. The child was killed then *and* now, now *and* then; the child was killed either way around, but only always and forever. The child was killed in the original accumulation and that, we sometimes mislead ourselves into thinking, was *then*. But it is *now*, too, as Dagerman observed:

Because life is constructed in such a merciless fashion, even one minute before a cheerful man kills a child he can still feel entirely at ease, and only one minute before a woman screams out in horror she can close her eyes and dream of the sea, and during the last minute of the child's life his parents can sit in a kitchen waiting for sugar, talking casually about the child's white teeth and the rowing trip they have planned, and the child himself can close the gate and begin to cross a road, holding in his right hand a few cubes of sugar wrapped up in white paper, and for the whole of that minute he can see nothing but a clear stream with big fish and a wide-bottomed boat with silent oars.<sup>40</sup>

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<sup>40</sup> Stig Dagerman, *To Kill a Child*, Grand Street Magazine (Book 42) (1992) [hereinafter Dagerman, *To Kill a Child*].

Dagerman continued, “Afterward, everything is too late.”<sup>41</sup> How does the dead child becomes a republic? That is our absurd situation and therefore it is our absurd question. There is nothing that can ready a people for the original accumulation. That makes it an uninterpretable, that is to say unmanageable, trauma.

Our need for consolation is insatiable.<sup>42</sup> “When every available consolation has been exhausted a new one must be invented even if it should turn out to be absurd.”<sup>43</sup> If “faith is the substance of things hoped for, the evidence of things not seen,”<sup>44</sup> then faith can also be the expression, after the exhaustion of all consolation, of our insatiable need for consolation.<sup>45</sup> “So, we must be careful—lest we lose our faith—and become possessed.”<sup>46</sup> But which faith? This one, the only one:

The sin of property  
 We do disdain  
 No one has any right to buy and sell  
 the earth for private gain.<sup>47</sup>

Without words, the original accumulation remains a trauma and not a memory. We cannot say anything at all and so we repeat. But repetition is not living. We repeat by our own fidelity to the genealogies of property. What is faith in law other than that which mysteriously authorizes these genealogies? Law authorizes the genealogies of property—the genealogy of our dispossession—by cutting off their historical origin. What is faith in law but the loss of faith in whatever it was that we were when we yet lived, or in whatever it might be that we might become should we leave the undiscovered country? Faith, lost, becomes faith in law, “[s]o, we must be careful—lest we lose our faith—and become possessed.”<sup>48</sup> Faith in law, then, is the sign that we have lost our faith “and become possessed.”<sup>49</sup>

<sup>41</sup> *Id.*

<sup>42</sup> See generally DAGERMAN, Our Need for Consolation, *supra* note 39.

<sup>43</sup> STIG DAGERMAN, *Ruins*, in GERMAN AUTUMN 19, 19 (Robin Fulton trans., 1988) (1947).

<sup>44</sup> Hebrews 11:1 (King James).

<sup>45</sup> DAGERMAN, Our Need for Consolation, *supra* note 39.

<sup>46</sup> JAMES BALDWIN, *The Devil Finds Work* (1975), in JAMES BALDWIN'S COLLECTED ESSAYS, *supra* note 26, at 568 [hereinafter BALDWIN, *The Devil Finds Work*].

<sup>47</sup> ROSSELSON, *supra* note 34.

<sup>48</sup> BALDWIN, *The Devil Finds Work*, *supra* note 46, at 568.

<sup>49</sup> *Id.*

Official memory, legal memory, as a matter of method, can have nothing to say about the original accumulation. Law is law to the extent, and only to the extent, that it occults memory of the original accumulation. Law makes of the original accumulation something unspeakable. The unspeakable nature of the original accumulation comes from its legal future. The *legal* is the work, akin to Freud's dreamwork, that constantly creates screen memories of the original accumulation.<sup>50</sup> These screen memories are called by many names. All these screen memories can be gathered under one simple phrase: rule of law, its name is Legion.<sup>51</sup> The screen memory, rule of law, is a primal scene, a kaleidoscope of primal

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<sup>50</sup> Dreamwork, for psychoanalysis, is the process by which unconscious thought is transformed into dreaming. Unconscious thought, transformed in any number of ways through condensation, displacement, representation, and secondary revision, the dreamwork, results in the bundle of contradictions, toward a particular direction, that make up the surface or manifest content of the dream. Freud deploys a very instructive "kettle logic" to describe the peculiar way that contradictions matter in psychoanalysis:

The whole plea—for the dream is nothing else—reminded one vividly of the defence put forward by the man who was charged by one of his neighbours with having given him back a borrowed kettle in a damaged condition. The defendant asserted first, that he had given it back undamaged; secondly that the kettle had a hole in it when he borrowed it; and thirdly, that he had never borrowed a kettle from his neighbour at all.

FREUD, *The Interpretation of Dreams*, in FREUD, THE STANDARD EDITION, VOL. IV, *supra* note 21, at 119-20. For psychoanalysis:

A dream is a disguised fulfillment of a repressed wish. The interpretation of dreams has as its object the removal of the disguise to which the dreamer's thoughts have been subjected. It is, moreover, a highly valuable aid to psycho-analytic technique, for it constitutes the most convenient method of obtaining insight into unconscious psychological life.

FREUD, *On Psychoanalysis*, in FREUD, THE STANDARD EDITION, VOL. XII, *supra* note 21, at 210. The contradictions that psychoanalysis locates in our dreams are akin to the contradictions that critical theory locates in our jurisprudence. Defenders of legal order, when it comes to the damage done to those who inherited only the suffering of the great death event—genocide, colonialism, slavery—are rather like Freud's defendant. All manner of contradictory assertions are made to excuse the fact of present day white-over-black, but they all tend in the same direction, white-over-black. That direction, white-over-black, comes into view, as in the case of the damaged kettle, by attending to the contradictions themselves.

<sup>51</sup> Mark 5:9 (King James).

scenes, an endless reconstruction of a past that endlessly eludes memory, the always-vanishing-into-repetition original accumulation.

Rule of law is the primal scene before the collective mind's eye of those dispossessed who work within the law and who thereby "sing the tune without the words."<sup>52</sup> The dispossessed who labor for legal equality labor for law. Such labors fail to accomplish anything save for the eventual erasing of whatever trace of memory may have prompted the soon-to-forget to take action in the first place. The first step, the child's first step, the turn to law, never led to another step. There was no spark, it was a trick of the light. The child is dead; it was murdered in the original accumulation. Now, within the spectacle, it is too late: it is white-over-black to white-over-black to white-over-black, world without end.<sup>53</sup>

The child, remember, is dead, it was murdered, and that is how it became the first capital. The thing that moves around making law is a corpse that is possessed and being pursued past death by the Furies.<sup>54</sup> The Furies never stop. Our faith already has been taken, that is what faith in law means, faith in repetitions. The repetitions are not life at all and faith in them is not faith. Stig Dagerman wrote of this tragic condition:

With a bitter enjoyment, I wish to see my house collapsing and see myself buried under the snow of forgetfulness. But depression is a Russian doll and, in the last doll, there are a knife, a razor blade, a poison, a deep water and a jump in a big hole. I eventually become the slave of all these instruments of death. They follow me as dogs, unless the dog is me. And it seems to me to understand that suicide is the only proof of the human freedom.<sup>55</sup>

<sup>52</sup> DICKINSON, *supra* note 1, at 254.

<sup>53</sup> Ephesians 3:21 (King James).

<sup>54</sup> Law is a form of possession:

The Lawyers they conjoin, stand up now, stand up now,  
The Lawyers they conjoin, stand up now;  
To arrest you they advise, such fury they devise,  
The devil in them lies, and hath blinded both their eyes.  
Stand up now, stand up now.

*The Diggers' Song*, in WINSTANLEY 'THE LAW OF FREEDOM' AND OTHER WRITINGS 334, 335 (Christopher Hill ed., 2006).

<sup>55</sup> DAGERMAN, *Our Need for Consolation*, *supra* note 39.

But there is something, not nothing. How it is that there is something and not nothing cannot be said. The words are gone. The worlds are gone. But there is something, something that comes from nothing, something that is with us in the midnight hour, even in the undiscovered country; there is something we keep even, perhaps only, when dispossessed:

So, you, the custodian, recognize, finally, that your life does not belong to you: nothing belongs to you. This will not sound like freedom to Western ears, since the Western world pivots on the infantile, and, in action, criminal delusions of possession, and of property. But . . . this mighty responsibility is the only freedom. Your child does not belong to you, and you must prepare your child to pick up the burden of his life long before the moment when you must lay your burden down.<sup>56</sup>

None of us can understand anything until everything that we think we have has been taken from us. “So, we must be careful—lest we lose our faith—and become possessed.”<sup>57</sup> Our possessions possess us. Our faith has already been taken. Everything has always already been taken. That is the meaning of dispossession.

The Furies, hounds of heaven,<sup>58</sup> follow us (“[t]hey follow me as dogs, unless the dog is me.”<sup>59</sup>). Time cut open the sky. Blood rained down on the sea. The Furies were born of that blood and water. “Afterward, everything is too late.”<sup>60</sup> We have and are nothing, nothing but repetition:

But, coming from an unsuspected direction, there comes the miracle of liberation. It can occur on the shore, and the same eternity which, moments from now, aroused my dismay is now the witness of my entry into freedom. Of what thus consists this miracle? Simply in the sudden discovery that nobody, no power, no human being, has the right to express such requirements from me that my desire to live comes to languish. Because if this desire does not exist, what can then exist?<sup>61</sup>

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<sup>56</sup> BALDWIN, *The Devil Finds Work*, *supra* note 46, at 566-67.

<sup>57</sup> *Id.* at 568.

<sup>58</sup> THOMPSON, *supra* note 6.

<sup>59</sup> DAGERMAN, *Our Need for Consolation*, *supra* note 39.

<sup>60</sup> Dagerman, *To Kill a Child*, *supra* note 40.

<sup>61</sup> DAGERMAN, *Our Need for Consolation*, *supra* note 39.



But there is something, not nothing. This is the “the miracle of liberation.”<sup>62</sup> Secure in the faith that nothing belongs to anyone, that not even our lives are our property, we can rejoice.<sup>63</sup> We need have nothing to do with whatever it was that the powers and principalities supported by our repeated deaths *seemed* to possess.<sup>64</sup> All they have, and all capital can promise us, is the stuff and nonsense of corpses.

“O fearful meditation! where, alack, shall Time’s best jewel from Time’s chest lie hid?”<sup>65</sup> Everything has already been taken. “Fear not,” for “these are good tidings of great joy, which shall be to all people”<sup>66</sup> because “nobody, no power, no human being, has the right to express such requirements from me that my desire to live

<sup>62</sup> *Id.*

<sup>63</sup> Helen Keller spoke on political melancholia and hope in an interview:

“Then I read HG Wells’ *Old Worlds for New*, summaries of Karl Marx’s philosophy and his manifestoes. It seemed as if I had been asleep and waked to a new world—a world different from the world I had lived in. “For a time I was depressed”—her voice saddened in reminiscence—“but little by little my confidence came back and I realized that the wonder is not that conditions are so bad, but that society has advanced so far in spite of them. And now I am in the fight to change things. I may be a dreamer, but dreamers are necessary to make facts!” Her voice almost shrilled in its triumph, and her hand found and clutched my knee in vibrant emphasis.

“And you feel happier than in the beautiful make-believe world you had dreamed?” I questioned.

“Yes,” she answered with firm finality in the voice which stumbles a little. “Reality, even when it is sad is better than illusions.” (This from a woman for whom it would seem all earthly things are but that.) “Illusions are at the mercy of any winds that blow. Real happiness must come from within, from a fixed purpose and faith in one’s fellow men—and of that I have more than I ever had.”

Barbara Bindley, *Helen Keller—Why I became an IWW, An Interview*, N.Y. TRIB., Jan. 15, 1916. Baldwin, Dagerman, and Keller write of the same faith. Faith in the rule of law is in opposition to “faith in one’s fellow men . . . . So we must be careful, lest we lose our faith and become possessed.” BALDWIN, *The Devil Finds Work*, in JAMES BALDWIN’S COLLECTED ESSAYS, *supra* note 26, at 568.

<sup>64</sup> Ephesians 6:12 (King James).

<sup>65</sup> WILLIAM SHAKESPEARE, *Sonnet 65*, *George Manos*, in THE SONNET COLLECTION OF WILLIAM SHAKESPEARE: TRANSLATED AND ANALYZED 135 (2011).

<sup>66</sup> Luke 2:10 (King James).

comes to languish. Because if this desire does not exist, what can then exist?"<sup>67</sup> Stones themselves cry out<sup>68</sup>:

You poor take courage  
You rich take care  
The earth was made a common treasury  
For everyone to share.<sup>69</sup>

From the place where all has been already taken, *from our undiscovered country*, we can see that we are "custodians."<sup>70</sup>

Our lives do not belong to us, nothing belongs to us but our freedom. "Hope is the thing with feathers,"<sup>71</sup> we have only a freedom that comes to us unbidden in the form of a "mighty responsibility"<sup>72</sup> to the child that this Essay has discussed throughout. Our mighty responsibility, because it is a responsibility to another life, takes us beyond the original accumulation, beyond our original line of flight, beyond the undiscovered country, beyond the repetitions.

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<sup>67</sup> DAGERMAN, *Our Need for Consolation*, *supra* note 39.

<sup>68</sup> Luke 19:40 (King James).

<sup>69</sup> ROSSELSON, *supra* note 37.

<sup>70</sup> BALDWIN, *The Devil Finds Work*, in JAMES BALDWIN'S COLLECTED ESSAYS, *supra* note 26, at 566-67.

<sup>71</sup> DICKINSON, *supra* note 1, at 254.

<sup>72</sup> BALDWIN, *The Devil Finds Work*, in JAMES BALDWIN'S COLLECTED ESSAYS, *supra* note 26, at 566-67.