

THE TREADMILL AND THE CONTRACT: A CLASSCRITS GUIDE TO THE ANTHROPOCENE

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I. INTRODUCTION

Time and again, in the film *Twelve Years a Slave*, we see a close-up of waters splashing and churning into foam.¹ The waters are those of the Mississippi River; the churning is caused by the paddlewheel of a steamboat inexorably driving south. Southward lies slavery, where the protagonist will lose, bit by bit, his family, his legal personhood, his freedom of movement, his privacy, his physical and moral integrity, and his very name. But the loss is not only his. Slavery, the film makes clear, is a total institution, pulling all who are connected with the great cotton plantations into the vortex of mass production, mass destruction, and mass moral corruption that is creating the modern Atlantic world. Spreading magnolia trees, river waters, cotton plants, black and white bodies and their genitalia, sun and rain, the steamboat and the whip were all factors of production in an international economic system that was also a local social system – and a national political system known simply as the Slave Power.

Centuries after the events depicted in the movie, as world leaders met to discuss what would become known as the 2015 Paris accords on climate change, New York Times economic columnist Eduardo Porter articulated one of the contradictions that constitutes contemporary capitalism: Could humanity thrive today without

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¹ TWELVE YEARS A SLAVE (Fox Searchlight Pictures 2013).

economic growth?²

Porter begins his article by pointing out that for much of history, most human societies were more or less economically stagnant: “Economic growth took off consistently around the world only some 200 years ago. Two things powered it: innovation and lots and lots of carbon-based energy, most of it derived from fossil fuels like coal and petroleum.”³

How long can this party last? Porter cites the economist Kenneth Boulding: “Anyone who believes exponential growth can go on forever in a finite world is either a madman or an economist.”⁴ Porter then takes note of several academic studies concluding that staying within the limits of Earth’s carrying capacity will require, sooner or later (sooner, if inequality between living standards in the global north and the global south is to decrease), negative economic growth, either concentrated in the rich countries or spread around the planet.⁵ Immediately after articulating this idea, however, Porter declares it unthinkable – a “non-starter.”⁶ Economic growth, he argues, made it possible to end slavery, as well as empower women and maintain liberal democracies around the world.⁷ Since economic stagnation or “degrowth” is politically unthinkable, the solution, Porter concludes, is technology.⁸ Innovations of the kind set forth by the Deep Decarbonization Pathways Project (DDPP) will permit the world’s economies to keep growing indefinitely without destroying the finite planet on which those economies depend.⁹

² Eduardo Porter, *Imagining a World Without Growth*, N.Y. TIMES (Dec. 1, 2015), http://www.nytimes.com/2015/12/02/business/economy/imagining-a-world-without-growth.html?_r=0.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* Porter quotes Financial Times writer Martin Wolf: “[T]he option for everybody to become better off — where one person’s gain needn’t require another’s loss — was critical for the development and spread of the consensual politics that underpin democratic rule.” *Id.*

⁸ *Id.*

⁹ *Id.*; see Justin Gillis, *A Path for Climate Change, Beyond Paris*, N.Y. TIMES (Dec. 1, 2015), http://www.nytimes.com/2015/12/01/science/beyond-paris-climate-change-talks.html?_r=0; DEEP DECARBONIZATION PATHWAYS PROJECT, <http://deepdecarbonization.org/> (last visited Apr. 12, 2016) (describing the project as “a global collaboration of energy research teams charting practical pathways to deeply reducing greenhouse gas emissions in their own countries”). Some research indicates that, in fact, a few countries have recently managed to sustain economic growth while simultaneously reducing carbon emissions. See Coral Davenport, *Can Economies Rise as Emissions Falls? The Evidence Says Yes*, N.Y. TIMES (Apr. 5, 2016), <http://www.nytimes.com/2016/04/06/upshot/promising-signs-that-economies-can-rise-as-carbon-emissions-decline.html> (reporting on the “decoupling” of

At first glance, the Mississippi paddlewheel and the DDPP seem unrelated. In this essay for the ClassCrits VIII symposium volume, however, I argue that they are intimately linked. I develop the images of “the treadmill” and “the contract” as a framework for understanding the link. The treadmill is a metaphor for the continuous processes of innovation, destruction, and commodification that have brought us from the great cotton plantations to the DDPP. The contract is a metaphor for the political-legal world of liberal citizenship, in which some actors exercise political voice as rights-bearing liberal subjects, and others are deemed defective subjects or non-subjects lacking the right to have rights.¹⁰ The law is a central site where struggles over the treadmill and the contract take place. The treadmill and the contract function, however, not as legal rules or doctrines in and of themselves, but as forms of unspoken “law beyond law” that silently structure judicial, administrative, and statutory law in the United States and elsewhere.¹¹ I argue that ClassCrits scholars are well equipped to bring to the surface the contradictions contained in the treadmill and the contract, opening them up for critique and alteration in this time of crisis.¹²

This essay is divided into four parts. In Part I, I explain the term “Anthropocene,” a term recently proposed by scientists to refer to the present moment in geological time. I also briefly describe the central commitments of the ClassCrits movement. In Part II, I outline the metaphor of the treadmill, exploring the material and the ideological dynamics of contemporary capitalism. In Part III, I outline the metaphor of the contract, linking capitalism with forms of racial

emissions and economic growth in twenty-one countries, including the United States, since the beginning of the twenty-first century).

¹⁰ The phrase “right to have rights” was first articulated by political philosopher Hanna Arendt, although it has since been used in many other different contexts. *Introduction to ALISON KESBY, THE RIGHT TO HAVE RIGHTS: CITIZENSHIP, HUMANITY, AND INTERNATIONAL LAW* (2012). For a recent attempt to map the various interpretations of Arendt’s phrase, *see generally* KESBY, *supra* note 10.

¹¹ Michael M’Gonigle and Louise Takeda use the term “law beyond law” to describe the commitment to continued economic growth that lies beneath environmental law and policy in North America. Michael M’Gonigle & Louise Takeda, *The Liberal Limits of Environmental Law: A Green Legal Critique*, 30 PACE ENVTL. L. REV. 1005 (2013). In this essay, I accept their brilliant and lucid account of the treadmill and provide a friendly amendment with an account of the political economy of the contract.

¹² In this essay, I am responding to M’Gonigle and Takeda’s call for “a ‘new narrative’ of our past, a more informed context for environmental action in our present, new imaginaries of possible futures and, above all, new strategies for getting there.” *See id.* at 1113. Because the ClassCrits project seeks to fold an understanding of political domination into economic analysis, I believe it is a productive response to their quest for a “green legal theory.” *See id.*

domination that originated in European colonialism. Part IV concludes the essay with an invitation to other legal scholars, especially those engaged in the ClassCrits project, to delve more deeply into the relationship between the Anthropocene and legal doctrine.

II. PART I: CRISES AND CLASSCRITS

The massive and ever-increasing release of so-called “greenhouse gases” into the Earth’s atmosphere – a consequence of a planet-wide human dependence on carbon to sustain economic activity – has brought about a series of effects collectively known as “climate change.”¹³ Global warming is the best-known major effect of climate change, but it is not the only way in which human activity is currently affecting the world. The Earth is currently experiencing a massive extinction of nonhuman species, described by scientists as the “Holocene extinction” or the “sixth great extinction” in the history of life on Earth.¹⁴ This extinction is directly traceable to human practices, including habitat destruction (through urbanization and the introduction of “invasive species” into vulnerable ecosystems), pollution, and hunting.¹⁵ Perhaps even more incredibly, human activity is now disrupting the large-scale and long-term cycles of biology, chemistry, and geology through elements like carbon and nitrogen which circulate through land, sea, and atmosphere.¹⁶ Awareness of these changes, many of which are cumulative, synergistic, and/or mutually reinforcing, has prompted some scientists to change the name of the geologic era we live in from the Holocene to the Anthropocene.¹⁷

¹³ See generally CLIMATE CHANGE 2014: SYNTHESIS REPORT: SUMMARY FOR POLICYMAKERS, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC) (2014), http://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf. The IPCC is an international body of scientists “established by the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO) in 1988 to provide the world with a clear scientific view on the current state of knowledge in climate change and its potential environmental and socio-economic impacts.” *Organization*, IPCC, <http://www.ipcc.ch/organization/organization.shtml> (last visited Apr. 12, 2016).

¹⁴ See ELIZABETH KOLBERT, *THE SIXTH EXTINCTION: AN UNNATURAL HISTORY* 107-09 (2014).

¹⁵ *Id.*

¹⁶ See CLIMATE CHANGE 2014, *supra* note 13, at 6.

¹⁷ WELCOME TO THE ANTHROPOCENE, <http://www.anthropocene.info/en/anthropocene> (last visited Apr. 12, 2016). “The Anthropocene” is an example of what anthropologist Arturo Escobar calls “Transition Discourses”: contemporary calls to “link together aspects of reality that have remained separate in previous imaginings of social transformation: ontological, cultural, politico-economic, ecological and spiritual. These are brought together by a profound concern with human suffering and with the fate of life itself.” ARTURO

The environmental crises collectively being dubbed the Anthropocene are intertwined with national and international economic crises. The founders of the TRIPLECRISIS BLOG, Kevin P. Gallagher and Jayati Ghosh, explain their title this way:

[O]ur current predicament is a convergence of at least three crises: in global finance, development, and environment. These areas are seemingly disparate but actually interact with each other in forceful ways to reflect major structural imbalances between finance and the real economy; between the higher income and developing economies; between the human economic system and the earth's ecosystems.¹⁸

This “triple crisis,” in turn, is concurrent with a series of disparate crises involving violence, political instability, and migration exploding through the human world.¹⁹

The ClassCrits movement in American legal scholarship is

ESCOBAR, ENCOUNTERING DEVELOPMENT: THE MAKING AND UNMAKING OF THE THIRD WORLD xxi (2d ed. 2012). This essay can be understood as an experiment in bringing Transition Discourses into legal scholarship.

¹⁸ Kevin P. Gallagher & Jayati Ghosh, *Introducing the TripleCrisis Blog*, TRIPLECRISIS BLOG, <http://triplecrisis.com/introducing-the-triplecrisis-blog/> (last visited Apr. 12, 2016).

¹⁹ For example, violent insurgencies, such as the Islamic State (ISIS) and Boko Haram, have taken control of territory and pursued campaigns of terror while articulating fundamentalist religious ideologies. *See, e.g.*, Graeme Wood, *What ISIS Really Wants*, ATLANTIC (Mar. 2015), <http://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980/>; Mike Smith, *Factsheet: Explaining Nigeria's Boko Haram and Its Violent Insurgency*, AFRICA CHECK (2014), <https://africacheck.org/factsheets/factsheet-explaining-nigerias-boko-haram-and-its-violent-insurgency/>. An unprecedented number of refugees seeking to escape violence and death have sought entrance into the countries of the European Union. *See, e.g.*, Rod Nordland, *A Mass Migration Crisis, and It May Yet Get Worse*, N.Y. TIMES (Oct. 31, 2015), <http://www.nytimes.com/2015/11/01/world/europe/a-mass-migration-crisis-and-it-may-yet-get-worse.html>; *Migrant Crisis: Migration to Europe Explained in Seven Charts*, BBC NEWS (Mar. 4, 2016), <http://www.bbc.com/news/world-europe-34131911>. In response to the pace and scale of immigration and the violent attacks, reactionary fundamentalisms based on anti-Muslim hysteria and xenophobia are thriving in the European Union and the United States. *See, e.g.*, Ernesto Londoño, *The Vile Politics of the Syrian Refugee Crisis*, N.Y. TIMES (Nov. 17, 2015, 2:28 PM), <http://takingnote.blogs.nytimes.com/2015/11/17/the-vile-politics-of-the-syrian-refugee-crisis/> (compiling hostile responses to refugees from U.S. politicians); Anna Sauerbrey, *Paris and Europe's Anti-Refugee Backlash*, N.Y. TIMES (Nov. 16, 2015), <http://www.nytimes.com/2015/11/17/opinion/paris-and-europes-anti-refugee-backlash.html> (discussing the growing anti-immigration movement in Europe).

well-positioned to investigate the connections among these many crises. As the group's name suggests, ClassCrits scholars are interested in investigating the relationship between economic activity and the law from a critical perspective – an endeavor that directly challenges mainstream “law and economics” scholarship by paying attention to the relationship between economics and power, including class struggle and the ideologies that accompany mainstream economics.²⁰ ClassCrits scholars define “the economy” broadly: as co-founder Athena Mutua observes, some participants in the early ClassCrits meetings “were inclined to understand the economy not as some reified notion of markets detached from the household, civil society, or government, but as a system through which ‘people co-operate to provide for their daily and future needs, combined with the techniques

²⁰ For example, several ClassCrits scholars have focused on criticizing the law and economics movement and, more broadly, the language of “neoliberalism,” which is increasingly the vernacular of mainstream law and policy. *See generally* Tayyab Mahmud, *Debt and Discipline: Neoliberal Political Economy and the Working Classes*, 101 KY. L.J. 1, 5-6 (2012-13) (criticizing neoliberal ideology and policy from a ClassCrits perspective); Martha T. McCluskey, *Efficiency and Social Citizenship: Challenging the Neoliberal Attack on the Welfare State*, 78 IND. L.J. 783, 798-99 (2003) (criticizing neoliberal ideology and defending a notion of “social citizenship”); Athena D. Mutua, *Stuck: Fictions, Failures, and Market Talk as Race Talk*, 43 SW. U. L. REV. 517, 523-26 (2014) (reviewing themes found in ClassCrits literature). Both the academic and popular versions of neoliberalism rely on an idealized image of “markets,” a denigrated image of “government,” and a strong differentiation between these two spheres (“private” and “public”). *See* BERNARD HARCOURT, *THE ILLUSION OF FREE MARKETS: PUNISHMENT AND THE MYTH OF NATURAL ORDER* 18-22 (2012) (exploring the ideological roots of laissez-faire doctrine). In contrast, the ClassCrits mission statement asserts:

In America today, commentators and scholars often portray [economic] inequality as the natural byproduct of the differing interests, talents, and education that individuals bring to something called the “market.” This “market,” a complex system involving millions of participants, driven by the purported imperatives of “supply” and “demand,” as well as the apparent “preferences” of diverse identities, appears as a naturally occurring phenomenon, like water, oil, or trees—capable of existing without any conscious, collective, human action.

Justin Desautels-Stein, *ClassCrits Mission Statement*, 43 SW. U. L. REV. 651, 651 (2014).

and materials [such as resources] at their disposal.”²¹ Given this moment in history, I believe the ClassCrits project should take as its territory not only the critique of contemporary neoliberalism and its obsession with allocating social goods through markets with minimal “government intervention,” not only the question of “class,” understood via Weber and Marx as human relationships of status and exploitation, but also the question raised by the Anthropocene – the question of how we configure the relationship between human and nonhuman activities and processes.²² This relationship is the place where “economics” begins – and ends.

At the same time, ClassCrits scholars are well positioned to integrate into their work an understanding of the processes of political, social, and legal subordination, sometimes described as “identity politics.” Writing with Tayyab Mahmud and Frank Valdes, Mutua notes that the word “ClassCrits” was deliberately chosen to echo prior movements in American critical legal scholarship, such as critical race theory (“race-crits”), feminist legal theory (“fem-crits”), Latino/a critical theory (“LatCrit”), and critical legal studies (just plain “crits”).²³ Another way to frame the ClassCrits project, then, is to see it as the latest in a series of efforts to apply methods and perspectives adopted from critical legal studies to different dimensions of subordination.²⁴ The ClassCrits mission statement explicitly rejects the notion that economic relations are prior to identity politics.²⁵ Indeed, close attention to the dynamics that have brought us the Anthropocene makes clear that the intertwined crises in finance, the environment, and international “development” are not separate from the crises of citizenship – legal, political, and social – that are wracking countries around the globe.²⁶ Although a “theory of everything” is well beyond my capacities, especially in the confines of a law review article, in the remainder of this essay I offer a genealogy of the Anthropocene that highlights two of its lesser-known synonyms: “Capitalocene” and “Plantationocene.” Through a deliberately reductive analysis that reduces it to two intertwined dynamics, the treadmill and the contract, I invite other scholars explore the Anthropocene as a crisis that involves not only the relationship

²¹ Athena D. Mutua, *Introducing ClassCrits: From Class Blindness to a Critical Legal Analysis of Economic Inequality*, 56 BUFF. L. REV. 859, 868 (2008) (quoting Sue Ferguson, *Building on the Strengths of the Socialist Feminist Tradition*, 7 NEW POL. 26 (1999)).

²² *Id.* at 895, 902.

²³ *See id.* at 368 n.28, 402; Tayyab Mahmud et al., *LatCrit Praxis @ XX: Toward Equal Justice in Law, Education and Society*, 90 CHI.-KENT L. REV. 361, 402 (2015).

²⁴ *See id.* at 372.

²⁵ Desautels-Stein, *supra* note 20, at 651.

²⁶ Mahmud et al., *supra* note 23, at 372.

between capitalism and the environment, but also the dynamics of subordination.²⁷

III. PART II: THE ECONOMIC-ENVIRONMENTAL TREADMILL

In this Part, I explore the metaphor of the treadmill. The image, borrowed from environmental sociology, expresses the continual intensification of labor and material resource exploitation that has led to the present-day climate crisis. Section A outlines conventional treadmill theory. Section B elaborates on the theory by adding an ideological dimension.

A. *Class Treadmill Theory*

In 1980, environmental sociologist Allan Schnaiberg tried to understand why U.S. environmental degradation increased so rapidly in the years following World War II.²⁸ His explanation focused on the economics of the petroleum and atomic energy industries.²⁹ In the postwar era, he argued, producers in these industries began to spend more money on technological innovations.³⁰ The new technologies increased the productivity of labor, making it possible to hire fewer workers, but they also tended to be more chemical- and energy-dependent than the previous labor-dependent methods of production and, so, produced more and more hazardous waste.³¹ Thus, Schnaiberg argued, resource extraction began to be more profitable but added the side effects of increased worker displacement and environmental destruction.³² Moreover, the producers' new preference for capital investment over labor set the energy sector on a "treadmill."³³ In order to stay competitive and keep profits rising, corporate managers had to increase their levels of production.³⁴ Each

²⁷ This effort is inspired by scholars and advocates involved in the environmental justice movement who have developed the position that environmental quality, economic sustainability, and social justice are mutually intertwined. *See, e.g.*, JULIAN AGYEMAN, INTRODUCING JUST SUSTAINABILITIES: POLICY, PLANNING AND PRACTICE 1-3 (2013); Julian Agyeman et al., *Exploring the Nexus: Bringing Together Sustainability, Environmental Justice, and Equity*, 6 SPACE & POLITY 77 (2002).

²⁸ *See* Allan Schnaiberg, *Labor Productivity and the Environment*, in TWENTY LESSONS IN ENVIRONMENTAL SOCIOLOGY 60-61 (Kenneth A. Gould & Tammy L. Lewis eds., 2009); *see also* Kenneth A. Gould et al., *Interrogating the Treadmill of Production: Everything You Wanted To Know About the Treadmill But Were Afraid To Ask*, 17 ORG. & ENV'T 296 (2004).

²⁹ Gould et al., *supra* note 28, at 296.

³⁰ *Id.*

³¹ *Id.* at 296-97.

³² *Id.* at 297.

³³ *Id.*

³⁴ *Id.* As M'Gonigle and Takeda explain:

In a free and competitive market economy,

higher level of production meant more technological innovation, more efficient production, higher worker productivity – and also fewer jobs, more crises of demand, and more environmental destruction.³⁵

Schnaiberg argued that there was a governance component of the treadmill as well. The financial boom in the resource extraction industry caused by escalating profits allowed “shareholders” – corporate owners and managers – to amass political power at the expense of “stakeholders” – workers and citizens.³⁶ Shareholders used their increasing political power to increase their economic power, and vice versa. For example, despite the political might of the Organization of Petroleum Exporting Countries (OPEC), which in 1960 formed an international economic cartel to coordinate oil production (thus challenging the power of the oil companies), the petroleum industry remains a powerful economic and political actor in American and

capital demands a *return*, whether in interest payments or returns on investment. Thus, under capitalism, growth has a life of its own; it is inherent to it An individual producer enhances his returns to capital by investing his revenues in innovation and technologies that will generate cost-saving efficiencies. If other owners of capital are doing likewise, anyone who does not keep up with these improvements will see their capital diminish in relative value. Under competitive conditions, all producers continuously seek to reduce their costs so that they might retain their market share against other producers who are doing the same thing. This competition tends to drive down prices for everyone (to the benefit of consumers). In response, if all producers can expand the size of the market as a whole (i.e. its overall growth), this will allow them all to benefit by bringing in new consumers who can take up the increased flow of products that result from these economies of scale. In such a situation, more producers can survive the pressures of competition.

M’Gonigle & Takeda, *supra* note 11, at 1062-63.

³⁵ Gould et al., *supra* note 28, at 297.

³⁶ *Id.*

international politics today.³⁷ Antonia Juhasz observes, for instance, that “Chevron’s spending of nearly \$7.5 million on federal lobbying in 2006 was seven and a half times larger than the entire \$1 million budget of Amazon Watch, which organizes the ‘ChevronToxico’ [environmental] campaign.”³⁸

The oil and gas industry, moreover, works hand-in-hand with the federal government: it helps fund the government that regulates it, while the government, in return, helps build consumer demand for oil and gas.³⁹ Administrative law scholars have long described such relationships in terms of “regulatory capture.”⁴⁰ Michael M’Gonigle

³⁷ ANTONIA JUHASZ, *THE TYRANNY OF OIL: THE WORLD’S MOST POWERFUL INDUSTRY – AND WHAT WE MUST DO TO STOP IT* 238 (2008).

³⁸ *Id.* Multinational petroleum companies have also played a notorious role in the politics of climate change – reportedly, seeking to undermine, obscure, and challenge scientific research documenting global warming. See Suzanne Goldenberg, *Exxon Knew of Climate Change in 1981, Email Says – But It Funded Deniers for 27 More Years*, *GUARDIAN* (July 8, 2015, 4:41 PM), <http://www.theguardian.com/environment/2015/jul/08/exxon-climate-change-1981-climate-denier-funding>. Petroleum companies and individuals who have amassed their fortunes from oil and gas also heavily fund nonprofit organizations dedicated to “climate denial.” See *Global Warming Skeptic Organizations*, UNION OF CONCERNED SCIENTISTS, http://www.ucsusa.org/global_warming/solutions/fight-misinformation/global-warming-skeptic.html (last visited Apr. 12, 2016) (listing organizations involved in climate denial and identifying their ties to the petroleum industry).

³⁹ As Michael M’Gonigle and Louise Takeda note:

According to the Tax Foundation, between 1981 and 2008, oil producers paid an average of \$14.37 billion per year to federal and state governments in corporate income taxes and almost double the amount to foreign governments. Over the same 27-year period, the industry paid a total of \$1.1 trillion in excise and sales taxes. In the never-ending circle that is the modern capitalist economy, these excise taxes go directly to support highway maintenance that, in turn, subsidize automobile purchases and use.

M’Gonigle & Takeda, *supra* note 11, at 1026 (footnotes and citations omitted).

⁴⁰ According to Michael A. Livermore and Richard L. Revesz, “[C]apture can be understood to occur when organized groups successfully act to vindicate their interests through government policy at the expense of the public interest.” Michael A. Livermore & Richard L. Revesz, *Regulatory Review, Capture, and Agency Inaction*, 101 *GEO. L.J.* 1337, 1343 (2013).

and Louise Takeda argue, however, that the interdependence between the energy sector of the economy and federal, state, and local governments is more systemic than “capture.”⁴¹ Instead, they argue that governments have an independent stake in continuing economic growth and, thus, a stake in supporting large and powerful industries (like the petroleum industry) that keep the economy growing.⁴² In their words:

A growing economy allows for more social spending with lower taxes and leads to high public approval. As a result, democratic state “legitimacy” is dependent on maintaining a high level of economic growth. A capitalist economy without growth leads not only to an economic but a political downturn. Consequently, the promotion of economic growth, as Gus Speth noted, “may be the most widely shared and robust cause in the world today.”⁴³

In addition to providing citizens with government largess, a growing economy preserves social peace by constantly forestalling questions of economic redistribution. Capitalism, by its very nature, creates and exacerbates economic inequality, which in turn raises the possibility that the have-nots will use the political system to challenge the haves.⁴⁴ Existing distributions of wealth and power can be preserved, however, with the promise of growth: as long as economic opportunities are growing for everyone, class war is unnecessary and

⁴¹ M’Gonigle & Takeda, *supra* note 11, at 1013.

⁴² *Id.*

⁴³ *Id.* at 1065 (citing JAMES GUSTAVE SPETH, *THE BRIDGE AT THE EDGE OF THE WORLD* 47 (2008)).

⁴⁴ In his classic 1944 book, *THE GREAT TRANSFORMATION*, Karl Polanyi argued that this contradiction is fundamental to capitalist democracies. The capitalist democratic state, he argued, was subject to a “double movement.” KARL POLANYI, *THE GREAT TRANSFORMATION* 119 (1944). On the one hand, the government of a market society supports the attempt to fully commodify all factors of production, including land, labor, and money, because such commodification makes economic growth possible and increases the state’s wealth and power. *Id.* On the other hand, Polanyi argued, because land, labor, and money can never be fully commodified (because they are partially outside of capitalism), the push for full commodification creates social unrest to which the state must also respond, or else see its existence jeopardized. *Id.* A state in a capitalist democracy is thus caught in a contradiction to which it responds by simultaneously trying to appease the powerful and the powerless. For a useful explication and critique of Polanyi’s argument, see Fred Block & Margaret R. Somers, *Beyond the Economic Fallacy: The Holistic Social Science of Karl Polanyi*, in *VISION AND METHOD IN HISTORICAL SOCIOLOGY* 47 (Theda Skocpol ed., 1984).

social harmony is preserved.⁴⁵

Governments of capitalist democracies thus tacitly treat constant economic growth as a kind of “law beyond law,” a commitment that underpins their very existence. M’Gonigle and Takeda, examining the legal regulation of oil and gas, biofuels, forestry, agriculture, and water in the United States and Canada, demonstrate that environmental regulation never violates the underlying rule that economic growth must continue.⁴⁶ Rather, quoting Mary Wood, they write: “[T]he bureaucratic scale of the modern ‘administrative state is geared almost entirely to the legalization of natural resource damage . . . , the majority of agencies spend[ing] nearly all of their resources to permit, rather than prohibit, environmental destruction.’”⁴⁷ Ironically, environmental regulation facilitates the treadmill. Successes in pollution control create the conditions for more consumption and thus more pollution: “The 1980s and 90s (when conservation was a public priority) saw the greatest boom in consumerism and energy use in planetary history.”⁴⁸ The treadmill is the invisible predicate on which the American liberal state is built.

Unfortunately, the planet and its resources are finite, and capitalist exploitation has brought us the environmental crises of the Anthropocene. Or, as we now might want to call it, the Capitalocene.

We are back to the contradiction stated in Eduardo Porter’s New York Times column: the end of economic growth is politically unthinkable, yet the end of economic growth appears to be demanded by climate change.⁴⁹ For those of us with rising expectations, technology is the Hail Mary pass that will save us: just as the promise of growth forestalls the need for redistribution, the promise of technological innovation forestalls the need for an end to growth.

⁴⁵ See M’Gonigle & Takeda, *supra* note 11, at 1065. This dynamic functions on the international level as well as the domestic level, creating one of the stickiest political barriers to taking action against climate change. Poor countries and rich countries both have an investment in postponing the redistribution issue by searching for continued economic growth for everyone. See Carmen G. Gonzalez, *Bridging the North-South Divide: International Environmental Law in the Anthropocene*, 32 PACE ENVTL. L. REV. 407 (2015).

⁴⁶ M’Gonigle & Takeda, *supra* note 11, at 1013.

⁴⁷ *Id.* (quoting Mary Christina Wood, *Advancing the Sovereign Trust of Government to Safeguard the Environment for Present and Future Generations (Part I): Ecological Realism and the Need for a Paradigm Shift*, 39 ENVTL. L. 43, 55 (2009)). Daniel Faber makes a similar argument. See DANIEL FABER, *CAPITALIZING ON ENVIRONMENTAL INJUSTICE: THE POLLUTER-INDUSTRIAL COMPLEX IN THE AGE OF GLOBALIZATION* (2008).

⁴⁸ M’Gonigle & Takeda, *supra* note 11, at 1029.

⁴⁹ Porter, *supra* note 2.

B. *Capitalism and Modernity*

In a paper published in 2011, a group of scientists led by Will Steffen presented evidence of what they called “The Great Acceleration”: a sudden intensification of the impact of human activity on the global environment.⁵⁰ Taking the measure of diverse human phenomena from human population and fertilizer consumption to the number of McDonald’s restaurants worldwide, the authors generated a series of charts.⁵¹ Each features a curve sloping steeply upward beginning around 1945.⁵² The authors offer these steep upward curves as evidence of the beginning of the Anthropocene. The sudden upward curve of humanity’s influence on the planet’s infrastructure corresponds in time to Schnaiberg’s account of the postwar treadmill of production.

Schnaiberg’s treadmill theory was faithfully Marxist, treating the political and social aspects of the treadmill as an effect of economic dynamics. In this section, however, I argue that the treadmill is a product not only of the material practices we know as capitalism, but of a series of linked ideologies collectively referred to as “modernity.” Exploring the ideology of modernity helps us trace the origins of the Anthropocene beyond 1945.

i. Blood and Fire: Power Relations and the History of Capitalism

Arturo Escobar argues that the Western economy is composed of three systems: production, power, and signification.⁵³ Production is what we think of when we think about economic history: it comprises

⁵⁰ Will Steffen et al., *The Anthropocene: Conceptual and Historical Perspectives*, 369 PHIL. TRANSACTIONS, ROYAL SOC’Y ASS’N 842, 851-52 (2011) (charting different measures of human activity from 1750-2000). See also JAMES GUSTAVE SPETH, *THE BRIDGE AT THE EDGE OF THE WORLD* xx-xxi (2008) (presenting similar “hockey stick” shaped charts). Of Speth’s charts, M’Gonigle and Takeda remark:

From water, fertilizer, and paper consumption, to dam construction, motor vehicles use, species extinctions, and loss of tropical rainforest the story is the same: after increasing only slightly over the preceding two centuries, the numbers suddenly shoot up around the middle of the twentieth century. This exponential increase translates, in the United States, to a level of mineral and fossil fuel use over the last half-century that surpasses the amount used by the rest of the world throughout all of human history.

M’Gonigle & Takeda, *supra* note 11, at 1055.

⁵¹ Steffen, *supra* note 50, at 851-52.

⁵² *Id.* at 846-60.

⁵³ ESCOBAR, *supra* note 17, at 59.

“the rise of the market, changes in the productive forces and the social relations of production, demographic changes, the transformation of everyday material life, and the commodification of land, labor, and money.”⁵⁴

However, Escobar argues that the development of the market system in the eighteenth and nineteenth centuries also involved new regimes of power.⁵⁵ As he puts it, “People did not go into the factories gladly and of their own accord; an entire regime of discipline and normalization was necessary.”⁵⁶ Karl Marx dubbed the process by which European peasants living lives of subsistence became factory laborers as “primitive accumulation.”⁵⁷ He wrote:

The immediate producer, the labourer, could only dispose of his own person after he had ceased to be attached to the soil and ceased to be the slave, serf, or bondsman of another. To become a free seller of labour power, who carries his commodity wherever he finds a market, he must further have escaped from the

⁵⁴ *Id.* at 59-60.

⁵⁵ *Id.* at 60.

⁵⁶ *Id.*

⁵⁷ Marx explains:

The capitalist system presupposes the complete separation of the labourers from all property in the means by which they can realize their labour. As soon as capitalist production is once on its own legs, it not only maintains this separation, but reproduces it on a continually extending scale. The process, therefore, that clears the way for the capitalist system, can be none other than the process which takes away from the labourer the possession of his means of production; a process that transforms, on the one hand, the social means of subsistence and of production into capital, on the other, the immediate producers into wage labourers. The so-called primitive accumulation, therefore, is nothing else than the historical process of divorcing the producer from the means of production.

regime of the guilds, their rules for apprentices and journeymen, and the impediments of their labour regulations. Hence, the historical movement which changes the producers into wage-workers, appears, on the one hand, as their emancipation from serfdom and from the fetters of the guilds, and this side alone exists for our bourgeois historians. But, on the other hand, these new freedmen became sellers of themselves only after they had been robbed of all their own means of production, and of all the guarantees of existence afforded by the old feudal arrangements. And the history of this, their expropriation, is written in the annals of mankind in letters of blood and fire.⁵⁸

Marx used feudal England as his example of the process of making peasants into wage laborers.⁵⁹ Contemporary historian Sven Beckert uses a different name for the process of turning peasants against their will into wage laborers: “war capitalism.”⁶⁰ Beckert demonstrates that the story of how cotton became a commodity is a global story, not centered in any one country, and that the history of capitalism as we know it is therefore a global history.⁶¹ He argues further that war capitalism made the Industrial Revolution possible, and that the cotton industry was central to war capitalism’s emergence:

We usually think of capitalism, at least the globalized, mass-production type that we recognize today, as emerging around 1780 with the Industrial Revolution. But war capitalism, which began to develop in the sixteenth century, came long before machines and factories. War capitalism flourished not in the factory but in the field; it was not mechanized but land- and labor-intensive, resting on the violent expropriation of land and labor in Africa and the Americas.⁶²

War capitalism, in turn, was the product of European colonialism and imperialism. As Carmen Gonzalez explains:

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ SVEN BECKERT, *EMPIRE OF COTTON: A GLOBAL HISTORY* xv (2014).

⁶¹ *Id.*

⁶² *Id.*

Colonialism transformed subsistence economies into economic satellites of Europe, and wreaked havoc on the peoples and environments of the colonized territories. Asia, Africa, and Latin America were incorporated into the global economy as exporters of raw materials and importers of manufactured products. Mining, logging, and plantation agriculture destroyed forests, displaced indigenous communities, and disrupted local ecosystems. The diversion of prime agricultural lands to export production created poverty and inequality by concentrating landholding in the hands of local elites, converting farmers into landless peasants, promoting the use of slave labor, and degrading the natural resource base necessary for food production. Resistance to colonial domination was brutally repressed.⁶³

Beckert argues that the cotton industry was at the center of this transformation:

Cotton growing dominated the U.S. economy throughout much of the nineteenth century. It was in cottons that new modes of manufacturing first came about. The factory itself was an invention of the cotton industry. So was the connection between slave agriculture in the Americas and manufacturing across Europe. Because for many decades cotton was the most important European industry, it was the source of huge profits that eventually fed into other segments of the European economy. Cotton also was the cradle of industrialization in virtually every other part of the world—the United States and Egypt, Mexico and Brazil, Japan and China.⁶⁴

Indeed, Beckert argues, cotton produced the modern state, along with modern wage workers.⁶⁵ Both cotton industrialists and

⁶³ Carmen Gonzalez, *Environmental Justice and International Environmental Law*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW (Shawkat Alam et al., eds., 2012).

⁶⁴ BECKERT, *supra* note 60, at xvi-xvii.

⁶⁵ *Id.* at xii.

factory workers came to rely on the state as an intermediary.⁶⁶ By the 1800s, ambitious American planters relied on federal and state governments to help them gain access to Georgia, Florida, and Mississippi's rich soil by violently expelling the Indian peoples from those lands.⁶⁷ Beckert comments: "The coercion and violence required to mobilize slave labor was matched only by the demands of an expansionist war against indigenous people."⁶⁸ Slaveowners exercised violence and coercion on an individual basis against enslaved people, but they also relied on the state as the ultimate guarantor of their "property rights."⁶⁹

As the empire of cotton grew, national governments became involved in passing tariffs, import duties, and other mechanisms designed to protect their domestic manufacturers from foreign competition.⁷⁰ National governments also had the resources to dig the canals and build the roads and railways necessary to make cotton manufacturing profitable.⁷¹ Beckert notes:

Without a powerful state capable of legally, bureaucratically, infrastructurally, and militarily penetrating its own territory, industrialization was all but impossible. Forging markets, protecting domestic industry, creating tools to raise revenues, policing borders, and fostering changes that allowed for the mobilization of wage workers were crucial. Indeed, the capacity of states to foster a domestic cotton industry turns out to be the key division between places and industrialized and those that did not. The map of modern states corresponds almost perfectly to the map of regions that saw early cotton industrialization.⁷²

The extraordinary profits made possible by this new system of production, reliant on slave labor and stolen land, had global effects. Beckert writes:

⁶⁶ *Id.* at xvi.

⁶⁷ *Id.* at 108. Beckert quotes John Ross, the chief of the Cherokees, in a letter to Congress upon their 1836 removal from Georgia: "[O]ur property may be plundered before our eyes; violence may be committed on our persons; even our lives may be taken away, and there is none to regard our complaints. We are denationalized; we are disenfranchised. We are deprived of membership in the human family!" *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *See id.* at 158-61.

⁷¹ *Id.* at 161.

⁷² *Id.* at 155-56.

[T]he cheapness of cottons enabled by slavery in the United States would help undermine local manufacturing everywhere. Many times over, indeed, the empire of cotton would advance what historian Kären Wigen has called the “making of a periphery.” Tench Coxe understood that process already in 1818: The export of British piece goods to India, he perceptively observed, would force Indians “to turn to raising cotton instead of making piece goods they cannot sell.” Across the nineteenth century, Europeans gambled on the efficacy of war capitalism again and again; each time they succeeded in planting new fields, in coercing more slaves, in finding additional capital, they enabled the production of more cotton fabrics at cheaper prices, and they pushed their cotton rivals to the periphery. The destruction of each of these alternative circuits of cotton, in turn, would further tip the balance of power in many parts of the world’s countryside, making more territory and more labor vulnerable to the encroachment of the global economy.⁷³

Colonialism simultaneously made the colonizers richer and the colonized poorer, producing international differentials of wealth and power that would affect global relationships for centuries. War capitalism, reliant on violence, gave rise to industrial capitalism, “with its administratively, infrastructurally, legally and militarily powerful states channeling private initiative.”⁷⁴ Industrial capitalism, in turn, produced:

New ways of raising capital, new ways of inserting capital into production, new forms of labor mobilization, new forms of market making, and, last but not least, new forms of the incorporation of land and people into the global capitalist economy From the 1860s on, capital backed by state power rather than masters backed by expropriation and private physical coercion, would colonize territories and

⁷³ *Id.* at 134-35.

⁷⁴ *Id.* at 173.

people.⁷⁵

New relations of power and new identities – from the modern territorial nation-state to the factory worker – thus emerged from colonialism. What scholars call “modernity” is in part a project of power. We can now begin to grasp the connection between the Mississippi paddlewheel and the DDPP, and see why a valid alias for the Anthropocene is the Plantatiocene.

ii. Economics as Natural Law: Commodification, Development, and the Birth of “Economic Science”

Escobar argues that a third essential component of our modern economic system, beyond relations of production and relations of power, involves signification.⁷⁶ War capitalism and industrial capitalism involved transformations of thought. One of these transformations can be described as “commodification”: for example, the commodification of land, labor, and money involves not only new practices and new relationships, but also new ideas about these things.⁷⁷ Another transformation involves the figuration of “economics” itself: ideas about economic activity that frame it as natural, pre-political, and subject to orderly phases of evolution are central to the concept of economic “development.”⁷⁸

In his 1944 book *THE GREAT TRANSFORMATION*, Karl Polanyi argued that the market society produced by industrial capitalism assumes that everything with economic value is nothing but a commodity (defined by Polanyi as an object produced for sale in a market), including land, labor, and money.⁷⁹ For Polanyi, however, this assumption is both wrong and destructive.⁸⁰ He argues: “To allow

⁷⁵ *Id.*

⁷⁶ ESCOBAR, *supra* note 17, at 59.

⁷⁷ *Id.* at 59-60.

⁷⁸ *Id.* at 77.

⁷⁹ POLANYI, *supra* note 44, at 75.

⁸⁰ Polanyi explains:

[L]abor, land, and money are essential elements of industry; they also must be organized in markets; in fact, these markets form an absolutely vital part of the economic system. But labor, land, and money are obviously *not* commodities; the postulate that anything that is bought and sold must have been produced for sale is emphatically untrue in regard to them. . . . Labor is only another name for a human

the market mechanism to be sole director of the fate of human beings and their natural environment, indeed, even of the amount and use of purchasing power, would result in the demolition of society.”⁸¹ The complete commodification of human labor, for instance, would result in widespread violence, death, disease, and suffering.⁸² Similarly, the complete commodification of nature would result in its complete destruction: “neighborhoods and landscapes defiled, rivers polluted, military safety jeopardized, the power to produce food and raw materials destroyed.”⁸³ Even the complete commodification of money – a pure social construction – would be socially destructive: “the market administration of purchasing power would periodically liquidate business enterprise, for shortages and surfeits of money would prove as disastrous to business as floods and droughts in primitive society.”⁸⁴

Polanyi argued that the impossibility of fully commodifying land, labor, and money produces, in modern market societies – a “double movement.”⁸⁵ Market actors obeying the laws of capitalism constantly seek to exert greater control over the factors of production through intensified commodification; however, as well as creating new efficiencies and greater productivity, these commodification projects

activity which goes with life itself, which in its turn is not produced for sale but for entirely different reasons, nor can that activity be detached from the rest of life, be stored or mobilized; land is only another name for nature, which is not produced by man; actual money, finally, is merely a token of purchasing power which, as a rule, is not produced at all, but comes into being through the mechanism of banking or state finance. None of them is produced for sale. The commodity description of labor, land, and money is entirely fictitious.

Id. at 75-76.

⁸¹ *Id.* at 76.

⁸² *See id.*

⁸³ *Id.*

⁸⁴ *Id.* For more contemporary accounts of the non-commodified dimensions of money, see generally DAVID GRAEBER, *DEBT: THE FIRST 5,000 YEARS* 14 (2011) (arguing that the concept of “debt” has a moral and relational dimension lost when it is reduced to a mere financial obligation); VIVIANA ZELIZER, *ECONOMIC LIVES: HOW CULTURE SHAPES THE ECONOMY* (2010) (discussing the social and cultural functions of money and economic transactions not captured by the standard economic conception of exchange).

⁸⁵ POLYANI, *supra* note 44, at 136.

create environmental destruction and social unrest and suffering.⁸⁶ The liberal state is caught in the middle. Invested both in economic growth and popular legitimacy, it reacts by promoting growth and simultaneously moderating its most undesirable consequences.⁸⁷ Polanyi believed that the ultimate way out of this contradiction was for societies to abandon the fiction that land, labor, and money are nothing but commodities, and instead subordinate economic activities and institutions to state planning in the name of the greater public interest.⁸⁸ The planning utopia to which he looked forward, however, has not come into being. As the story of environmental law reveals (and the story of labor law and international trade relations could equally reveal), nation-states continue to try to satisfy both the owners and the victims of capital, even in the face of cascading financial, economic, and social crises.⁸⁹

A second crucial transformation that accompanied the emergence of modern capitalism was the conviction that human economic activity follows a single, universal path of progress from simple to complex societies, with contemporary capitalism at the apex of civilization.⁹⁰ This conception of human social “development”

⁸⁶ See *id.* at 136-37.

⁸⁷ *Id.* at 261-62.

⁸⁸ *Id.* at 266-68.

⁸⁹ The environmental historian Donald Worster muses:

[Under capitalism, a]ll the complex forces and interactions, beings and processes, that we term “nature” (sometimes even elevate to the honorific status of a capitalized “Nature”) were compressed into the simplified abstraction, “land.” Though not truly a commodity in the ordinary sense, that is, something produced by human labor for sale on the market, land became “commodified”; it came to be regarded as though it were a commodity and by that manner of thinking was made available to be traded without restraint. Whatever emotional meanings that land had held for the self and its identity, whatever moral regard it had engendered, now was suppressed so that the market economy could function freely. The environmental implications in such a mental change are beyond easy reckoning.

DONALD WORSTER, *THE WEALTH OF NATURE* 58 (1993).

⁹⁰ ESCOBAR, *supra* note 17, at 77-78.

appears, as Arturo Escobar argues, in some of the foundational texts of development economics.⁹¹ For example, he argues, W. Arthur Lewis' 1954 model of the "dual economy" posits that poor countries are split between a "traditional" and a "modern" sector.⁹² "Development would consist of the progressive encroachment of the modern upon the traditional, the steady extension of the money economy on the vast world of subsistence or near subsistence."⁹³ Escobar quotes Lewis on the dual economy:

We find a few industries highly capitalized, such as mining or electric power, side by side with the most primitive techniques. . . . We find the same contrast also outside their economic life. There are one or two modern towns, with the finest architecture, water supplies, communications, and the like, into which people drift from other towns and villages which might almost belong to another planet. There is the same contrast even within people; between the few highly westernized, trousered, natives, educated in western universities, speaking western languages, and glorifying Beethoven, Mills, Marx or Einstein, and the great mass of their countrymen which live in quite other worlds. . . . Inevitably what one gets are very heavily developed patches of the economy, surrounded by economic darkness.⁹⁴

Escobar argues that this kind of thinking, though well-intentioned, implicitly or explicitly, dismissed traditional life as something to be swept away by a rising tide of progress.⁹⁵

⁹¹ *Id.* at 77.

⁹² *Id.*

⁹³ *Id.* at 77-78.

⁹⁴ *Id.* at 78 (quoting W. Arthur Lewis, *Economic Development with Unlimited Supply of Labor*, in *THE ECONOMICS OF UNDERDEVELOPMENT* 408 (reprint 1958) (Amar Narin Agarwala & S.P. Singh eds., 1954)).

⁹⁵ Escobar observes:

This excluded the possibility of articulating a view of social change as a project that could be conceived of not only in economic terms but as a whole life project, in which the material aspects would be not the goal and the limit but a space of possibilities for broader individual and collective endeavors, culturally defined.

Id. at 83.

This brings us to a third transformation accompanying the emergence of modern capitalism: the emergence of economics as a discipline which conceptualizes problems of wealth and poverty as technical problems that can be solved following the model of the hard sciences.⁹⁶ By way of example, Escobar quotes Antonio Garcia, who criticized the economic notion of Third World “underdevelopment” as mechanistic and compartmentalizing:

It is mechanistic because it is based on the theoretical assumption that development is an effect induced by certain technological innovations and by certain mechanisms that accelerate the equation savings/investment. It is compartmentalizing because it is built on a view of social life as the arithmetic sum of compartments (economic, political, cultural, ethical) that can be isolated at will and treated accordingly.⁹⁷

The signification system of contemporary Western economics figures “the economy” as a natural system outside of politics, subject to natural laws.⁹⁸ And despite the many crises and failures of economic theory and policy, from the 1970s “stagflation” to the Great Recession of 2008 and to the looming crisis of the Anthropocene, the economic-epistemological project of reducing the known world to factors of production, distribution, and consumption continues apace.⁹⁹ Thus, as Escobar notes and Eduardo Porter demonstrates, the dominant policy response to the Anthropocene is an effort to reconcile capitalism with environmentalism by subsuming “nature” into the economy, through technocratic fixes such as “geoengineering” and analytical attempts to quantify the earth’s “resources” and turn nature into capital.¹⁰⁰ The very idea of environmental sustainability has become a stalking horse for subordinating the environment into capitalism.¹⁰¹

⁹⁶ ESCOBAR, *supra* note 17, at 83, 199-202.

⁹⁷ *Id.* at 83.

⁹⁸ See HARCOURT, *supra* note 20, at 26 (tracing this view of markets to the eighteenth-century French Physiocrats).

⁹⁹ ESCOBAR, *supra* note 17, at 83.

¹⁰⁰ *Id.* at 199-200.

¹⁰¹ As Escobar puts it:

The resignification of nature as environment; the reinscription of the Earth into capital via the gaze of science; the reinterpretation of poverty as effect of destroyed environments; and the new lease on management and planning as arbiters between people and

Economic discourse is perhaps today's "master narrative" of modernity, characterized by its commitment to the autonomous rational subject and its demotion of everything not human to a dead object devoid of rights or interests. In this sense it is economic discourse that is driving the crisis we know as the Anthropocene. The story line of conventional economics tells us that any alternative to capitalism is unthinkable. More technology, not a change of ideology, must be the answer.

As ClassCrits scholars have noted, this narrative of economics is visible in American jurisprudence. American civil rights law, like American environmental law, is built upon and facilitates a construction of economic relations as natural, pre-political, and free, as opposed to "state action," which is inherently coercive.¹⁰² As constitutional law scholars have observed, within American anti-discrimination law, existing distributions of wealth are treated as neutral "baselines" from which constitutional rights may force a deviation only under certain narrow conditions.¹⁰³ The so-called

nature, all of these are effects of the discursive construction of sustainable development.

Id. at 202.

¹⁰² See HARCOURT, *supra* note 20; Justin Desautels-Stein, *The Market as a Legal Concept*, 60 BUFF. L. REV. 387 (2012).

¹⁰³ Cass Sunstein explains how the public/private distinction is maintained through the constitutional doctrine of "state action," which serves a gatekeeping function in equal protection analysis:

The so-called state action doctrine is a cornerstone of American constitutionalism. The doctrine is a product of an understanding that the Constitution is directed to acts of government rather than to acts of private individuals. . . .

. . .

But how do we decide whether government is "acting"? . . .

. . .

In fact courts do not resolve state action cases by asking whether government officials are involved in the problem at issue – though sometimes they say that they do. Instead, . . . they resolve such cases by relying on a particular baseline, establishing the normal, natural, or desirable functions of government. These functions are usually not considered state

public/private distinction in American law places “private” action beyond the reach of “public” requirements of equality, with the effect of setting the economy apart from and prior to the state.¹⁰⁴ Challenging this state of affairs has been a theme of critical scholars since the American Legal Realism movement of the 1920s and 1930s.¹⁰⁵

The public/private distinction operates as another kind of “law beyond law.” One of its results is the preservation of existing distributions of wealth and power, when these are perceived as having been accomplished through the “private” rules of the market.¹⁰⁶ Another result is the perpetuation of the fiction that markets are natural and pre-political – giving the United States what Lisa Iglesias calls an “anti-political economy.”¹⁰⁷ Still, a third result is the implication that private orderings are natural and superior to state governance.¹⁰⁸

IV. PART III: LAW, POLITICS, AND THE RACIAL CONTRACT

The ClassCrits mission statement argues that, *contra* vulgar Marxism, economic exploitation is not the only or primary driver of

action; other functions are. And in setting forth such a theory, and using it as the basis of inquiry, courts have not merely searched for state action, but instead relied on existing distributions, with which normal government functions are not thought to interfere.

CASS SUNSTEIN, *THE PARTIAL CONSTITUTION* 71-72 (1998).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See Martha T. McCluskey, *Constitutionalizing Class Inequality: Due Process in State Farm*, 56 *BUFF. L. REV.* 1035 (2008) (using as an example the Supreme Court case of *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408 (2003)).

¹⁰⁷ Iglesias describes the anti-political economy as:

[T]he structures of power that are legally produced by the rhetorical manipulation of the separation of politics and economics in ways calculated to legitimate both the exclusion of social justice concerns and democratic participation from the realm of the “market” and the penetration and domination of the political realm by economic power.

Elizabeth M. Iglesias, *Institutionalizing Economic Justice: A LatCrit Perspective on the Imperatives of Linking the Reconstruction of Community to the Transformation of Legal Structures That Institutionalize the Depoliticization and Fragmentation of Labor/Community Solidarity*, 2 *U. PA. J. OF LAB. & EMP. L.* 773, 781 n.21 (2000).

¹⁰⁸ See McCluskey, *supra* note 106, at 1056.

subordination.¹⁰⁹ For ClassCrits, hierarchies of race, gender, sexuality, and ability are not produced solely by capitalism; they have their own independent dynamics.¹¹⁰ This Part discusses those dynamics using the metaphor of the contract.

The Enlightenment political philosophers – among them Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and Immanuel Kant – were the architects of a new and powerful way of legitimizing the state and understanding politics: imagining a “social contract,” a fictitious moment at which individual humans consented to live in cooperation with one another as a society.¹¹¹ Although each of these philosophers took the metaphor in different directions, and there are an equal number of disagreements among contemporary political philosophers about what the idea of the social contract entails, Charles Mills describes the gist of social contract theory this way: “[T]he sociopolitical order is created by morally equal human beings (descriptive claim) and as such the structure of the sociopolitical order should reflect that equality (normative claim).”¹¹² The social contract is not intended as a description of a real historical event, but as an “as-if” story meant to give narrative life to “the idea of society as a human creation that should be morally bound by egalitarian norms.”¹¹³

As Mills notes, this metaphor and the idea it represents – that society is made up of morally equal participants whose interests should be reflected in social and political institutions – is at the very foundation of modern political liberalism.¹¹⁴ Yet Mills and Carole Pateman argue that the metaphor of the social contract, and the entire tradition of political philosophy that emerged from it, is fatally flawed.¹¹⁵ For Mills, the flaws are two. First, the social contract as originally conceived excluded women and non-western peoples. Second, and more importantly, the failure to attend to the question of who is properly a party to the social contract continues to facilitate injustice in the present.¹¹⁶

Mills points out that the equality assumed by the story of the social contract is not reflected in actual human history.¹¹⁷ While

¹⁰⁹ Desautels-Stein, *supra* note 20, at 651 (“[W]e hold that class power is inextricably connected to the development of racial and gender hierarchies, as well as to other systems of unequal power and privilege.”).

¹¹⁰ *Id.*

¹¹¹ CAROLE PATEMAN & CHARLES W. MILLS, *CONTRACT AND DOMINATION* 1 (2007).

¹¹² *Id.* at 108-09.

¹¹³ *Id.* at 109.

¹¹⁴ *Id.* at 108-09.

¹¹⁵ See PATEMAN & MILLS, *supra* note 111.

¹¹⁶ *Id.* at 108-18.

¹¹⁷ *Id.* at 110.

eighteenth-century political philosophers were formulating their theories of the social contract, what Mills calls “racial patriarchy” was in full sway.¹¹⁸ European colonialism, slavery, and women’s subordination in both political life and domestic life were the norm, and these practices of inequality were energetically justified by the very people who embraced, and sometimes formulated, the theory of the social contract.¹¹⁹ Mills explains this apparent contradiction by arguing that the early contract theorists implicitly accepted a theory of “natural” (i.e., nonpolitical) difference, under which women and nonwestern peoples lacked the capacities to enter fully into the social contract and, thus, could not be governed as equals.¹²⁰ Social contract theory’s silence about the question of who should be imagined as a party to the contract not only permitted the embrace of gendered racial ideologies, but also facilitated the process of actively making certain peoples and places invisible, and turning political questions of injustice into scientific questions of difference and managerial questions of governance.¹²¹ Mills argues, however, that more insidious than the exclusions implicit in early social contract theory is the failure of contemporary social contract theorists to pay attention to the central problem of justice in societies founded on those exclusions: the problem of history and reparation.¹²²

Just as the state’s commitment to economic growth has functioned as a limit on governance, creating an implicit “law beyond law” for doctrines affecting the environment, Mills and Pateman observe that the exclusion of certain human groups from the social contract has shaped western property and contract rights, as well as human and civil rights.¹²³ An example Pateman develops is the doctrine of *terra nullius*, incorporated into the law of nations and used by white settler societies in North and South America, Australia, and New Zealand in the colonial period.¹²⁴ The European colonizing

¹¹⁸ *Id.* at 4, 109-10.

¹¹⁹ Pateman notes that John Locke, for example, was personally involved in the colonial enterprise, as an investor in the Royal Africa Company, a landowner in the colonies, and as Commissioner for the Board of Trade and Plantations from 1695 until 1700. *Id.* at 47-48.

¹²⁰ *Id.* at 85-87.

¹²¹ *Id.* at 106-07.

¹²² *Id.*

¹²³ *Id.* at 2.

¹²⁴ *Id.* at 35-36. The doctrine of *terra nullius* (that is, the legal fiction that a territory is empty or unpopulated) is an element of the Doctrine of Discovery, the set of rules under which European colonizers “discovered” and laid claim to lands inhabited by non-Europeans. See Robert J. Miller et al., *DISCOVERING INDIGENOUS LANDS: THE DOCTRINE OF DISCOVERY IN THE ENGLISH COLONIES* (2010) (detailing the use of the doctrine in the United States, Canada, Australia, and New Zealand); Robert J. Miller

nations employed *terra nullius* in two senses. First, they used the doctrine to claim that the New World was uncultivated wilderness and therefore could be rightfully appropriated by the colonists.¹²⁵ Second, they argued that the indigenous inhabitants of the New World had no recognizable government, meaning that for purposes of social contract theory, the New World was in “a state of nature.”¹²⁶ Both versions of *terra nullius* explicitly excluded indigenous peoples from the social contract, thus affecting property and contract rights in domestic law and sovereignty and trade rights under the law of nations.¹²⁷

The original exclusion of native peoples from the social contract was never fully cured, despite later legal developments in international human rights.¹²⁸ Few nation-states are eager to return ancestral lands.¹²⁹ As S. James Anaya notes, even the affirmation of a general collective right to “self-determination” in contemporary international law stops short of granting indigenous peoples full sovereignty over their ancestral lands.¹³⁰ As Antony Anghie has shown, another legacy of colonialism is economic: even after formal decolonization in the 1960s and 1970s, the nations of the “global South” failed to recapture full ownership of their natural resources and, thus, were impeded in their drive toward economic development.¹³¹ In the United States, the relegation of American

et al., *The International Law of Discovery, Indigenous Peoples, and Chile*, 89 NEB. L. REV. 819 (2010) (detailing the use of the doctrine in Chile).

¹²⁵ PATEMAN & MILLS, *supra* note 111, at 36.

¹²⁶ *Id.*

¹²⁷ Pateman explains:

[A] civil society created out of a state of nature has (is understood to have) its origin in an original contract. In a *terra nullius* the original contract takes the form of a *settler contract*. The settlers alone (can be said to) conclude the original pact. It is a racial as well as a social contract. The Native peoples are not part of the settler contract – but they are henceforth subject to it, and their lives, lands, and nations are reordered by it.

Id. at 56.

¹²⁸ S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 4 (2d ed. 2004).

¹²⁹ *Id.*

¹³⁰ *Id.* at 7-8 (remarking that, “for obvious reasons,” states have resisted the notion that recognizing the rights of indigenous peoples to “self-determination” also requires recognizing the indigenous peoples’ right to choose independent statehood).

¹³¹ ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW* 115-37 (2004). For instance, in the 1970s, when the newly

Indian nations to the status of “domestic dependent nations” under federal Indian law has left them vulnerable to environmental destruction as well as economic marginalization and dependency.¹³² Sociologists Gregory Hooks and Chad Smith found, for example, that “a disproportionate number of the most dangerous military facilities are located near Native American lands.”¹³³ In their view, this is not the result of deliberate prejudice; rather, Indian lands, in the perception of the U.S. military, are still empty lands: *terra nullius*.¹³⁴

The original exclusions of the social contract have also affected American anti-discrimination law in at least three ways. First, although women and people of color are now embraced as parties to the social contract, the question of which nonhuman entities should be included remains underdiscussed. For instance, corporations are recognized as rights-holders (“persons”) with constitutional rights, but the nonhuman, living organisms and nonliving systems that sustain human

decolonized nations of the South attempted to create a New International Economic Order, the European powers and the United States denied the decolonized nations of the South sovereignty over their own natural resources by declaring that such resources were not national in character but belonged to all humanity. *Id.* at 211-12. These more powerful countries also upheld old colonial treaties governing resource transfer and granted multinational corporations equal international legal standing with Third-World governments. *Id.* at 223. These actions consolidated the economic and political weakness of the global south vis-a-vis the global north. *Id.* at 213.

¹³² Gregory Hooks & Chad Smith, *The Treadmill of Destruction: National Sacrifice Areas and Native Americans*, 69 AM. SOC. REV. 558, 569 (2004).

¹³³ *Id.* They argue that the “ferocious cruelty” with which white settlers displaced native peoples has been replaced in the post-frontier era with “the distant and calculated cruelty of bombings.” *Id.* at 570. Rob Nixon argues that the colonial encounter created not only nation-states (famously termed “imagined communities” by the anthropologist Benedict Anderson), but also “unimagined communities,” places that continue to be treated as if they are *terra nullius*. ROB NIXON, *SLOW VIOLENCE AND THE ENVIRONMENTALISM OF THE POOR* 150 (2011) (describing such places as “communities whose vigorously unimagined condition becomes indispensable to maintaining a highly selective discourse of national development”). Such places are sites for what Nixon calls “slow violence,” environmental catastrophes that unfold gradually over time. *Id.* at 2. For instance, the U.S. military has appropriated not only western lands in the continental United States, but also overseas territories for nuclear testing, sometimes with tragic health consequences for the inhabitants of those territories. *Id.* at 7 (describing the high rate of miscarriages and deformed babies born in the Marshall Islands well after U.S. nuclear testing ended).

¹³⁴ Hooks & Smith, *supra* note 132, at 571. Raymond Cross argues that even the economic development programs touted by many Indian nations as a path toward self-determination – such as investment in casinos – will not be effective because they require Indian peoples to cultivate values and practices at odds with Indian cultural identity. Raymond Cross, *Tribes as Rich Nations*, 79 OR. L. REV. 893, 955-56 (2000) (arguing that economic development without attention to tribal values yields “wolf children” and high levels of social dysfunction).

and other life on the planet are not recognized as having legal interests in the United States.¹³⁵ Because nonhuman producers can exercise the legal rights of “persons” to be heard (but nonhuman beings, entities, and systems that may suffer the ill effects of production cannot), the legal system becomes an inadequate forum for adjudicating competing rights and interests.¹³⁶

A second limitation of American law with respect to acknowledging and challenging the logic of the contract lies in absences and silences in the American jurisprudence of “fundamental rights.” Americans have no “positive” constitutional rights to life, food, education, health, or a safe environment, nor do they possess specifically economic rights such as the right to minimum support, the right to organize labor, or the right to a decent livelihood.¹³⁷ The absence of these social and economic rights means that economic institutions and practices are functionally prior to civil rights law. In the context of a post-colonial world, the absence of social and economic rights ensures the continued subordination of the previously excluded whenever that subordination cannot be addressed by “negative” rights alone.

A third, related limitation of American law is the failure of specific legislative and administrative remedies for the takings of land and labor from excluded populations that enabled the Plantationocene. Legislative reform efforts, such as the famous “forty acres and a mule” initiative following the Civil War, which sought to fundamentally intervene in the economic dependence of whites on black labor, were

¹³⁵ See CHRISTOPHER D. STONE, *SHOULD TREES HAVE STANDING?: LAW, MORALITY, AND THE ENVIRONMENT* (3d ed. 2010); Gary Steiner, *Cosmic Holism and Obligations Toward Animals: A Challenge to Classical Liberalism*, 2 J. ANIMAL L. & ETHICS 1 (2007). In contrast, Ecuador and Bolivia recognize “rights of nature” that do countenance nonhuman organic systems and entities as rights-holders. See Angela P. Harris, *Vulnerability and Power in the Age of the Anthropocene*, 6 WASH. & LEE J. ENERGY CLIMATE & ENV’T 98, 154 (2014).

¹³⁶ Maneesha Deckha argues that the concept of “the human” itself does ideological work that facilitates both violence against nonhuman animals and violence against humans rendered “subhuman” through domination. Maneesha Deckha, *The Subhuman as a Cultural Agent of Violence*, 8 J. CRIT. ANIMAL STUD. 28, 39 (2010). As Deckha further argues, “dehumanization” of human beings works under conditions of terror, torture, and war because we all understand that nonhumans have no rights that humans are bound to respect. *Id.*

¹³⁷ Indeed, the Supreme Court permits such a high degree of state surveillance and discipline over the poor that one commentator asserts, “Poverty Law has been deconstitutionalized, that is, the courts generally fail to enforce the Constitution’s existing protections when applied to poor people.” Julie Nice, *No Scrutiny Whatsoever: Deconstitutionalization of Poverty Law, Dual Rules of Law, and Dialogic Default*, 35 FORDHAM URB. L. J. 629, 630 (2008).

truncated before they had a chance to take hold.¹³⁸ Instead, whites were allowed to hang on to their ill-gotten gains, still recognized as “property,” and pass them on to the next generation.¹³⁹ Later efforts at black radical economic self-determination, such as the 1960s proposal that lands in the South be ceded to black control, never became law.¹⁴⁰ Similarly, although Indians whose nations have been “recognized” by the federal government today have been accorded a certain amount of political and legal sovereignty, “sovereignty” in this context does not mean a general right of return to lands taken by whites through fraud, treaty violations, and unjust war.¹⁴¹ Today, many Indian reservations

¹³⁸ For example, in 1865, Pennsylvania congressman Thaddeus Stevens argued in a speech to the state’s Republican convention that 400 million acres of land belonging to the wealthiest ten percent of Southerners should be seized and redistributed in 40-acre plots to former slaves, with the remainder being sold to the highest bidder. ERIC FONER, *RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION, 1863-1877* at 235 (1988). This plan was never adopted, however. Instead, as Alberto B. Lopez notes:

President Johnson pursued an agenda that pardoned secessionist individuals and simultaneously restored their property rights, thereby sounding the death knell for Reconstruction era land redistribution schemes. Thus, Stevens’s nineteenth-century proposal and its subsequent presidential rejection spawned the infamous phrase, “forty acres and a mule,” that today serves as an anthem for proponents of slavery reparations from the federal government.

Alberto B. Lopez, *Focusing the Reparations Debate Beyond 1865*, 69 *TENN. L. REV.* 653, 654 (2002) (footnotes omitted) (reviewing ALFRED L. BROPHY, *RECONSTRUCTING THE DREAMLAND: THE TULSA RIOT OF 1921* (2002)).

¹³⁹ See footnote 138 and accompanying notes.

¹⁴⁰ See Dan Berger, “*The Malcolm X Doctrine*”: *The Republic of New Afrika and National Liberation on U.S. Soil*, in *NEW WORLD COMING: THE SIXTIES AND THE SHAPING OF GLOBAL CONSCIOUSNESS* 46 (Karen Dubinsky et al., eds., 2009).

¹⁴¹ As Raymond Cross argues, treaties signed with Indian nations have failed to stop the federal government from taking millions of acres through coercion and fraud:

Millions of acres of Indian lands were taken by the federal government in outright congressional defiance of the Indian consent provisions of many treaties. Spurious land cession agreements and coerced Indian land transfers in the mid-to-late nineteenth century were devastating for the Indian peoples: they today retain only some fifty-seven million acres of their lands that once stretched from the Atlantic Seaboard to the Pacific Coast. More significantly, the contemporary Indian peoples’ survival as distinct cultural and economic entities has been jeopardized by this rapid and massive shrinkage of their land base.

remain desperately poor and vulnerable to further environmental degradation as “development.”¹⁴² Indeed, some Indian nations have seen their traditional subsistence economies prohibited in the name of property rights and environmental protection.¹⁴³ Reparations for black slavery and the return of indigenous lands taken through treaty violations, unjust wars of conquest, and fraud are today generally treated as “political questions” by the courts and as “off the table” by legislatures.¹⁴⁴ African American wealth is a fraction of white wealth, even in an era of slowly-closing income gaps.¹⁴⁵

Even attempts to combat the logic of the contract through less radical civil rights initiatives than “reparations” have been stymied by judicial and legislative refusal to allow civil rights remedies to fully penetrate economic relations. For example, in the 1960s, civil rights advocates inside and outside the federal government were gradually pulled away from attacking systems of racialized economic exploitation, such as sharecropping and the Southern chain gang, and towards more assimilationist remedies for subordination, such as equal opportunity in housing and employment.¹⁴⁶ To the extent that civil rights include economic rights, these are economic rights of “equal

Raymond Cross, *Sovereign Bargains, Indian Takings, and the Preservation of Indian Country in the Twenty-First Century*, 40 ARIZ. L. REV. 425, 427-28 (1998) (footnotes omitted). Cross argues that new jurisprudence is necessary to protect the tribes’ rights to compensation for unlawfully-taken lands. *Id.* at 428.

¹⁴² For a detailed look at the interactions of poverty, Indian sovereignty, and environmental destruction, see Ezra Rosser, *Ahistorical Indians and Reservation Resources*, 40 ENVTL. L. 437 (2010).

¹⁴³ The most famous example involves twenty-three Indian tribes and confederations living in what is now the Columbia River basin and Washington state. See Vincent Mulier, *Recognizing the Full Scope of the Right to Take Fish Under the Stevens Treaties: The History of Fishing Rights Litigation in the Pacific Northwest*, 31 AM. INDIAN L. REV. 41, 41 (2006). In 1854 and 1855, the United States executed nine treaties with these tribes and confederations under which, in exchange for ceding approximately sixty-four million acres of land, the tribes reserved the right to take fish from the waterways. *Id.* Mulier’s article describes the extensive litigation over these fishing rights, prompted by individual landowners and government regulators who have barred Indians’ access to exercise their treaty rights. *Id.* at 41-92.

¹⁴⁴ For an astute critical analysis of judicial decisions that decline to decide reparations claims on the merits, see Robert Westley, *The Accursed Share: Genealogy, Temporality, and the Problem of Value in Black Reparations Discourse*, 92 REPRESENTATIONS 81 (2005).

¹⁴⁵ According to an analysis by the Pew Research Center of data from the Federal Reserve’s Survey of Consumer Finances, “The wealth of white households was 13 times the median wealth of black households in 2013, compared with eight times the wealth in 2010” Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, PEW RESEARCH CTR. (Dec. 12, 2014), <http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/> (last visited Apr. 12, 2016).

¹⁴⁶ See RISA L. GOLUBOFF, *THE LOST PROMISE OF CIVIL RIGHTS* 142 (2010).

opportunity” to compete for existing jobs and housing without “discrimination,” not the right to fundamentally restructure education, employment, and housing systems in the name of equality. Rather, for the most part civil rights are narrow “racial rights,” focused on identity and recognition rather than redistribution.¹⁴⁷ The few instances in which anti-discrimination law has been held to require some economic intervention (as in prohibitions on racial discrimination in employment and housing) have been extremely controversial.¹⁴⁸ The result is a suite of rights that cannot penetrate systems such as “the environment” and “the economy.”¹⁴⁹ Rather than providing an effective challenge to

¹⁴⁷ *Id.* at 143.

¹⁴⁸ Indeed, as critical race theorists have argued, even within the already narrow ambit of anti-discrimination law, the constitutional law of race discrimination has notoriously been narrowed even further to recognize a legal violation only when the government uses racial classifications or when the plaintiffs can prove discriminatory intent to harm “because of” race. *See generally* Mario L. Barnes & Erwin Chemerinsky, *The Once and Future Equal Protection Doctrine?*, 43 CONN. L. REV. 1059 (2011) (critiquing the Supreme Court’s different levels of suspect classifications); Barbara J. Flagg, “*Was Blind, But Now I See*”: *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953 (1993) (commenting that color blindness is an “inadequate social policy [for] substantive racial justice”); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987) (positing a new way of looking at discrimination by acknowledging unconscious racism); Reva B. Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111 (1997) (discussing how efforts to reform racial and gender discrimination over the past several centuries have only changed status regulation, not abolished it). This “intent requirement” means that “institutional” or “structural” racism is effectively untouchable by law. *See* Alan David Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1050 (1978) (arguing that the law “has affirmed that Black Americans can be without jobs, have their children in all-black, poorly funded schools, have no opportunities for decent housing, and have very little political power, without any violation of antidiscrimination law”); Eva Paterson et al., *The Id, the Ego, and Equal Protection in the 21st Century: Building Upon Charles Lawrence’s Vision to Mount a Contemporary Challenge to the Intent Doctrine*, 40 CONN. L. REV. 1175, 1179 (2007-08) (arguing that “until we tackle the psychological and structural sources of racial inequality, we will remain stalled in our efforts to advance racial justice”).

¹⁴⁹ As Laura Pulido puts it:

[A] narrow focus on racism obscures a nuanced understanding of how racism interacts with various economic forces, including relations of production and regimes of accumulation, to create highly oppressive circumstances. This, in turn, militates against the development of more radical politics, as we are left with antiracist politics devoid of an economic critique.

Laura Pulido, *A Critical Review of the Methodology of Environmental Racism Research*, 28 ANTIPODE 142, 148 (1996).

the economic dimensions of white privilege, the law instead protects the “possessive investment in whiteness.”¹⁵⁰

V. PART IV: CONCLUSION

Since the colonial era, the treadmill and the contract have worked together to produce the dynamics that in turn have produced the Anthropocene. We are now in a position to understand why some scholars have offered two synonyms for the Anthropocene: “Capitalocene” and “Plantationocene.”¹⁵¹ We are also in a position to see why the treadmill and the contract pose dangers in the age of the Anthropocene.

What might be the alternative? Daniel Faber argues that “capitalism must be subsumed to long-term democratic planning aimed at meeting the human and environmental needs of all present and future generations.”¹⁵² Arturo Escobar goes further: rather than “globalization,” he proposes “a process of planetarization articulated around a vision of the Earth as a living whole that is always emerging out of the manifold biophysical, human, and spiritual elements and relations that make up the pluriverse, from the biosphere and the mechanosphere to the noosphere.”¹⁵³ Escobar argues that planetarization would involve:

the steady decentering and displacement of the capitalist economy with the concomitant expansion of diverse forms of economy, including communal and noncapitalist forms; the decentering of representative democracy and the setting into place of direct, autonomous, and communal forms of democracy; and the establishment of mechanisms of epistemic and cultural pluralism (interculturality) among various ontologies and cultural worlds. From a poststructuralist perspective, it is thus possible to speak of the emergence of postliberal and postcapitalist forms of social organization.¹⁵⁴

Exploring the treadmill and the contract and developing creative alternatives are appropriate tasks for ClassCrits scholarship.

¹⁵⁰ See generally George Lipsitz, *THE POSSESSIVE INVESTMENT IN WHITENESS: HOW WHITE PEOPLE PROFIT FROM IDENTITY POLITICS* (2006).

¹⁵¹ Donna Haraway, *Anthropocene, Capitalocene, Plantationocene, Cthulucene: Making Kin*, 6 ENV. HUM. 159, 159 (2015).

¹⁵² FABER, *supra* note 47, at 268.

¹⁵³ ESCOBAR, *supra* note 17, at xxxii.

¹⁵⁴ *Id.* at xxix.

Just as understanding race and colonialism helps enrich our understanding of the Anthropocene, an understanding of the Anthropocene can enrich our understanding of race and colonialism. As our bird's eye look at U.S. law suggests, the split between the contract and the treadmill has affected race theorizing as well. Outside the field of environmental justice, race is often understood in purely identitarian terms; attempts to link "class" and "race" frequently center one dynamic at the expense of the other rather than appreciating the way in which the treadmill and the contract are "co-formations" of power. Thus, understanding the treadmill and the contract, and the relationship between them, is a way to improve our understanding of the relationships between "race"/ethnicity, class, and colonialism, situating them within a larger framework. The goal is to trouble and query the very terms in which we have been accustomed to think. The treadmill and the contract endure as the horizons of mobilizations for justice. We need new metaphors, practices, and institutions if human life is to continue in the Anthropocene. This is a job for ClassCrits.

