STREAM READINGS

POVERTY AND SOCIAL INCLUSION

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Poverty and Social Inclusion

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Description

This stream will examine the distributive role of legal ideas, legal norms and legal institutions as they affect the incidence of poverty and inequality. Through theoretical readings and case analyses, we will map the relationship of law to poverty using various methods, including socio-legal analysis of the distribution of formal or official law, examination of the use of law in struggles over rent in extractive industries and global value chains, and the potential for various rights regimes to strengthen or weaken these dynamics. Our goal will be to offer an overview of critical legal methods for examining law's role in poverty and inequality, particularly in the developing world.

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Nils Gilman

The New International Economic Order: A Reintroduction

> Bliss was it in that dawn to be alive,
> But to be young was very heaven!
> —William Wordsworth, 1805

> I hear a noise at the door, as of some immense slippery body lumbering against it.
> —H.P. Lovecraft, 1917

What, exactly, was the New International Economic Order (NIEO)? Promulgated as a United Nations declaration in 1974 (reprinted as the frontispiece to this special issue of *Humanity*), the NIEO was the most widely discussed transnational governance reform initiative of the 1970s. Its fundamental objective was to *transform the governance of the global economy to redirect more of the benefits of transnational integration toward "the developing nations"*—thus completing the geopolitical process of decolonization and creating a democratic global order of truly sovereign states.

It was, in short, a proposal for a radically different future than the one we actually inhabit.

Viewed from our present conjuncture, the NIEO seems like an apparition, an improbable political creature that surfaced out of the economic and geopolitical dislocations and uncertainties of the early to mid-1970s, only to sink away again just as quickly. Appearing today as the figment of a now all but lost political imaginary, the NIEO sprang forth during a narrow and specific window of geopolitical opportunity, a "moment of disjunction and openness," when wildly divergent political possibilities appeared suddenly plausible.[1] What made the NIEO remarkable was not so much the content of its program as the fact that political and economic leaders throughout both the postcolonial world and the industrial core of the global economy took seriously the possibility—the former mainly with Wordsworthian hope, the latter often with Lovecraftian horror—that they might be witnessing the downfall of the centuries-long hegemony of what was coming to be known simply as "the north." In contrast to the Thatcherite "There Is No Alternative" order that would soon emerge, the NIEO imagined and represented a dramatically "alternative" geopolitical future.[2]

Although the idea of a NIEO reverberated through the halls of power from Washington and New York to Algiers and Dar es Salaam throughout the late 1970s, it faded from view during the 1980s, replaced by discussions of structural adjustment programs, the Washington consensus, and the "end of history."[3] By the late 1990s, few (in the north, at least) would have disagreed with Jeffrey Cason's hand-waving

dismissal that the proposals of the NIEO could only be regarded as "quaint."[4] Today, the NIEO is almost completely forgotten.

The South Demands

This special issue of *Humanity* is dedicated to disinterring the NIEO and its moment, to considering how diverse (and, often, contested) the proposals were that came together under the NIEO rubric in terms of origins, goals, and rhetoric. Focusing on different dimensions of the NIEO, our authors variously suggest that the NIEO was:

- a bid to empower the United Nations General Assembly as the legislative body for making binding international law
- a critique of legal formalism
- the genealogical starting point for "the right to development"
- an effort to create a global regulatory framework for transnational corporations
- an extension of the principle of sovereignty from the political to the economic realm
- an incrementalist approach to reforming global economic and political power arrangements
- an endeavor to redress historical grievances of newly independent states, thereby "completing" decolonization
- a call for global redistribution—including financial, resource, and technology transfer—from rich to poor countries
- an attempt to universalize and globalize the principles of "embedded liberalism"
- the high noon of "Third Worldism" and its vision of solidarity among the poorer nations
- a radical challenge to the historic hegemony of the North Atlantic industrial core
- a realistic program for global socialism
- a utopian political project, global and totalizing in its ambitions
- an alternative model for transnational economic integration—that is, of globalization
- a key catalyst (via backlash) for the formulation of the neoliberal paradigm in favor of limiting state power and augmenting private power

What this list makes clear is that the NIEO was not a single coherent entity; rather, it was more like a political brand holding together a set of loosely compatible agendas, which together formed something less than a coherent strategy. While everyone involved might have agreed that the goal of the NIEO was to improve the economic position of the global south in relation to the global north, there was no consensus about the ultimate political ends, much less about the best way to achieve those ends. This, as much as anything, helps to explain why the NIEO seemed unable to realize its proponents' hopes. With this caveat in mind, it is nonetheless possible to distinguish three distinct but interconnected aspects to the NIEO: economic proposals, legal tactics, and political objectives.

The Economic Vision of the NIEO

At the core of the NIEO's agenda was a series of interrelated proposals for reforms to the structure, governance, and norms of the global economy designed to improve the relative position of the so-called developing states. In particular, the NIEO Declaration called for: (a) an absolute right of states to control the extraction and marketing of their domestic natural resources; (b) the establishment and recognition of state-managed resource cartels to stabilize (and raise) commodity prices; (c) the regulation of transnational corporations; (d) no-strings-attached technology transfers from north to south; (e) the granting of preferential (nonreciprocal) trade preferences to countries in the south; and (f) the forgiveness of certain debts that states in the south owed to the north. Together, all these proposals amounted to an assertion of the "economic sovereignty" of postcolonial states.

Although the point of origin for some of these demands can be traced back to the Mexican revolutionary constitution of 1917 or even earlier, the more proximate intellectual origins for these ideas derived from pioneering work in development economics by the Argentine economist Raúl Prebisch, first as the head of the Economic Commission for Latin America (ECLA) from the late 1940s and then as the founding secretary general at the United Nations Conference on Trade and Development (UNCTAD) from the early 1960s.[5] Along with the German British economist Hans W. Singer, Prebisch postulated that, absent regulatory intervention, the terms of trade between primary (commodity) producers and manufacturers deteriorate over time. The Singer-Prebisch thesis not only offered a political critique of the subordinate economic position to which the imperial powers had historically consigned their colonies as primary producers; it also provided a clear path forward: international trade needed to be managed to prevent the deterioration of the terms of trade, and governments and corporations from the north had to be compelled to provide capital, technology, and expertise to enable the south to develop its own industrial base. The Singer-Prebisch thesis would not only form the cornerstone of dependency theory and later world systems theory; it also provided the underlying rationale for import-substitution industrialization strategies as well as the demands of the NIEO.[6] Indeed, under Prebisch's leadership in the 1960s, UNCTAD became a prime site for the formulation and promotion of the NIEO's various economic claims.[7]

Examining the global economic context of the early 1970s is crucial for understanding both the demands and reception of the NIEO. Particularly critical were the dissolution of the Bretton Woods fixed exchange rate regime around 1968–73 and the Arab-led oil embargo and price spike of 1973.[8] These events had many practical implications for the world economy; but as Hans Singer himself noted in 1978, their importance for the NIEO was as much psychological as material.[9] On the one hand, the dissolution of the fixed-exchange rate system demonstrated that ostensibly unalterable structures underpinning the world economy could in fact shift abruptly. On the other hand, the success of the Organization of the Petroleum Exporting Countries (OPEC) in raising and sustaining high oil prices not only offered the hope that solidarity among primary producers could succeed in upending the terms of global trade,

it also quelled fears among many in the south concerning military or financial reprisals from the north. Together these events made the economic ambitions of the NIEO, which both before had seemed (and would soon again seem) utterly unrealistic, appear suddenly and shockingly conceivable. Even oil-importing countries in the south, for whom the oil price spike was ruinous materially, could find political hope from the situation. At a February 1975 meeting in Algiers devoted to drawing up an "action plan" for the NIEO, the G-77 nations pledged to raise their share of the world economy from 7 percent to 25 percent, with attendees from oil-producing countries promising to offer financial aid as long as the West also "did its part."[10] For NIEO proponents, goals once considered impossible now appeared within reach.

Even at this heady moment, however, the NIEO's economic vision encompassed a strange set of tensions. On the one hand, it embraced markets, albeit of a controlled sort, to be governed by cartels managed by states. Contrary to some claims about the NIEO, the proposals were not antitrade or prefiguratively antiglobalization; rather, the NIEO envisaged an alternative order of global economic integration in which countries in the south could catch up with the economic achievements of the north, thus creating a material foundation for political equality between states in the north and south.[11] In other words, the NIEO represented a call for *socialism among states*, what Tanzanian president Julius Nyerere called "a trade union of the poor."[12] On the other hand, despite this interstate socialism, the NIEO remained studiously agnostic about the proper form of internal organization of national economies, being quite amenable to *capitalism within states*. This was in keeping with the principle of absolute respect for the economic sovereignty of nations, but it also lent credence to critics of the NIEO who asserted that its real agenda was to transfer resources "from the poor in rich countries to the rich in poor countries."[13] For the NIEO, however, the unit of poverty was the state, not the individual.

The NIEO as an Intervention in International Law

Just as important as the NIEO's economic objectives were the novel means it sought to implement its objectives through new mechanisms of international law. Rather than accepting international law as a neutral device, NIEO legal theorists claimed that existing international law, unsuited to promoting structural reform, was biased toward economic incumbents and needed recasting in order to favor developing nations. More narrowly, NIEO proponents argued that states in the south should not be bound by legal agreements made under an illegitimate transnational legal regime, particularly if those agreements had been concluded by pre-independence administrations or with private corporations. Just as the economic goal of the NIEO was to enable the self-sufficiency and self-determination of countries in the south, the legal strategy was similarly predicated on the bedrock assertion of the absolute sovereign equality of every nation.

Proponents of the NIEO, especially those at UNCTAD, sought to use the UN General Assembly, with its more plausible claims to represent world interests, as a forum for developing new international legal structures that would promote the agenda of the south. Choosing the General Assembly as a vehicle for transnational legal change made political sense given the evolving composition of that body. When

the UN was founded in the mid-1940s, not only were "north" and "south" not yet operative concepts in the geopolitical imaginary but even the distinction between "industrialized" and "developing" countries (or economies) barely existed.[14] Decolonization changed this rapidly, as the number of UN member states ballooned from the original 51 to 76 in 1955 and 110 by 1962—the large majority of which were "developing" states in the south.[15] With the General Assembly operating under a one state–one vote principle, it seemed a fruitful site for legal claims-making that would benefit the south. At the second UNCTAD conference in 1968, 77 southern states had self-identified as a bloc, which came to be known as the Group of 77 (G-77). In principle, the G-77 was unified by its members' shared subordinate position within the global economy. While the politics of the group would prove difficult to manage, they indubitably formed a voting majority within the General Assembly. Therefore, if the G-77 could at once enhance the power of the General Assembly and maintain political unity, all of them stood to gain in relation to the north.

The most important legal theorist for the NIEO was the Algerian jurist Mohammed Bedjaoui, who provided the most elaborate legal-theoretical articulation of how to accomplish the NIEO's economic objectives. Bedjaoui criticized the existing formal structure of international law, which he claimed was organized to systematically favor former imperial powers, which in turn reflected and enabled the structural inequality of the global economy. Unlike legal localists, who argued that different communal situations necessitated different sorts of legal regimes, Bedjaoui advocated legal universalism. He argued, however, that the power dynamics embedded within the structure of international law required that certain key terms of international law be undone. For example, he rejected the notion that postcolonial and postrevolutionary states had to meet treaty and contractual obligations joined under previous regimes. In short, Bedjaoui presented Algeria's own postindependence international legal positions toward France as a model for what an alternative global, transnational legal order might look like.[16]

The central problem for NIEO jurists like Bedjaoui was how to assert the absolute national sovereignty of southern states without at the same time empowering northern states to ignore, in the name of their own national sovereignty, the supranational legal injunctions proposed by the NIEO.[17] This tension within the legal doctrine of the NIEO mirrored the one in the economic sphere: claims of absolute economic sovereignty flew in the face of transnational economic interdependence. At the end of the day, NIEO success required leveling power disparities between states, but for that to happen, its legal strategy had to be embedded in a political strategy.

The NIEO as Political Project

As the foregoing suggests, the NIEO was more than just a set of technical economic-legal proposals; it was also an explicitly political initiative, an attempt to extend the realignment of international power that the process of decolonization had begun. At the level of political identity, the G-77 and the NIEO claimed to embody the idea that the "developing nations" formed a coherent political group, one whose common political identity rested on a shared history of resistance to colonialism and imperialism.[18] As such, the NIEO may be seen as a continuation of what Erez Manela

has referred to as the "Wilsonian moment" for the peoples of the south or of the "Bandung era" which had opened with the Afro-Asian Conference in 1955, itself often characterized as the start of the Non-Aligned Movement.[19] The economic proposals of the NIEO and the legal ideas for their implementation were, in the end, merely instruments in the service of the political goal of creating true global democracy of equal (and equally) sovereign states, thereby completing the process of decolonization. In this sense, the NIEO represented arguably the most direct and sustained political challenge of the postcolonial era to the ongoing authority and legitimacy of the incumbent industrial powers.

Implicit in the NIEO Declaration was the assumption that a shared interest in rearranging global economic governance provided a sufficient basis for political solidarity. Sharp divisions existed within the G-77 about political tactics, however. For the more radically inclined proponents of the NIEO, the fulfillment of a new order meant rolling back Western power and augmenting the power of local elites who ruled in the name of their own peoples. Typical of this stance was Algerian president Houari Boumediene, who would emerge as perhaps the single most prominent political proponent of the NIEO. The site of a particularly vicious colonial war of independence, Algeria's ultimate victory represented the promise and efficacy of simultaneous confrontation with the north across diplomatic, economic, political, and legal channels: for Boumediene there was a direct line from the Battle of Algiers to the NIEO.[20] Speaking of a "dialectic of domination and plundering on the one hand, and the dialectic of emancipation and recovery on the other," he warned of an "uncontrollable conflagration" should the north refuse to cede "control and use of the fruits of resources belonging to the countries of the Third World."[21]

Not all members of the G-77 coalition adopted such confrontational rhetoric, however. Others, such as Haile Selassie in Ethiopia or the leaders of Ghana after independence under Kwame Nkrumah, viewed the politics of the NIEO as a framework for achieving a more harmonious and mutually beneficial model of global economic and political integration. Yes, the NIEO's aims might have been about redressing historical wrongs and challenging ongoing power inequities, but the goal was to forge a dialogue that would bind wounds. To reread all the speeches delivered on behalf of the NIEO is to be struck by the hopeful idea that the north could be reasoned into accepting the moral necessity of abandoning its privileged position in the geopolitical hierarchy.

In addition to the division over political tactics and rhetoric, the sheer economic diversity of the G-77 represented a political paradox. As mentioned earlier, a key source of inspiration to the NIEO was the sustained success of the OPEC oil embargo that had begun in the fall of 1973, less than a year before the NIEO Declaration in May 1974. OPEC's success in altering the terms of trade of a key global commodity appeared to represent a model that might be extended to other commodities, and to geopolitics as a whole. But this was based on two critical misapprehensions. First, oil was not a commodity like any other: unlike copper or coffee, oil was the energetic foundation of the entire global economy, which meant that the north was necessarily going to adopt a unique strategy to address its production and marketing.[22] Second, what few anticipated before the oil embargo began was that the success of the embargo

would open an enormous fissure within the G-77 between oil importers, for whom the price spikes were an economic disaster, and oil producers, whose sudden windfalls made the idea of global redistribution much less attractive. The fact that the south would split over the material consequences of the very act that had brought them such collective political hope was hardly foreordained, however, and instead was exacerbated by a deliberate strategy embarked upon by certain leaders in the north.

The North Demurs

While NIEO proponents were pushing for a future of global sovereign equality, the leaders of the capitalist economies in Frankfurt, London, and New York were making other plans. Reactions in the north to the NIEO ranged from incremental accommodation (led by social democrats like Willy Brandt, Jan Tinbergen, Olaf Palme, Bruno Kreisky, and Jan Pronk), to Machiavellian inversion (led by conservative geopolitical realists like Henry Kissinger), to unrelenting and direct opposition (led by an emergent cadre of American neoconservatives like William Simon, Daniel Patrick Moynihan, and Irving Kristol, the last of whom characterized the NIEO as "mau-mauing" the north[23]).

For the governing powers of the north, the emergence of the NIEO reinforced the sense of global crisis that had been building for years across several fronts. Not only had the Bretton Woods financial order collapsed but rioting and domestic terrorism seemed to have become endemic in much of the north.[24] Many leaders in the north felt they were facing a fundamental, multifaceted systemic revolt, characterized by some as a "crisis of governability."[25] While for most leaders in the north the crisis was perceived as primarily domestic in nature, the linkages between the revolt of subalterns in their own home states and the revolt of global subalterns seemed linked.[26] The fact that some domestic "radical" groups linked their political goals and language to the emergent language of transnational racial and economic emancipation did little to allay the concern.[27]

Many leaders and intellectuals in the north saw the NIEO as an element in this wider systemic crisis, and their responses to the NIEO typically mirrored their respective reactions to domestic unrest. For example, the American political scientist Stephen Krasner, who would go on to serve as director of policy planning in the U.S. State Department under George W. Bush, claimed that the goal of the NIEO was to "capture the structure of international organizations created by the United States at the conclusion of World War II."[28] Krasner recommended simply saying "no." By contrast, former West German chancellor Willy Brandt took a much more conciliatory stance, which he realized by managing a two-year-long series of workshops around the world to discuss various elements of the NIEO proposal. The result of this listening tour would be the landmark *North-South: A Program for Survival,* a book whose mere existence testifies to the willingness of serious northern leaders to countenance the proposals of the NIEO.[29] The most common reaction, however, was neither uncompromising naysaying nor sympathetic accommodation but rather playing for time and accentuating divisions among the members of the G-77.[30]

In stalling any decisions that might empower the states of the south, the north was also reflecting an epochal shift in views of the efficacy and probity of government

more generally. Partly as a result of various governments' inability to overcome domestic crises, a deep cynicism was setting in about government, especially in the United States, where Ronald Reagan would be elected president in 1980 on a platform that declared that government was the problem rather than the solution. As James Buchanan put it, "romantic and illusory notions about the workings of governments and the behavior of persons who govern" were being "replaced by a set of notions that embody more skepticism about what governments can do."[31] While the "public choice theory" literature that purported to prove this point was mainly directed at exposing the corruptions and malfeasances of governments in the north, the rejection of the state as a positive force could not help but affect the way that the NIEO would be evaluated. Even those in the north sympathetic to the NIEO's call for a more just global order were inclined to promote solutions at odds with southern leaders' insistence that such an order could only be realized through the empowerment and affirmation of the sovereignty of the southern states.[32] Whether it was religious charities like Oxfam that were attempting to provide food aid to famine-endangered communities, or the World Bank taking on "basic needs," or human rights organizations like Amnesty International trying to protect political dissidents, nowhere in the north was there much support for the NIEO's ambition to rearrange global power or legal structures in favor of postcolonial states.[33] Indeed, with hindsight it is apparent that what succeeded the NIEO was not more state power in the south but rather the emergence of new centers of private authority.[34]

In the end, the dissipation of the NIEO's energies took place as rapidly as its emergence. Already by 1977 it was clear to people like Nyerere that the north was unwilling to respond with any major concessions, and Boumediene's untimely death in 1978 deprived the NIEO of its most forceful leader. Margaret Thatcher's election as prime minister of Britain in 1979, as well as the economic downturn in the United States that same year created by Federal Reserve chair Paul Volcker's interest rate hike, meant that the political leadership of the major powers of the north was unified in its disdain for the NIEO, with only smaller industrialized countries like Austria and the Netherlands still expressing sympathy.[35] It was left to Reagan to deliver the final word at the Cancún Economic Summit in October 1981 that the United States would no longer discuss any changes to the global economic governance architecture, no matter the discord this generated.[36]

The final dagger would be the Latin American debt crisis in 1982: bailing out indebted southern states was not done in charity but conditionally dependent on structural adjustments designed explicitly to weaken the reach of the state.[37] The result was a "lost decade" in Latin America, and then another in Africa when the same policies were applied there.[38] The new "post-historical" consensus in favor of "free trade" that consolidated by the late 1980s among mainstream economists in the north asserted that the proponents of the NIEO had been fundamentally misguided in their view of history and development.[39] Political determinism gave way to technological determinism.[40] "Hitherto existing politico-economic approaches or even the analytical approaches employed by these perspectives will not be able to find answers to the global problems," explained one former supporter of the NIEO: "The coming technotronic age will give its own answers."[41] In the end, all that was left of the NIEO were

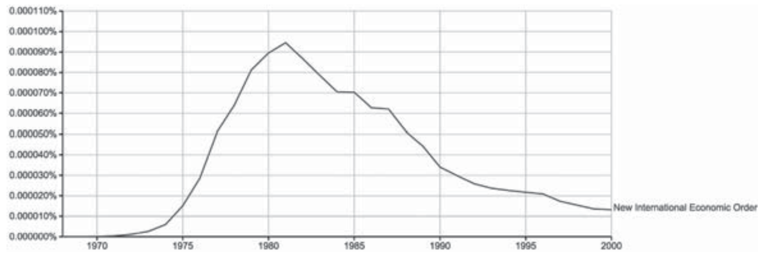

Figure 1. The salience of "New International Economic Order" in language. Google Ngram for "New International Economic Order," 1969–2000. Source: http://books.google.com/ngrams (accessed October 19, 2014).

a few twitches, as of a phantom political limb, such as discussions concerning the regulation of transnational corporations, which themselves would die in early 1990s. It would seem the NIEO failed ignominiously.

Failure—or Unfailure?

The NIEO today is almost entirely forgotten, at least when referred to by its proper name (see fig. 1). Already in the early 1980s, the conventional wisdom among mainstream analysts in the Anglophone academy was that NIEO had always been doomed to failure.[42] The explanations for this inevitability were legion: the political solidarity of the Third World was bound to unravel; the logic of collective action meant that commodity cartels were destined to defection and failure; the attempt to use international law to rein in the sovereign prerogatives of powerful countries was fated to succumb to jurisdictional fragmentation and forum shopping; and the north was always going to have been willing and able to flex its vastly greater economic, political, and (if ultimately necessary) military might to restrain the rise of the south.[43]

This *Humanity* special issue, dedicated to the NIEO, began as an effort to make sense of this paradox: how an entity that today has been nearly universally represented (insofar as it is represented at all) as an abject and inevitable failure had in its own moment seemed so entirely plausible to so many of both its proponents and enemies.[44] Most of the essays published here were presented at a conference sponsored by New York University's Remarque Institute in April–May 2014, where a lively exchange of views helped to clarify just how sprawling and contradictory the NIEO was, even at its zenith of optimism, forty years earlier. What emerged from the conversation was something of a surprise: despite the fact that there was broad consensus in the north that the NIEO failed, in important ways this is not quite right.

First, the matter of inevitability. As historians, we should always be wary of ascribing inevitability to outcomes that seemed deeply uncertain to the actors at the time.[45] Were Daniel Patrick Moynihan and others in the Nixon and Ford administrations simply being alarmists when they declared that the United States must attack the NIEO frontally? Was the Brandt Commission merely a Machiavellian scheme to

divert attention? In fact, as several essays in this dossier demonstrate, the failure of the NIEO was the result of a deliberate and concerted strategy on the part of leaders in the north, compounded by strategic choices on the part of the south.

Second, a key underlying economic objective of the NIEO, namely, to improve the south's economic position in the global economy, has in fact been realized, albeit unevenly. Whereas the advanced economies produced 80 percent of global GDP at the time of the NIEO Declaration, by 2009 that share had fallen to 57 percent, while the leading economies of the south (now rebranded by mainstream economists in the north as "emerging markets") had increased their share to nearly 40 percent of total world GDP.[46] While it is true that the states of the south are no more economically sovereign than they were in the 1970s, this is arguably part of a larger trend whereby all states, including those of "advanced" economies, have become more deeply integrated into, and thus dependent on, the overall world economy interconnected by global supply chains. While many have lamented the deindustrialization of the old industrial core states, the silver lining has been a huge growth in industrial jobs in poorer countries. And while it is true that it is mostly corporations based in rich countries that control these globalized supply chains, even this is changing rapidly.[47]

Indeed, rather than see the NIEO as a failure, it might be more helpful to see it as an example of what Jennifer Wenzel has called "unfailure."[48] *Unfailure* refers to the paradox that many seemingly failed political and social movements, even though they did not realize their ambitions in their own moment, often live on as prophetic visions, available as an idiom for future generations to articulate their own hopes and dreams. In other words, although the historically specific institutional demands of the NIEO during the 1970s went unrealized, one can make a credible case that the undead spirit of the NIEO continues to haunt international relations.

The unfailed afterlife of the NIEO is perhaps most evident today in global climate change negotiations. For many key poor countries, the north/south geographic imaginary that gave life to the NIEO remains the dominant framing of the question of climate justice.[49] Just as it was in the 1970s, the G-77 remains the south's main organizing agent for collective climate bargaining with the north.[50] In addition, in its negotiating positions with respect to climate change, the G-77 has pursued a line of economic reasoning that strongly echoes the NIEO Declaration, arguing that because the north bears a historic responsibility for producing the vast majority of anthropogenic greenhouse gases currently in the atmosphere, and the south still has a "right to development," any fair climate treaty should be "nonreciprocal," with binding responsibilities (in this case, concerning emissions reduction mandates) applying only the north. Likewise, just as it did in the 1970s, the G-77 insists that the north should transfer technology and provide aid as reparations for the damage caused by historic wrongs—now referring to historic greenhouse gas emissions. In sum, the NIEO's unfailed political imaginary of a more just and egalitarian global order lives on in contemporary climate negotiations.[51]

Historians, who for many years ignored the historiographic no man's land between the charismatic upheavals of the 1960s and the world historical events of the 1980s, have come to recognize the 1970s as the foundry of our current world order.[52] But crucial to understanding how that current order took shape is to appreciate the contingency of the

events and decisions that took place in those years: key actors had highly divergent visions and hopes for the future and, had different choices been exercised, we might have gotten a strikingly different future. Embedded liberalism and planned modernization were in deep crisis but still deeply institutionalized in the West; communism was rotting from within in its Eastern European and Asian heartlands but remained a source of inspiration to many radicals elsewhere; and Third Worldism seemed to offer a dramatic break from centuries of North Atlantic domination of the world economy.

Beyond these major ideologies lurked others: environmentalists calling for re-ruralization, techno-utopians predicting undersea and extraterrestrial colonization, and wine-dark visions of various demographic apocalypses. The conditions making possible this pluralization of political imaginaries were historically specific: détente had terminated the binary geopolitical logic of the early Cold War; revolutions had overturned governments in more than fifty states in the previous two decades; the Vietnam War confirmed that small nations of the south could defeat even the determined military might of a traditional great power; the collapse of the Bretton Woods exchange rate system had shown the tenuousness of existing global governance institutions; and OPEC showed that political solidarity among primary producers could drastically reshape global trade relations in favor of historically poor regions. From this cauldron of contingencies, among the least anticipated prospects was that corporate powers would assert control over the commanding heights of economies worldwide, with their casuists retroactively declaring that this had always already been the only real alternative.[53]

It is no coincidence that the idea to reconsider the history of NIEO first occurred to the editorial collective of *Humanity* in the wake of the 2007–2008 global financial crisis, as the "no alternative" draperies of the post–Cold War decades seemed suddenly threadbare. Once-conceivable alternatives to our current global order are of more than passing interest to those who seek historical bases for alternative political economies.[54] The political economy of antistatist, structurally adjusted, labor-disciplined, financialized globalization—though it produced much growth in the 1990s—has been increasingly questioned in the wake of the 2007–2008 global financial crisis. The secular stagnations (and worse) that have followed, in conjunction with amplifying economic inequalities, have made more urgent the need to identify alternatives to the "actually-existing" world order that emerged in the wake of the NIEO.[55] Revisiting the NIEO is part of that process: a chance to revisit an abandoned road—not because it remains available but because seeing it as an unfailure helps denaturalize the inegalitarian global political economy which for three decades global authorities like the *Economist* magazine or the World Economic Forum have insisted is the only reasonably available historical possibility. Reappreciating the seriousness with which the NIEO was regarded in its time, not least by its fervent opponents, can help us to reopen the possibility space of contemporary geopolitics.

NOTES

1. Bob Jessop, "What Follows Fordism? On the Periodization of Capitalism and its Regulation," in *Phases of Capitalist Development: Booms, Crises and Globalizations*, ed. Robert Albritton et al. (Basingstoke: Palgrave, 2001), 282–99.

2. Bradley W. Bateman, "There Are Many Alternatives: Margaret Thatcher in the History of Economic Thought," *Journal of the History of Economic Thought* 24, no. 3 (September 2002): 307–11.

3. Jamie Peck and Adam Tickell, "Neoliberalizing Space," *Antipode* 34, no. 3 (July 2002): 380–404; Branko Milanovic, "The Two Faces of Globalization: Against Globalization as We Know It," *World Development* 31, no. 4 (April 2003): 667–83.

4. Jeffrey Cason, "Whatever Happened to the New International Economic Order?" in *Ethics in International Affairs*, ed. Andrew Valls (Lanham, MD: Rowman & Littlefield, 2000), 201–13.

5. J. Reuben Clark Jr., "The Oil Settlement with Mexico," *Foreign Affairs*, July 1927; John Gledhill, "The Persistent Imaginary of 'the People's Oil': Nationalism, Globalisation and the Possibility of Another Country in Brazil, Mexico and Venezuela," in *Crude Domination: An Anthropology of Oil*, ed. Andrea Behrends, Stephen P. Reyna, and Günther Schlee (New York: Berghahn Books, 2011).

6. Thomas Ziesemer, "A History of Economic Theorizing on the Prebisch-Singer-Thesis," in *Zur Kontinentalen Geschichte des Ökonomischen Denkens*, ed. Jörg Glombowski, Anka Gronert, and Henk W. Plasmeijer (Marburg: Metropolis-Verlag, 1998), 337–65; J.F.J. Toye and Richard Toye, "The Origins and Interpretation of the Prebisch-Singer Thesis," *History of Political Economy* 35, no. 3 (Fall 2003): 437–67.

7. Whether Prebisch's leadership was wise or effective is deeply contested. For harsh assessments, see Frederick F. Clairmonte, "Prebisch and UNCTAD: The Banality of Compromise," *Journal of Contemporary Asia* 16, no. 4 (1986): 427–55, and also John White's comment in footnote 45. For a relatively even-handed biography of Prebisch, see Edgar Dosman, *The Life and Times of Raúl Prebisch, 1901–1986* (Montreal: McGill-Queen's Press, 2008).

8. On the end of Bretton Woods, see Peter M. Garber, "The Collapse of the Bretton Woods Fixed Exchange Rate System," in *A Retrospective on the Bretton Woods System: Lessons for International Monetary Reform*, ed. Michael D. Bordo and Barry Eichengreen (Chicago: University of Chicago Press, 1993), 461–94. For a broader context, see Francis J. Gavin, *Gold, Dollars, and Power: The Politics of International Monetary Relations, 1958–1971* (Chapel Hill: University of North Carolina Press, 2004). On the geopolitical context of the oil embargo, see David S. Painter, "Oil and the American Century," *Journal of American History* 99, no. 1 (June 2012): 24–39; Christopher R.W. Dietrich, "'Arab Oil Belongs to the Arabs': Raw Material Sovereignty, Cold War Boundaries, and the Nationalisation of the Iraq Petroleum Company, 1967–1973," *Diplomacy and Statecraft* 22, no. 3 (2011): 450–79.

9. Hans W. Singer, "The New International Economic Order: An Overview," *Journal of Modern African Studies* 16, no. 4 (December 1978): 539–48.

10. United Press International (UPI): "Developing Nations Finish Plan to Raise Share of Economy," *New York Times*, February 19, 1975.

11. Jagdish Bhagwati, ed., *The New International Economic Order: The North-South Debate* (Cambridge, Mass.: MIT Press, 1978), chap. 1.

12. Julius K. Nyerere, "Unity for a New Order," speech in Arusha, Tanzania, February 12, 1979.

13. H.W. Arndt, *Economic Development: The History of an Idea* (Chicago: University of Chicago Press, 1987), 142–45.

14. Though the literature contains scattered references to "developing countries" prior to the

mid-1940s, the key texts that popularized the term were Eugene Staley, *World Economic Development: Effects on Advanced Industrial Countries* (Montreal: International Labor Office, 1944), and Kurt Mandelbaum, *The Industrialization of Backward Areas* (Oxford: Oxford University Press, 1945).

15. The term ''decolonization'' was almost unknown until the mid-1950s and appears to have become popular in the wake of the Bandung Conference. The term ''developing countries'' emerged only in the early 1960s.

16. James Thuo Gathii, ''Neoliberalism, Colonialism and International Governance: Decentering the International Law of Governmental Legitimacy,'' *Michigan Law Review* 98, no. 6 (May 2000): 1996.

17. William L. Scully of the Heritage Foundation made this argument in a policy briefing titled ''The Brandt Commission: Deluding the Third World'' (April 30, 1982) in which he condemned ''international redistributive schemes'' as entailing ''a degree of coercion, the abrogation of sovereignty, and the denial that man has a fundamental right to the fruits of his labor'' http://s3.amazonaws.com/thf_media/1982/pdf/bg182.pdf (accessed October 14, 2014).

18. With virtually all of G-77 nations being located in Africa, Asia, or Latin America, the political project also carried an antiracist overtone, though this was mainly discussed *sotto voce*. See C. Clyde Ferguson Jr., ''The Politics of the New International Economic Order,'' *Proceedings of the Academy of Political Science* 32, no. 4 (1977): 142–58.

19. Erez Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (New York: Oxford University Press, 2007).

20. Matthew Connelly, *A Diplomatic Revolution: Algeria's Fight for Independence and the Origins of the Post-Cold War Era* (New York: Oxford University Press, 2002), 283–86.

21. Houari Boumediene, ''The Problems of Third World Development,'' *Black Scholar* 6, no. 8 (May 1975): 2–10.

22. On the foundational importance of oil (and fossil fuels more generally) to the global economy, see Richard Heinberg, *The Party's Over: Oil, War, and the Fate of Industrial Society* (Gabriola Island, BC: New Society Publishers, 2003), and from the opposite end of the political spectrum, Daniel Yergin, *The Prize: The Epic Quest for Oil, Money, and Power* (New York: Simon and Schuster, 1991). Telling of the NIEO's historical oblivion is that neither of these books so much as mentions the NIEO.

23. Irving Kristol, ''The 'New Cold War,' '' *Wall Street Journal*, July 17, 1975, 18, cited in Vijay Prashad, *The Poorer Nations: A Possible History of the Global South* (Brooklyn: Verso, 2012), 34.

24. Robert Moss, ''International Terrorism and Western Societies,'' *International Journal* 28, no. 3 (1973): 418–30; Rick Perlstein, *The Invisible Bridge: The Fall of Nixon and the Rise of Reagan* (New York: Simon and Schuster, 2014).

25. The Trilateral Commission popularized the term ''governability,'' but mainly with respect to the internal governance of nation-states, particularly in the industrial core, rather than for the international system as such: Michel Crozier, Samuel P. Huntington, and Joji Watanuki, *The Crisis of Democracy: Report on the Governability of Democracies to the Trilateral Commission* (New York: New York University Press, 1975). For recent reflections on the rhetoric and reality of ungovernability, see Rosa Ehrenreich Brooks, ''Failed States, or the State as Failure?,'' *University of Chicago Law Review* 72, no. 4 (Fall 2005): 1159–96; and Claus Offe, ''Ungovernability,'' in *Fragile Stabilität–Stabile Fragilität*, ed. Stephen A. Jansen et al. (Wiesbaden: Springer Fachmedien, 2013), 77–87.

26. Karl W. Deutsch, ''On Inequality and Limited Growth: Some World Political Effects,'' *International Studies Quarterly* 19, no. 4 (November 1975): 381–98.

27. Sean L. Malloy, ''Uptight in Babylon: Eldridge Cleaver's Cold War,'' *Diplomatic History* 37, no. 3 (June 2013): 538–71.

28. Stephen D. Krasner, ''Transforming International Regimes: What the Third World Wants and Why,'' *International Studies Quarterly* 25, no. 1 (March 1981): 119. Krasner would elaborate his perspective at length in *Structural Conflict: The Third World against Global Liberalism* (Berkeley: University of California Press, 1985).

29. Willy Brandt, *North-South: A Programme for Survival—Report of the Independent Commission on International Development Issues* (London: Pan, 1980).

30. Mark T. Berger, ''The Nation-State and the Challenge of Global Capitalism,'' *Third World Quarterly* 22, no. 6 (December 2001): 889–907.

31. James M. Buchanan, ''Politics without Romance: A Sketch of Positive Public Choice Theory and Its Normative Implications'' [1979], repr. in *The Collected Works of James Buchanan,* vol. 1, *The Logical Foundations of Constitutional Liberty* (Indianapolis: Liberty Fund, 1999).

32. S. M. Amadae, *Rationalizing Capitalist Democracy: The Cold War Origins of Rational Choice Liberalism* (Chicago: University of Chicago Press, 2003), chap. 3. As Amadae remarks, this literature generated, ''a growing skepticism over the inherent meaningfulness of 'the public,' 'public interest' or 'general welfare' ''—all key terms for the NIEO (4).

33. This same goes for the World Bank's current ''Zero Poverty 2030'' campaign, which asserts that ''eradicating extreme poverty'' is possible under current international institutional arrangements, thus implying that there is no need to rework these arrangements. For an acute contemporary assessment of how the Bank's turn to Basic Needs was deeply at odds with NIEO's ambition to remake international power, see Ajit Singh, ''The 'Basic Needs' Approach to Development vs. the New International Economic Order: The Significance of Third World Industrialization,'' *World Development* 7, no. 6 (June 1979): 585–606; and Johan Galtung, ''The New International Economic Order and the Basic Needs Approach,'' *Alternatives: Global, Local, Political* 4, no. 4 (March 1979): 455–76.

34. On the lineaments of this trend, see Rodney Bruce Hall and Thomas J. Biersteker, eds., *The Emergence of Private Authority in Global Governance* (Cambridge: Cambridge University Press, 2002). For example, even as the NIEO was proposed a new global legal-regulatory framework for transnational corporations, a competing framework was emerging in the 1970s in the form of a private ''legal marketplace'' of transnational legal arbitration; see Yves Dezalay and Bryant G. Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (Chicago: University of Chicago Press, 1996).

35. Vanessa Ogle, ''State Rights against Private Capital: The 'New International Economic Order' and the Struggle over Aid, Trade, and Foreign Investment, 1962–1981,'' *Humanity* 5, no. 2 (Summer 2014): 211–34.

36. Walter Goldstein, ''Redistributing the World's Wealth: Cancun 'Summit' Discord,'' *Resources Policy* 8, no. 1 (March 1982): 25–40.

37. Robert E. Wood, *From Marshall Plan to Debt Crisis: Foreign Aid and Development Choices in the World Economy* (Berkeley: University of California Press, 1986).

38. Merilee Serrill Grindle, *Challenging the State: Crisis and Innovation in Latin America and Africa* (Cambridge: Cambridge University Press, 1996); Christopher G. Locke and Fredoun Z. Ahmadi-Esfahani, ''The Origins of the International Debt Crisis,'' *Comparative Studies in Society*

and History 40, no. 2 (April 1998): 223–46; Enrique R. Carrasco, ''The 1980's: The Debt Crisis and the Lost Decade of Development,'' *Transnational Law & Contemporary Problems* 9, no. 1 (1999): 119.

39. Charles Gore, ''The Rise and Fall of the Washington Consensus as a Paradigm for Developing Countries,'' *World development* 28, no. 5 (May 2000): 789–804.

40. John Williamson, who coined the phrase ''the Washington Consensus,'' explicitly stated that development was a technical rather than political problem: ''In Search of a Manual for Technopolis,'' in *The Political Economy of Policy Reform*, ed. John Williamson (Washington, DC: Institute for International Economics, 1994), 11–28.

41. K. Ravi, ''North-South Conflict: Global Problems in Search of Solutions,'' in *The New International Economic Order Perspectives: The NIEO Perspectives, Towards a Global Concern,* ed. K.C. Reddy, M. Jagdeswara Rao, and S. Chandrasekhar (New Delhi: Ashish Publication House, 1991).

42. Craig N. Murphy, *Global Institutions, Marginalization, and Development* (New York: Routledge, 2005), esp. 103–6.

43. John Ravenhill, ''The North-South Balance of Power,'' *International Affairs* 66, no. 4 (October 1990): 731–48; David A. Lake, ''Review Essay: Power and the Third World: Toward a Realist Political Economy of North-South Relations,'' *International Studies Quarterly* 31, no. 2 (June 1987): 217–34; Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law* (New York: Oxford University Press, 2005); Eyal Benvenisti and George W. Downs, ''The Empire's New Clothes: Political Economy and the Fragmentation of International Law,'' *Stanford Law Review* 60, no. 2 (November 2007): 595–631; Robert L. Rothstein, ''Epitaph for a Monument to a Failed Protest? A North-South Retrospective,'' *International Organization* 42, no. 4 (Autumn 1988): 725–48.

44. As of October 2014, a search on Google Scholar of ''NIEO failed'' yields 41 results, whereas a search of ''NIEO succeeded'' yields exactly 1 result.

45. Even a skeptic of the NIEO like John White emphasized that there was nothing inevitable about the NIEO's failure, but that it resulted rather from a poor strategic choices: ''What was particularly unclear, and to some extent remains so still, was whether the call for a new order was a call addressed primarily to the *developing* countries, asserting, in the euphoria of 'commodity power,' a new-found capacity for independent action, or whether it was merely a somewhat angrier reassertion of the old appeal to the developed countries for unilateral concessions and preferential treatment. It could not be both. This was the point that had consistently been missed by the strategists of UNCTAD, with their commitment to a posture of confrontation from which it was hoped that a consensus would emerge. That strategy, stemming from a deep-seated and wrong belief in the ineluctable superiority of the developed countries' negotiating hand, was akin to the behaviour of a general who, observing the superior disposition of his enemy's forces, demands that the opposing commander should move off the high ground before the battle begins, to give him a 'fairer' chance of winning. It was this absurd strategy that render the 'unity of the 77' so ineffectual. There was nothing inevitable about the failure of the Group of 77. Nor was the failure attributable, as some have argued, to the Group's commitment to the appearance of unity, even at the cost of substance. It was a failure peculiar to the extraordinary strategy devised for the developing countries in the UNCTAD framework, which was not abandoned until the fourth UNCTAD in 1976.'' White, ''The New International Economic Order: What Is It?'' *International Affairs* 54, no. 4 (October 1978): 630.

46. M. Ayhan Kose, *Emerging Markets: Resilience and Growth amid Turmoil* (Washington, DC: Brookings, 2010), 30.

47. Richard E. Baldwin, ''Global Supply Chains: Why They Emerged, Why They Matter, and Where They Are Going,'' Fung Global Institute Working Paper FGI-2012–1 (2012); reprinted in Deborah K. Elms and Patrick Low, eds., *Global Value Chains in a Changing World* (Geneva: WTO Publications, 2013), 13–60.

48. Jennifer Wenzel, *Bulletproof: Afterlives of Anticolonial Prophecy in South Africa and Beyond* (Chicago: University of Chicago Press, 2010).

49. Shangrila Joshi, ''Understanding India's Representation of North–South Climate Politics,'' *Global Environmental Politics* 13, no. 2 (May 2013): 128–47.

50. Robert O. Keohane and David G. Victor, ''The Regime Complex for Climate Change,'' *Perspectives on Politics* 9, no. 1 (March 2011): 7–23.

51. Sjur Kasa, Anne T. Gullberg, and Gørild Heggelund, ''The Group of 77 in the International Climate Negotiations: Recent Developments and Future Directions,'' *International Environmental Agreements: Politics, Law and Economics* 8, no. 2 (June 2008): 113–27; Antto Vihma, Yacob Mulugetta, and Sylvia Karlsson-Vinkhuyzen, ''Negotiating Solidarity? The G77 through the Prism of Climate Change Negotiations,'' *Global Change, Peace & Security* 23, no. 3 (2011): 315–34.

52. The 1970s are presented as the "beginning of the present era" in many widely cited but otherwise very different works. For a social history that makes this claim, see Jefferson Cowie, *Stayin' Alive: The 1970s and the Last Days of the Working Class* (New York: New Press, 2010); for an economic history, see Judith Stein, *Pivotal Decade: How the United States Traded Factories for Finance in the Seventies* (New Haven, CT: Yale University Press, 2010); for an intellectual history, see Daniel T. Rodgers, *Age of Fracture* (Cambridge, MA: Belknap Press, 2011); for an international history, see Thomas Borstelmann, *The 1970s: A New Global History from Civil Rights to Economic Inequality* (Princeton, NJ: Princeton University Press, 2012); for a political history, see Rick Perlstein, *The Invisible Bridge: The Fall of Nixon and the Rise of Reagan* (New York: Simon and Schuster, 2014).

53. Daniel Yergin and Joseph Stanislaw. *The Commanding Heights: The Battle between Government and the Marketplace* (New York: Simon and Schuster, 2008).

54. See, for example, Goran Therborn, ''New Masses? Social Bases of Resistance,'' *New Left Review* 85 (January–February 2014); and Naomi Klein, *This Changes Everything: Capitalism vs. the Climate* (New York: Simon and Schuster, 2014).

55. Tony Aspromourgos, ''There Is No Alternative? The Financial Crisis and the Problem of Bail-outs,'' *AQ: Australian Quarterly* 81, no. 1 (January–February 2009): 4–9; Miguel A. Centeno and Joseph N. Cohen,'' The Arc of Neoliberalism,'' *Annual Review of Sociology* 38 (2012): 317–40; Wolfgang Streeck, ''How Will Capitalism End,'' *New Left Review* 87 (May–June 2014); Klein, *This Changes Everything.*

SLUMS, SLUMDOGS, AND RESISTANCE

TAYYAB MAHMUD*

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Where there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power.[1]
In human history there is always something beyond the reach of dominating systems, no matter how deeply they saturate society, and this is obviously what makes change possible.[2]

I. INTRODUCTION

Marooned on the outskirts of the law, almost one billion people live in slums, mostly in the global South.[3] Many view slums as warehouses of "surplus humanity,"[4] and slum dwellers as a "surplus population."[5]

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1. MICHEL FOUCAULT, THE HISTORY OF SEXUALITY: VOLUME 1: AN INTRODUCTION 95 (Robert Hurley trans., 1978).

2. EDWARD W. SAID, THE WORLD, THE TEXT, AND THE CRITIC 246-47 (1983).

3. U.N. Human Settlements Programme [UN-HABITAT], *Working Paper: Slums of the World: The Face of Urban Poverty in the New Millennium*? 76 annex 3, U.N. Doc. HS/692/03E (2003) (*written by* Eduardo López Moreno), *available at* http://www.unhabitat.org/pmss/getElectronicVersion.aspx?nr=1124&alt=1.

4. Mike Davis, *Planet of Slums: Urban Involution and the Informal Proletariat*, 26 NEW LEFT REV. 5, 23 (2004) [hereinafter Davis, *Planet of Slums*].

5. Henry Veltmeyer, *Surplus Labor and Class Formation on the Latin American Periphery*, *in* THEORIES OF DEVELOPMENT: MODES OF PRODUCTION OR DEPENDENCY? 201, 212-13 (Ronald H. Chilcote & Dale L. Johnson eds., 1983).

Recently, the Academy Award winning film *Slumdog Millionaire*[6] has dramatically underscored the urgency of the problem of slums. Set in Dharavi, the infamous slum of Mumbai, *Slumdog Millionaire* is an acerbic snapshot of law and illegality tangled in a brutal drama of power and resistance in the lives of slum dwellers.[7] Dharavi emerges as a liminal space[8] where law, extra-legality, and illegality commingle to produce spaces and subjects at the margins of legal orders and formal economies. Indeed, from these margins, we witness "the other side of universality—moral and legal *no man's land*, where universality finds its spatial limit."[9]

How do those situated on the other side of universality negotiate their conditions of existence? What strategies of survival and practices of resistance do those confined to the margins of economic, legal, and social orders deploy? How can the lives of slum dwellers inform theorizing resistance? With a focus on Dharavi, this article explores these questions in tune with LatCrit teachings about the political nature of theorizing,[10] the intersections of local and global,[11] and privileging the voices of the subordinated.[12] Guided by Foucault's insight about the relationship between power and resistance, this article first explores the structural determinants of the production of slum dwellers and slums, and the policy frames that furnish the context of resistance for residents of Dharavi.[13] Prompted by Said's confidence in the possibility of change, this article

6. SLUMDOG MILLIONAIRE (Fox Searchlight 2009). The term "slumdog," borrowed from this film, can be seen as an offensive characterization of those who live in slums. I use it, as I believe the film does, by combining the words "slum" and "underdog" to signal the marginalized state of those constrained to make slums their abode.

7. *Id.*

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

9. Denise Ferreira da Silva, *Towards a Critique of the Socio-Logos of Justice: The Analytics of Raciality and the Production of Universality*, 7 SOC. IDENTITIES 421, 422 (2001).

10. *See* Francisco Valdes, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence & Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1, 53 (1997).

11. *See* Pedro A. Malavet, *LatCritical Encounters with Culture in North-South Frameworks*, 55 FLA. L. REV. 1 (2003); Ediberto Román, *LatCrit VI: Outsider Jurisprudence and Looking Beyond Imagined Borders*, 55 FLA. L. REV. 583, 596 (2003).

12. *See* Francisco Valdes, *Outsider Scholars, Critical Race Theory, and "OutCrit" Perspectivity: Postsubordination Vision as Jurisprudential Method*, *in* CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 399, 399 (Francisco Valdes et al. eds., 2002).

13. *See infra* Parts II-III.

proceeds to engage with attempts to theorize resistance that unfolds outside recognized modes of political engagement, and recounts practices of resistance demonstrated by the slum dwellers of Dharavi.[14]

II. THE SETTING OF RESISTANCE: DHARAVI—MAXIMUM SLUM IN MAXIMUM CITY[15]

In Mumbai, every second person lives in a slum, making it the global capital of slum-dwelling.[16] Twelve million people live in slums and tenements, and one million on pavements and sidewalks.[17] In Dharavi, a 0.67 square mile maze of dark alleys and corrugated shacks that house one million souls, [18] "housing is a verb."[19] This is a place where slum dwellers juggle housing costs, security, quality of shelter, distance from work, and personal safety. In the slums of Mumbai, death rates are fifty percent higher than in adjoining rural areas. Contaminated water and inadequate sanitation cause infections and parasitic diseases that account for forty percent of the death rate.[20] Breathing Dharavi's air is as hazardous as smoking two and a half packs of cigarettes a day.[21] The municipal corporation runs the few available public toilets and charges for each use.[22] Slum dwellers who have been in the city since before 1995 pay a monthly fee to the city for a "photo-pass," an identity card with the photograph of the head of the household on it.[23] The small print on the back of the card

14. *See infra* Parts IV-V.

15. *See* SUKETU MEHTA, MAXIMUM CITY: BOMBAY LOST AND FOUND (2004).

16. *See* Komal Panchamatia, *Every Second Person in Mumbai Resides in Slum: UNDP Report*, BUS. STANDARD, Sept. 4, 2009, http://www.business-standard.com/india/news/every-second-person-in-mumbai-resides-in-slum-undp-report/72631/on (quoting U.N. Development Programme [UNDP], *Mumbai Human Development Report 2009,* 55 (2010) (*prepared by* Regional Centre for Urban and Environmental Studies, All India Institute of Local Self Government, Mumbai), *available at* http://hdr.undp.org/en/reports/nationalreports/asiathepacific/india /Mumbai_2009_NHDR_EN.pdf).

17. *Id.*; Minar Pimple & Lysa John, *Security of Tenure: Mumbai Experience*, *in* HOLDING THEIR GROUND: SECURE LAND TENURE FOR THE URBAN POOR IN DEVELOPING COUNTRIES 75, 78 tbl.4.1 (Alain Durant-Lasserve & Lauren Royston eds., 2002).

18. KALPANA SHARMA, REDISCOVERING DHARAVI: STORIES FROM ASIA'S LARGEST SLUM 18 (2000).

19. John F.C. Turner, *Housing as a Verb*, *in* FREEDOM TO BUILD: DWELLER CONTROL OF THE HOUSING PROCESS 148 (John F.C. Turner & Robert Fichter eds., 1972).

20. ALAIN JACQUEMIN, URBAN DEVELOPMENT AND NEW TOWNS IN THE THIRD WORLD 90-91 (1999).

21. MEHTA, *supra* note 15, at 29.

22. Kalpana Sharma, *Mumbai's Other Half*, COUNTER CURRENTS, Oct. 17, 2004, http://www.countercurrents.org/gender-sharma171004.htm.

23. Sharit K. Bhowmik, *The Politics of Urban Space in Mumbai: 'Citizen' Versus the Urban Poor, in* CONTESTED TRANSFORMATIONS: CHANGING ECONOMIES AND IDENTITIES IN CONTEMPORARY INDIA 147, 148 (Mary E. John et. al. eds., 2006).

states that the holder is an encroacher who has to pay a monthly "fine."[24]

Dharavi is also a hub of small industries that turn over an estimated $50-100 million annually.[25] Against all odds, Dharavi has developed into a "kind of self-sufficient, self-sustaining 'village,' one with a "vibrant community and economy," which "has achieved a unique informal 'self-help' urban development over the years, without any external aid." [26] Its more than 5,000 industrial units produce textiles, pottery, and leather and provide recycling, printing, steel fabrication, and other services.[27] Polluting, toxic, and often illegal industries find Dharavi, where "Darwin beat[s] Keynes," attractive.[28] Sweatshops profitably mine cheap labor under the radar of regulatory oversight.[29] The slums contend with the "garbage dump syndrome,"[30] a concentration of toxic industrial activity like tanning, dyeing, battery recycling, casting, metal plating, and chemical manufacturing.[31] Slums also face the omnipresent threat of fire, whether accidental or the result of "hot demolition," ―arson used by landowners to clear out squatters.[32]

Recently, the Mumbai city government approved a plan, styled "Vision Mumbai," to create a "world-class city" by 2013.[33] Dharavi, where the value of the land occupied by the slum is estimated to be approximately $2 billion,[34] is a particular target of this plan. Demolitions by bulldozers, with little notice to the residents, are the *modus operandi*.[35] One Dharavi

24. *Id*.

25. Mitu Sengupta, *Slumdog Millionaire's Dehumanizing View of India's Poor*, COUNTER PUNCH (Feb. 20, 2009), *available at* http://www.counterpunch.org/sengupta022009.html.

26. Prakash M. Apte, *Dharavi: India's Model Slum*, PLANETIZEN, Sept. 29, 2008, http:/www.plkanetizen.com/node/35269.

27. *Id*.

28. Hans Schenk, *Urban Fringes in Asia: Markets Versus Plans*, *in* REALIGNING ACTORS IN AN URBANIZING WORLD: GOVERNANCE AND INSTITUTIONS FROM A DEVELOPMENT PERSPECTIVE 119, 130-31 (I. S. A. Baud & J. Post eds., 2002).

29. *See* HUMAN RIGHTS FIRST, *Background*, http://www.humanrightsfirst.org/workers_rights/index.asp (last visited June 2, 2010).

30. GITA DEWAN VERMA, SLUMMING INDIA: A CHRONICAL OF SLUMS AND THEIR SAVIOURS 16 (2003).

31. *Id*.

32. *See* Hans Schenk, *Living in Bangalore's Slums*, *in* LIVING IN INDIA'S SLUMS: A CASE STUDY OF BANGALORE 17, 34 n.8 (Hans Schenk ed., 2001).

33. BOMBAY FIRST & MCKINSEY & CO., VISION MUMBAI: TRANSFORMING MUMBAI INTO A WORLD-CLASS CITY: A SUMMARY OF RECOMMENDATIONS vii (2003).

34. David Harvey, *The Right to the City*, 53 NEW LEFT REV. 23, 35 (2008), *available at* http://www.newleftreview.org/?view=2740.

35. NGO Appeals Against Slum Demolitions in Mumbai, National Confederation of Human Rights Organizations, http://www.nchro.org/index.php?option=com_content &view=article&id=3263:ngo-appeals-against-slum-demolitions-in-mumbai&catid =12:stateviolations&Itemid=7 (last visited May 27, 2010).

resident asks:

> Why wreck the homes and lives of people who have built the city and lived in it for decades? . . . Because from your luxury high-rise apartment you don't want the humiliation of India's poor in your line of vision as you make your money and succeed. Forcing them out is the only option. You simply can't wish them away.[36]

Dharavi residents are not the only ones questioning Mumbai's new vision of the city. An internationally known architect, for example, claims, "There's very little vision with this plan. They're more like hallucinations."[37] Residents also question the long-term vision of the plan and the city's motivation behind the development. One slum-dweller asks, "Development for whom? The government's idea of development doesn't include us. I've seen the plans. Wonderful. No room at all for ugly poor people."[38] In the meantime, the global escalation in the price of real estate has also reached Dharavi, making even the slum beyond the reach of the destitute.[39] A Dharavi real estate broker explains:

> Ten years ago, poor people were my only clients and huts my only properties. My only line was: "Poor people can afford it." Now I sell to businessmen, investors and speculators. I tell them, "This place is a commercial center. It's slap in the middle of the city. Its development is approved. It's a sure thing! It's golden! Get it now!"[40]

This picture of Dharavi shows a space not invested with formal legality. Rather, it is a liminal zone of regulatory vacuum, where predatory entrepreneurs, corrupt politicians, and state functionaries operate unfettered by law or public scrutiny.

III. STRUCTURAL CONTEXT OF RESISTANCE: CAPITALISM, CITIES, AND SLUMS

Some have characterized slum dwellers as the "outcast proletariat"[41] or the "disincorporated," and "unincorporatable" of capitalism.[42] They stand "condemned to the world of the excluded, the redundant, the dispensable, having nothing to lose, not even the chains of wage-slavery. [They are the]

36. Dan McDougall, *Waste Not, Want Not in the £700m Slum,* GUARDIAN, Mar. 4, 2007, *available at* http://www.guardian.co.uk/environment/2007/mar/04/india.recycling/print.

37. *Id.*

38. *See* Alex Perry, *Life in Dharavi: Inside Asia's Biggest Slum,* TIME, Jun. 12, 2006, http://www.time.com/time/asia/covers/501060619/slum.html.

39. *Id.*

40. *Id.*

41. Mike Davis, *The Urbanization of Empire: Megacities and the Laws of Chaos*, 22 SOC. TEXT 9, 10-12 (2004) [hereinafter Davis, *The Urbanization of Empire*].

42. *Id.* at 11, 13.

the shadowy figures of the rejected, the marginal, the leftovers of capital's arising, the wreckage and debris."[43] Three interlinked historical features of capitalism furnish the contours of the process that produces these slums and their inhabitants: accumulation by dispossession, the reserve army of labor, and the informal economy.

Accumulation by dispossession signifies that markets always rely on non-market legal and extra-legal forces to function.[44] Historically, coercion triggered the genesis of capitalism: the generation of "free" labor from those who have no other means of livelihood except their labor to be sold in a nascent "free" labor market.[45] The process turned on "*ex-novo* separation between producers and means of production."[46] This was a realm outside the market governed by "pure" economic laws—a zone of extra-economic coercive power of the state and the law. The Enclosure Acts[47] and Game Laws[48] in England are examples of the coercive use of the law to dispossess rural farmers, hunters, and other subsistence producers, forcing them to seek a livelihood in the "free" wage market. Primitive accumulation, however, is "a basic ontological *condition* for capitalist production, rather than just a historical condition."[49] The various forms of social capital that are required by capitalism but not paid for by private capital exemplify the enduring nature of accumulation by dispossession. Examples include publically funded infrastructure, gendered and often racialized household and reproductive labor,[50] instrumental use of race,

43. KALYAN SANYAL, RETHINKING CAPITALIST DEVELOPMENT: PRIMITIVE ACCUMULATION, GOVERNMENTALITY & POST-COLONIAL CAPITALISM 53 (2007).

44. *See* DAVID HARVEY, THE NEW IMPERIALISM 137-82 (2003); MICHAEL PERELMAN, THE INVENTION OF CAPITALISM: CLASSICAL POLITICAL ECONOMY AND THE SECRET HISTORY OF PRIMITIVE ACCUMULATION (2000) [hereinafter HARVEY, THE NEW IMPERIALISM]; Michael Perelman, *Primitive Accumulation from Feudalism to Neoliberalism*, 18 CAPITALISM, NATURE, SOCIALISM 44, 54 (2007); Jim Glassman, *Primitive Accumulation, Accumulation by Dispossession, Accumulation by "Extra-economic" Means*, 30 PROGRESS HUM. GEOGRAPHY 608 (2006).

45. *See* HARVEY, THE NEW IMPERIALISM, *supra* note 44, at 148.

46. Massimo de Angelis, *Separating the Doing and the Deed: Capital and the Continuous Character of Enclosures,* 12 HIST. MATERIALISM 57, 63 (2004).

47. *See* SIR JOHN BAKER, VI THE OXFORD HISTORY OF THE LAWS OF ENGLAND: 1483-1558, 650-52 (2003).

48. *See* E.P. THOMPSON, WHIGS AND HUNTERS: THE ORIGIN OF THE BLACK ACT 94, 99, 207 (1975); WILLIAM BLACKSTONE, 4 COMMENTARIES ON THE LAWS OF ENGLAND 174-75 (Univ. Chicago Press 1979) (1775).

49. Glassman, *supra* note 44, at 615.

50. *See* CLAUDE MEILLASSOUX, MAIDENS, MEAL AND MONEY: CAPITALISM AND THE DOMESTIC COMMUNITY 38 (Jack Goody & Geoffrey Hawthorn eds., Cambridge Univ. Press 1981) (1975); Nona Y. Glazer, *Servants to Capital: Unpaid Domestic Labor and Paid Work*, 16 REV. RADICAL POL. ECON. 61, 64-65 (1984); Nancy Hartsock, *Globalization and Primitive Accumulation: The Contributions of David Harvey's Dialectical Marxism, in* DAVID HARVEY: A CRITICAL READER 167, 183 (Noel Castree & Derek Gregory eds., 2006); Cindi Katz, *Vagabond Capitalism and the Necessity of Social Reproduction*, 33 ANTIPODE 708, 709 (2001); Claude Meillassoux,

class, and nationality in immigration and land-ownership laws that consolidated agro-capital in California,[51] and new appropriation of the commons for private accumulation whereby "the global commons are being enclosed."[52]

Accumulation by dispossession produces a reserve army of labor. While the "creative destruction," [53] of capitalism destroys traditional entitlements and subsistence economies and estranges direct producers from their means of labor, all those dislocated are not absorbed in the new production process.[54] This unabsorbed labor is the so-called "surplus humanity"—populations separated from their non-capitalist means of subsistence but not integrated into the productive circuits of wage labor on a stable basis.[55]

What do those not absorbed in formal markets do while suspended in the "imaginary waiting room" of history?[56] They tend to their basic needs as best as they can by exchanging needs and capacities in networks of barter, petty trade, and casual employment under the radar of the law. The result is the emergence of a "need economy"[57]—a zone outside the formal legal frames of contract and regulation signifying "informalization within the accumulation economy."[58] This zone is the so-called informal economy. While ostensibly "discovered in Africa in the early 1970s,"[59] the informal economy has been a perennial and enduring companion of the formal capitalist economy. Its emergence was contemporaneous with that of capitalism, and it endures just as capitalism persists.

From Reproduction to Production, 1 ECON. & SOC. 93, 100 (1972).

51. *See* RICHARD A. WALKER, THE CONQUEST OF BREAD: 150 YEARS OF AGRIBUSINESS IN CALIFORNIA 66 (2004).

52. *See* HARVEY, THE NEW IMPERIALISM, *supra* note 44, at 146-48; Hartsock, *supra* note 50, at 176.

53. *See* JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY 81-86 (Harper & Row 1976) (1942).

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

55. *See* Fred Magdoff & Harry Magdoff, *Disposable Workers: Today's Reserve Army of Labor*, 55 MONTHLY REV. 18 (2004); Robert Pollin, *David Gordon Memorial Lecture: The "Reserve Army of Labor" and the "Natural Rate of Unemployment": Can Marx, Kalecki, Friedman, and Wall Street All Be Wrong?*, 30 REV. RADICAL POL. ECON. 1, 4 (1998).

56. DIPESH CHAKRABARTY, PROVINCIALIZING EUROPE: POSTCOLONIAL THOUGHT AND HISTORICAL DIFFERENCE 8 (2000).

57. SANYAL, *supra* note 43, at 208-15.

58. *Id.* at 237.

59. U.N. Department of Economic & Social Affairs [ECOSOC], *Working Paper: Rethinking the Informal Economy: Linkages with the Formal Economy and the Formal Regulatory Environment* 1, U.N. Doc. ST/ESA/2007/DWP/46 (2007) (*written by* Martha Alter Chen).

Since the late 1970s, a neoliberal counter-revolution has unfolded on a global scale.[60] This accelerated accumulation by dispossession, enlarged the surplus army of labor, and expanded the informal sectors of economies.[61] Rural and urban areas are sutured in new networks to accelerate the siphoning of value. [62] Deeper penetration of market forces accelerates migration of uprooted rural farmers to urban areas.[63] Rapid urban growth combined with diminished state capacity is the recipe for mushrooming slums in the global South.[64] With the state rolled back, privatization becomes "the cutting edge of accumulation by dispossession."[65] As flexible production shrinks regulated formal economies, informal shadow economies become the only source of livelihood for the urban poor. Today, the informal sector engages two-fifths of the economically active population of the global South.[66] Across the global South, neoliberal policies have been "an inevitable recipe for the mass production of slums,"[67] that "have become dumping grounds for a surplus population working in unskilled, unprotected, and low-wage

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60. *See* DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM (2005); SKIDELSKY, *supra* note 54; Costas Lapavitsas, *Mainstream Economics in the Neoliberal Era*, *in* NEOLIBRALISM: A CRITICAL READER 30, 40 (2005); Gérard Duménit and Domminique Levy, *The Neoliberal (Counter-) Revolution*, *in* NEOLIBERALISMISM: A CRITICAL READER 9 (Alfredo Saad-Filho & Deborah Johnson eds., 2005); William I. Robinson & Jerry Harris, *Towards a Global Ruling Class: Globalization and the Transnational Capitalist Class*, 64 SCI. & SOC'Y 11 (2000).

61. David Harvey, *Neo-liberalism as Creative Destruction*, 88 SWEDISH SOC'Y FOR ANTHROPOLOGY & GEOGRAPHY 145, 145-46 (2006); DANIEL YERGIN & JOSEPH STANISLAW, THE COMMANDING HEIGHTS: THE BATTLE BETWEEN GOVERNMENT AND MARKETPLACE THAT IS REMAKING THE MODERN WORLD (1998).

62. *See* P. J. TAYLOR, WORLD CITY NETWORK: A GLOBAL URBAN ANALYSIS (2004); John Friedman, *Where We Stand: A Decade of World City Research*, *in* WORLD CITIES IN A WORLD-SYSTEM 21, 22 (Paul J. Knox & Peter J. Taylor eds., 1996); Julie Skurski & Fernando Coronil, *Country and City in a Colonial Landscape: Double Discourse and the Geopolitics of Truth in Latin America*, *in* VIEW FROM THE BORDER: ESSAYS IN HONOR OF RAYMOND WILLIAMS AND CULTURAL POLITICS 231, 233-34 (Dennis L. Dworkin & Leslie G. Romnan eds., 1993).

63. *See* JAN BREMAN, FOOTLOOSE LABOR: WORKING IN INDIA'S INFORMAL ECONOMY (1996); JAN BREMAN, WAGE HUNTERS AND GATHERERS: SEARCH FOR WORK IN THE URBAN AND RURAL ECONOMY OF SOUTH GUJARAT (1994); LORI ANN THRUPP WITH GILLIES BERGERON & WILLIAM F. WALTERS, BITTERSWEET HARVESTS FOR GLOBAL SUPERMARKETS: CHALLENGES IN LATIN AMERICA'S AGRICULTURAL EXPORT BOOM (1995).

64. For a detailed study of rapid urbanization over the last 30 years, see Frederick Van der Ploeg & Steven Poelhekke, *Globalization and the Rise of Mega-Cities in the Developing World*, 1 CAMBRIDGE J. REGIONS ECON. & SOC'Y 477, 490-94 (2008).

65. HARVEY, THE NEW IMPERIALISM, *supra* note 44, at 157.

66. U.N. Human Settlements Programme [UN-HABITAT], *The Challenge of Slums: Global Report on Human Settlements 2003*, 103-04 U.N. DOC. HS/686/03E (2003); JAN BREMAN, THE LABORING POOR: PATTERNS OF EXPLOITATION, SUBORDINATION, AND EXCLUSION 174 (2003).

67. Mike Davis, *Planet of Slums*, *supra* note 4, at 17.

informal service industries and trade."[68]

If accumulation by dispossession creates slum dwellers, what is the genealogy of slums? The "creative destruction" of capitalism forced rapid relocations of habitation as rural populations moved to emerging centers of extraction, manufacturing, and commerce. As urban centers grew in a *laissez faire* regimes, so too did slums as the abode of the surplus army of labor. Dublin, Manchester, London, and Naples were early examples of such urban centers.[69] The first prototype of planned urban development under capitalism occurred as a result of the rebuilding of Paris in the nineteenth century, whereby Paris emerged as a center of commerce and bourgeois life, and its emerging slums were removed from the heart of the city to its outer rim.[70] While this "turned the capital city into the city of capital,"[71] it also demonstrated that "the root cause of urban slumming seems to lie not in urban poverty but in urban wealth."[72] The second prototype emerged in the United States after the Second World War; first in New York City, and then in most other metropolitan areas.[73] While predominantly white middle-classes, ensconced in debt-financed suburbia, turned to the pursuit of individual accumulation, protection of property, and so-called family values,[74] the darker under-classes and the marginalized had to contend with removals, blighted inner-city ghettos, and inhuman public housing projects. The reconfiguration of Paris and New York City furnished two alternative models of urban development for the modern city across the global North—the "donut-shaped" American cities, with mostly poor people of color and immigrants concentrated in derelict inner-city zones, and European "saucer" cities, with immigrant and unemployed populations occupying high-rise housing on urban outskirts.[75] In the global South, urban growth is a hybrid of both models, turning urban real estate into a high-profit sector "where political corruption, capitalist development

68. *Id*. at 175.

69. *See generally* Davis, *Planet of Slums*, *supra* note 67 (detailing the development of these slums).

70. *See* DAVID HARVEY, PARIS, CAPITAL OF MODERNITY (2003) [hereinafter HARVEY, PARIS].

71. Derek Gregory, *Introduction: Troubling Geographies*, *in* DAVID HARVEY: A CRITICAL READER 1, 13 (Noel Castree & Derek Gregory eds., 2006).

72. VERMA, *supra* note 30, at xix.

73. *See* ROBERT MOSES AND THE MODERN CITY: THE TRANSFORMATION OF NEW YORK (Hillary Ballon & Kenneth T. Jackson eds., 2007).

74. *See* Hilde Eileen Nefstad et al., *Ideology and Power: The Influence of Current Neo-liberalism in Society*, 17 J. COMMUNITY & APPLIED SOC. PSYCHOL. 313 (2007).

75. *See generally* HARVEY, PARIS, *supra* note 70, at 236-52 (discussing the displacement of the working class from the city center of Paris); ROBERT MOSES AND THE MODERN CITY, *supra* note 73, at 94-121 (providing an overview of downtown urban renewal projects and slum removal in New York City).

and international finance intersect."[76] The dominant result is the concentration of real-estate ownership and slum growth.[77]

The neoliberal political economy has triggered a convergence between domains of economy and culture, and a confluence of reconfiguration of urban space and commodification of symbolic forms.[78] The city increasingly becomes exclusively a zone of the service and consumption economy, and urban space itself turns into a cultural commodity to be consumed along market principles.[79] Skills suitable for the service sector and/or the capacity to consume what this space has to offer become the only grounds for eligibility to be in the city. The ineligible who stay back are eventually confined to the informal economy and deprived of secure shelter. The commodification of urban space, with culture and aesthetics at a premium, engenders a range of legal and architectural regimes to discipline the ineligible and dispossessed. These include "secure architecture," "zero tolerance" policing, and "preventive crime control," in the neoliberal "post-justice" city.[80]

In the midst of all this, some urban groups do manage to contrive cultural, economic, and political "spaces of escape," or "counter spaces."[81] Farmers' markets, "alternative lifestyle" enclaves, and the "underground" economy are examples of this phenomenon which engender "new identities and practices that disturb established histories."[82] The resistive mode of these counter spaces can and does take overt political forms, as demonstrated by the anti-WTO protests in Seattle in 1999, and replicated in

76. Cağlar Keyder, *The Housing Market from Informal to Global*, *in* ISTANBUL: BETWEEN THE GLOBAL AND THE LOCAL 143, 153 (1999).

77. *See id.* at 153-57 (detailing the growth of large construction firms, the sale of land to large developers and banks, and the displacement of the lower class in Istanbul during the 1980s).

78. *See* Allen J. Scott, *Capitalism, Cities, and the Production of Symbolic Forms*, 26 TRANSACTIONS INST. BRITISH GEOGRAPHERS 11, 11-12 (2002).

79. *See* Timothy A. Gibson, *Selling City Living: Urban Branding Campaigns, Class Power and the Civic Good*, 8 INT'L J. CULTURAL STUD. 259 (2005).

80. *See* Don Mitchell, *Postmodern Geographical Praxis?: The Postmodern Impulse and the War Against Homeless People in the "Post Justice" City, in* POSTMODERN GEOGRAPHY: THEORY AND PRAXIS 57 (Claudio Minca ed., 2001); Don Mitchell, *The Annihilation of Space by Law: The Roots and Implications of Anti-homeless Laws in the United States*, 29 ANTIPODE 303, 305-06 (1997); Jamie Peck, *Geography and Public Policy*, *Mapping the Penal State*, 27 PROGRESS HUM. GEOGRAPHY 222 (2003).

81. Gordon MacLeod et al., *Negotiating the Contemporary City: Introduction*, 40 URB. STUD. 1655 (2003).

82. CITIES AND CITIZENS 167 (James Holston ed., 1999); *see also* SUDHIR ALLADI VENKATESH, OFF THE BOOKS: THE UNDERGROUND ECONOMY OF THE URBAN POOR (2006); Regina Austin, *"An Honest Living": Street Vendors, Municipal Regulation, and the Black Public Sphere*, 103 YALE L.J. 2119 (1994); Regina Austin, "*A Nation of Thieves": Securing Black People's Right to Shop and to Sell in White America*, 1994 UTAH L. REV. 147 (1994).

many major cities around the world.[83] This phenomenon has particular import for the resistance movements of slum dwellers.[84]

IV. BACKDROP OF RESISTANCE IN DHARAVI: INDIAN PUBLIC POLICY AND SLUMS

The genealogy of the spatial production of urban slums in the global South is rooted in the colonial configuration of cities in forms suitable for the assertion of control and the incorporation of the colony into the economies of empire.[85] In India, British colonists reconfigured urban areas to serve such ends.[86] A defining feature of colonial India was the spatial divide between the centers of gravity of colonial presence and the native quarters. Natives not recruited into colonial security, administrative, and commercial regimes, remained at or beyond the spatial and social margins. A policy of neglecting even minimal housing needs of native neighborhoods escalated into a *de facto* housing policy of reliance on local elites who built overcrowded, unsanitary, but highly profitable tenements.[87] Mumbai, historically a coastal fishing village, emerged as an urban center under colonial rule, a development rooted in the colonial control of opium production and trade.[88] The new city was carefully segregated, to separate colonial masters and the incorporated from the dispossessed natives.

After decolonization in the global South, postcolonial elites inherited and often reinforced the physical footprints and exclusionary geographies of segregated cities. They rushed to embrace trickle-down development models, whereby "the poor were denied a place in civic life and urban culture, and were seen as an impediment to progress and betterment of society."[89] In India, the Congress Party's "one-party democracy"[90] claimed

83. *See, e.g.*, DAVID FEATHERSTONE, RESISTANCE, SPACE AND POLITICAL IDENTITIES: THE MAKING OF COUNTER-GLOBAL NETWORKS 134 (2008); GLOBALIZATION AND THE POLITICS OF RESISTANCE (Barry K. Gills ed., 2000); NAOMI KLEIN, NO LOGO (1999).

84. *See generally* GLOBALIZATION AND THE POLITICS OF RESISTANCE, *supra* note 83, at 150-64.

85. *See* Ronald J. Horvath, *In Search of a Theory of Urbanization: The Colonial City*, 5 EAST LAKE GEOGRAPHER 60 (1969); ANTHONY D. KING, URBANISM, COLONIALISM, AND THE WORLD ECONOMY: CULTURE AND SPATIAL FOUNDATIONS OF THE WORLD URBAN SYSTEM (1990); JAN MORRIS & SIMON WINCHESTER, STONES OF EMPIRE: THE BUILDINGS OF THE RAJ (1983).

86. *See* MARIAM DOSSAL, IMPERIAL DESIGNS AND INDIAN REALITIES: THE PLANNING OF BOMBAY CITY 1845-1875 (1991).

87. *See id.* at 16-30.

88. *See* AMAR FAROOQUI, OPIUM CITY: THE MAKING OF EARLY VICTORIAN BOMBAY xiii (2006).

89. NANDINI GOOPTU, THE POLITICS OF THE URBAN POOR IN EARLY TWENTIETH-CENTURY INDIA 421 (2001).

90. STANLEY A. KOCHNANEK, THE CONGRESS PARTY IN INDIA: THE DYNAMICS OF ONE-PARTY DEMOCRACY (1968).

the moral high ground of national interest, modernity, equity, and efficiency.[91] Poverty alleviation was projected as the central concern of the state. However, the development model of modernization by diffusion failed to deliver.[92] While megaprojects like hydroelectric dams and heavy industry thrived, the education, health, and housing needs of the poor and the marginalized were neglected.[93] Often this development model directly swelled the ranks of the urban poor.[94] By the late 1970s, any lingering faith in development through state-led growth projects was shattered by poor growth rates, only a marginal decline in poverty, and barely appreciable improvements in the quality of life. As this development project derailed, the state attempted to address poverty by direct intervention.[95] However, declining growth rates, the escalating fiscal crisis of the state, and the fragmentation of political legitimacy ruled out the implementation of refurbished welfare policies.

India took a turn to neoliberalism in the early 1990s, ushering in an era of "liberalization-privatisation-globalization."[96] The market emerged as the new messiah, the welfare state went into a decisive retreat, and there was a shift away from formal sector waged work to casual labor in the informal sector.[97] The number of paupers in the country increased dramatically.[98] The impact on slum dwellers was particularly acute.[99] The results were a reconfiguration the social contract between the state and the subject, a

91. *See* PRANAB BARDHANM, THE POLITICAL ECONOMY OF DEVELOPMENT IN INDIA (1990); ACHIN VANAIK, THE PAINFUL TRANSITION: BOURGEOIS DEMOCRACY IN INDIA (1990); LLOYD I. RUDOLPH & SUSANNE H. RUDOLPH, IN PURSUIT OF LAKSHAMI: THE POLITICAL ECONOMY OF THE INDIAN STATE (1987).

92. *See* W. W. ROSTOW, THE STAGES OF ECONOMIC GROWTH: A NON-COMMUNIST MANIFESTO (1971). For critiques of this model, see ARTURO ESCOBAR, ENCOUNTERING DEVELOPMENT: THE MAKING AND UNMAKING OF THE THIRD WORLD (Sherry B. Ortner et al. eds., 1995).

93. *See* ROBERT-JAN BAKEN, PLOTTING, SQUATTING, PUBLIC PURPOSE AND POLITICS: LAND MARKET DEVELOPMENT, LOW INCOME HOUSING, AND PUBLIC INTERVENTION IN INDIA 361 (2003).

94. Arundhati Roy is quoted in AMITAVA KUMAR, BOMBAY, LONDON, NEW YORK 52 (2002).

95. SANYAL, *supra* note 43, at 170.

96. Mary E. John & Satish Deshpande, *Theorising the Present: Problems and Possibilities*, ECON. & POL. WKLY, Nov. 15, 2008 at 83, 84; *see also* Kamal Nayan Karba, *Indian Planning and Liberalisation*, 31 ECON. & POL. WKLY, Oct. 5, 1996, 2740; Kuldeep Mathur, *Neo-liberal Agenda and Study of Institutions,* REV. DEV. & CHANGE 167 (1996).

97. *See generally* GOOPTU, *supra* note 89.

98. JEREMY SEABROOK, IN THE CITIES OF THE SOUTH: SCENES FROM A DEVELOPING WORLD 49 (1996).

99. *See* KALYANI MENON-SEN & GAUTAM BHAN, SWEPT OFF THE MAP: SURVIVING EVICTION AND RESETTLEMENT IN DELHI (2008); Aditi Iyer & Gita Sen, *Health Sector Changes and Health Equity in the 1990s in India*, *in* HEALTH AND EQUITY – EFFECTING CHANGE 15 (Shobha Raghuram ed., 2001); Minar Pimple & Madhuri Kamat, *Struggle for People's Housing*, 59 INDIAN J. SOC. WORK 357, 358 (1998).

reconstitution of the grounds of eligibility for full citizenship, and a redrawing of the expectations of collective responsibility. This recalibration entailed turning electoral representative democracy into a "free market democracy." Elections have been turned into a "heavily-sponsored, TV-friendly spectator sport . . . [whereby] an electorate has been turned into a market, voters are seen as consumers, and democracy is being welded to the free market. Ergo: those who cannot consume do not matter."[100] An ideological reconstruction of poverty and inequality has unfolded that furnishes the grounds for the disavowal of the rights of the poor.

The Indian judiciary played a critical role in this enterprise. For a brief period, the courts tempered the violence of evictions and demolitions, ever-present dangers for slum dwellers, by requiring adequate resettlement schemes.[101] The neoliberal turn triggered a rupture, which led to a redefinition of poverty and the rights of the poor, and Indian courts have cast aside any considerations of the humane treatment and adequate resettlement of squatters and have adopted a discourse of the illegality of slums and squatting.[102]

In the 1980s and early 1990s, Indian courts equated evictions with the denial of the right to life,[103] mandated alternative housing,[104] held that "reasonable residence is an indispensible necessity" for human development and the fulfillment of the "right to life,"[105] and argued that the Indian Constitution held within its ambit the right to shelter to make the right to life more meaningful.[106] The courts held that adequate shelter is "a home where [one] has opportunities to grow physically, mentally,

100. ARUNDHATI ROY, FIELD NOTES ON DEMOCRACY: LISTENING TO GRASSHOPPERS 17 (2009). For a case study of political marketing in the 1989 parliamentary election in India, see DILIP M. SARWATE, POLITICAL MARKETING: THE INDIAN EXPERIENCE 110-201 (1990).

101. *See* JAMES HOLSTON, INSURGENT CITIZENSHIP 256 (2008).

102. *See* MENON-SEN & BHAN, *supra* note 99; Gautam Bhan, *This Is No Longer the City I Once Knew: Evictions, the Urban Poor and the Right to the City in Millennial Delhi*, 21 ENV'T & URBANIZATION 127, 128 (2009); Partha Chatterjee, *Are Indian Cities Becoming Bourgeois at Last? Or, If You Prefer, We Could Exclaim: Are Indian Cities Becoming Bourgeois, Alas?*, *in* CONTESTED TRANSFORMATIONS, *supra* note 23, at 113, 113; Janaki Nair, *"Social Municipalism" and the New Metropolis*, *in* CONTESTED TRANSFORMATIONS, *supra* note 23, at 125, 134; Lavanya Rajamani, *Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability*, 19 J. ENVTL. L. 293, 303 (2007); Usha Ramanathan, *Illegality and the Urban Poor*, ECON. & POL. WKLY, July 22, 2006, at 3193, 3197, *available at* http://www.ielrc.org/content/a0606.pdf; Rakesh Shukla, *Rights of the Poor: An Overview of Supreme Court of India*, ECON. & POL. WKLY, Sept. 2, 2006, at 3755, 3757.

103. Tellis v. Bombay Mun. Corp., (1985) 3 S.C.C. 545, 549 (India).

104. Chandru v. State of Tamil Nadu, (1985) 3 S.C.C. 537, 541 (India).

105. Shantistar Builders v. Totame, A.I.R. 1990 S.30, 633-34 (India), *appeal denied, aff'd sub nom,* Shantistar Builders v. Gotame, A.I.R. 1996 S.C. 786 (India).

106. Singh v. State of Uttar Pradesh, (1996) 2 S.C.C. 549 (India).

intellectually and spiritually."[107] Human rights were deemed to include the "right to a standard of living adequate for the health and well-being of himself and his family; it includes food, clothing, housing, medical care and necessary social services."[108]

As neoliberalism made inroads in India, the courts took a dramatic turn. They now became interested in "*cleaning up* the city,"[109] characterized slums as "large areas of public land . . . *usurped for private use free of cost*," and rejected a plan to provide the free land for resettlement as "a proposal which attracts more *land grabbers*. Rewarding an *encroacher* on public land with an *alternative free site is like giving a reward to a pickpocket*."[110] The judicially recognized fundamental right to adequate housing evaporated in thin air. Now the courts told squatters facing imminent removal, "[w]hen you are occupying illegal land, *you have no legal right, what to talk of fundamental right*, to stay there a minute longer."[111] Courts raised the specter of anarchy and breakdown of order was raised to deny any relief: "If encroachments on public land are to be allowed, *there will be anarchy*."[112] Deploying a discourse of epidemics and pathology to characterize squatters and slum dwellers, the courts argued that "their" numbers were "*growing and growing*," and hence urgent steps must be taken to "deal with *the problem*."[113] The ultimate prescription was rather simple: "*If they cannot afford to live in [the city], let them not come to [the city]*."[114]

The end result is an increased "segregation of economic classes."[115] A discourse of "development pornography"[116] has flourished that holds slum dwellers responsible for "pressure on civic amenities, crime, social imbalances, economic exploitation, unplanned growth, deterioration of city beautification, culture, environmental setback to city development in a planned manner."[117] The new judicial language regarding slum dwellers is

107. *Id*.

108. Ahmedabad Mun. Corp. v. Khan, (1997) 11 S.C.C. 121 (India).

109. Patel v. Union of India, (2000) 2 S.C.C. 679, 684-85 (India) (emphasis added).

110. *Id*. (emphasis added).

111. *See* Ramanathan, *supra* note 102, at 3197 (quoting Raj v. Comm'r of Police, (2005) 3419 W.P. 1999 (India)) (emphasis added).

112. *Id*. (emphasis added).

113. *Id*. (emphasis added).

114. *Id*. (emphasis added).

115. Nikhil Joseph & Pascal Goodman, CTR. FOR CIVIL SOC'Y, On the Outskirts of Legality: Policy and Legal Aspects of Slum Resettlement in Delhi (2008), *available at* http://ssrn.com/abstract=1325962.

116. Rotimi Sankore, *Behind the Image: Poverty and "Development Pornography"*, PAMBAZUKA NEWS (April 21, 2005), http://www.pambazuka.org/en/category/features/27815.

117. *See* Joseph & Goodman, *supra* note 115, at 26 (quoting *Detailed Project*

saturated with the rhetoric of illegality.[118] The courts appear mindful that in a constitutional liberal republic "in order, ethically, to justify denying a national citizen his text-based rights, it becomes necessary to make the informal settler into an 'improper' citizen."[119] The courts have done just that by characterizing slum dwellers as dishonest, unscrupulous, polluters, and predatory encroachers. Rendered an "improper citizen," the "encroacher" can now be denied the protections of rights of citizenship. The political economy of slum production stands erased, the slum and the slum-dweller emerge as a space and a body without history, and responsibilities of the state stand vitiated.

V. THEORIZING RESISTANCE

How do slum dwellers respond to their condition? What measures of resignation and resistance frame their existence? Relevant here is Gayatri Spivak's evocative question: "Can the subaltern speak?"[120] Sprivak cautions that external attempts to represent the subaltern run the risk of logocentric assumptions of solidarity within heterogeneity, and of speaking for the subaltern rather than allowing them to speak for themselves. The point is that if the subaltern could speak—that is, speak in a mode and manner intelligible to us—then they would not be a subaltern.[121] This signals that the marginalized may respond to their condition in ways that lie outside the channels and modes of political action contemplated by those who do not share their condition. Substantiations of this proposition emerge from inquiries about "the weapons of the weak,"[122] "oppositional consciousness,"[123] history from below,[124] "subversive" history,[125]

Report: Construction of Four Storied E.W.S. Housing for Slum Dwellers at Savdha Ghevra Phase III under INNURM, Slum and JJ Department, Municipal Corporation of Delhi (January 2008)).

118. *See* USHA RAMANATHAN, ILLEGALITY AND EXCLUSION: LAW IN THE LIVES OF SLUM DWELLERS 11 (2004).

119. MENON-SEN & BHAN, *supra* note 99, at 139.

120. GAYATRI CHAKRAVORTY SPIVAK, IN OTHER WORLDS: ESSAYS IN CULTURAL POLITICS 197 (1988).

121. *Id*. at 197-211.

122. *See* JAMES SCOTT, WEAPONS OF THE WEAK: EVERYDAY FORMS OF PEASANT RESISTANCE (1987).

123. *See* KAREN SPALDING, HUAROCHIRI: AN ANDEAN SOCIETY UNDER INCA AND SPANISH RULE (1984).

124. *See* C.L.R. JAMES, THE BLACK JACOBINS: TOUSSAINT L'OUVERTURE AND THE SAN DOMINGO REVOLUTION (Penguin Books 2001) (1938); PETER LINEBAUGH & MARCUS REDIKER, THE MANY-HEADED HYDRA: SAILORS, SLAVES, COMMONERS, AND THE HIDDEN HISTORY OF THE REVOLUTIONARY ATLANTIC (2004).

125. D. D. KOSAMBI, COMBINED METHODS IN INDOLOGY AND OTHER WRITINGS 407 (Brajadulal Chattopadhyaya ed., 2002).

alternative constructions of nationhood,[126] and the economy.[127] Resistance of the oppressed may take multiple and even contradictory forms. Here Gyan Prakash's famous question, fashioned in response to a critique that postcolonial theory and subaltern studies try to ride two horses at once—arxism and post-structuralism/deconstruction—is useful: "Can the subaltern ride?"[128] The implication for any inquiry about the marginalized is that it should be receptive to their heterogeneity and even contradictory oppositional practices.

Building on Foucault's insight about the relationship between power and resistance, Judith Butler argues that the conditional but creative possibilities of resistive performance are a "relation of being implicated in that which one opposes, this turning of power against itself to produce alternative modalities of power, to establish a kind of political contestation that is not 'pure opposition' . . . but a difficult labor of forging a future from resources inevitably impure."[129] It is the contingent and precarious terrain of possibilities that makes possible both the reaffirmation of patterns of domination and their undoing.[130] As Mbembe reminds us, located at the variously entangled public spaces, "the postcolonial subject has to learn to bargain in this conceptual marketplace."[131] Lives of the marginalized underscore that "we live in a time of porous legality or legal porosity, multiple networks of legal orders forcing us to constant transitions and trespassing."[132] Extreme heterogeneity of struggles against accumulation by dispossession can appear without progressive characteristics, and may be difficult to bring together both thematically and geographically.[133] The urban informal sector is "ideologically promiscuous" in its tactical alignments with populist political formations across the ideological

126. *See* FLORENCIA E. MALLON, PEASANT AND NATION: THE MAKING OF POSTCOLONIAL MEXICO AND PERU (1995).

127. *See* MICHAEL T. TAUSSIG, THE DEVIL AND COMMODITY FETISHISM IN SOUTH AMERICA xii (1983).

128. *See* Gyan Prakash, *Can the "Subaltern" Ride? A Reply to O'Hanlon and Washbrook*, *in* MAPPING SUBALTERN STUDIES AND THE POSTCOLONIAL 220, 220-23 (Vinayak Chaturvedi ed., 2000); Rosalind O'Hanlon & David Washbrook, *After Orientalism: Culture, Criticism, and Politics in the Third World*, *in* MAPPING SUBALTERN STUDIES AND THE POSTCOLONIAL 191, 191-99 (Vinayak Chaturvedi ed., 2000).

129. JUDITH BUTLER, BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF "SEX" 241 (1993); *see also* THOMAS B, HANSEN, WAGES OF VIOLENCE: NAMING AND IDENTITY IN POSTCOLONIAL BOMBAY 227-34 (2001).

130. *See* HOMI K. BHABHA, THE LOCATION OF CULTURE 219 (1994).

131. ACHILLE MBEMBE, ON THE POSTCOLONY 104 (2001).

132. BOAVENTURA DE SOUSA SANTOS, TOWARDS A NEW COMMON SENSE: LAW, SCIENCE AND POLITICS IN THE PARADIGMATIC TRANSITION 473 (1995).

133. HARVEY, THE NEW IMPERIALISM, *supra* note 44, at 162-63, 166, 173-74.

spectrum.[134] When analyzing liminal spaces like slums and the informal economy, it is critical that we jettison what Foucault terms "the tyranny of globalizing discourses"[135] and deploy what Chatterjee calls a "fragmentary discourse."[136] One also should take into account what Karl Polanyi termed the "double movement" of capitalist development, or the growth of market orientation of society and the simultaneous growth of struggles against market society's negative effects.[137]

In order to examine the field of possibilities of resistance and transformative political action by slum dwellers, hegemonic ideologies of the time have to be accounted for. Over the last thirty years Keynesian welfare, the socialist alternative, and nationalist populism have increasingly given way to a late capitalist market ideology. Globalization, neoliberalism, consumerism, and individualism form components of this hegemonic frame.[138] We find ourselves in a world characterized by increasingly pervasive norms of the so-called free market: competition, freedom from others, consumerism, and self-fulfillment.[139] With individuals posited as self-contained, self-interested, competitive, and primarily driven by greed, these norms reorder the balance between the individual and the community. Collective identities, duties to others, and social solidarities are increasingly banished from public discourse. This has a profoundly negative impact on the potential and scope of social movements that aim at foundational transformations of collective life. In critical social theory the revolutionary potential of urban populations has been a particular focus. Most inquiries have trained on the working class and, more recently, on an amorphous "multitude."[140] Relevant to our inquiry is Frantz Fanon's prognosis that in the global South transformative social movements arose from the uprooted peasantry marooned on the fringes of cities, rather than industrial proletariat as envisaged by Eurocentric critical social theory. He argued:

> It is among these masses in the people of the shanty towns and in the lumpenproletariat that the insurrection will find its urban spearhead. The lumpenproletariat, this cohort of starving men, divorced from tribe and

134. *See Davis, Planet of Slums*, *supra* note 4, at 29.

135. MICHEL FOUCAULT, POWER/KNOWLEDGE: SELECTED INTERVIEWS & OTHER WRITINGS 1972-1977 82-83 (Colin Gordon ed., Colin Gordon trans., 1980)

136. PARTHA CHATTERJEE, THE NATION AND ITS FRAGMENTS 13 (1993).

137. KARL POLANYI, THE GREAT TRANSFORMATION 76 (1944).

138. *See* ZYGMUNT BAUMAN, LIQUID MODERNITY (2000); PIERRE BOURDIEU, ACTS OF RESISTANCE: AGAINST THE MYTHS OF OUR TIME (1998); LESLIE SKLAIR, GLOBALIZATION: CAPITALISM AND ITS ALTERNATIVES (3d ed. 2002).

139. *See* Hilde Eileen Nafstad, *The Neo-liberal Ideology and the Self-Interest Paradigm as Resistance to Change*, 3 RADICAL PSYCHOL. 1 (2003), *available at* http://radicalpsychology.org/vol3-1/HildeEileenNafstad.html.

140. *See* MICHAEL HARDT & ANTONIO NEGRI, EMPIRE 391 (2000).

> clan, constitutes one of the most spontaneously and radically revolutionary forces of a colonized people.[141]

Analysts of slums note that while the "outcast proletariat" is not a "socialized collectivity of labor and lacks significant power to disrupt or seize the means of production . . . [i]t does possess . . . yet unmeasured powers of subverting urban order."[142] In order to appreciate the political space within which slum dwellers' resistance unfolds, Partha Chatterjee's mapping of postcolonial formations is instructive. Chatterjee sees the postcolonial political field split between distinct domains of civil society and political society.[143] Civil society "peopled largely by the urban middle classes, is the sphere that seeks to be congruent with the normative models of bourgeois civil society and represents the domain of capitalist hegemony."[144] The domain of political society includes the urban poor and rural population, who, while having the formal status of citizens and opportunity to exercise their franchise as an instrument of political bargaining, are not under the moral-political leadership of the capitalist class. Importantly, they

> do not relate to the organ of the state in the same way that the middle classes do, nor do governmental agencies treat them as proper citizens belonging to civil society. Those in political society make their claims on government, and in turn are governed, not within the framework of stable constitutionally defined rights and laws, but rather through temporary, contextual and unstable arrangements arrived at through direct political negotiations.[145]

This is in tune with the transformative potential of the marginalized wherein "the profound threat of these marginal positions lies in their power

141. FRANTZ FANON, THE WRETCHED OF THE EARTH 81 (Richard Philcox trans., Grove Press 2004) (1963).

142. Davis, *The Urbanization of Empire*, *supra* note 41, at 11-12.

143. In his interrogation of postcolonial modernity, he locates the emergence and operations of a "political society" in the conflict between modernity and democracy. He sees modernity being about rights and a sanitized public space emptied of social and class divides. "Civil society" is this realm of modernity and domain of rights. Democracy, Chatterjee suggests, emerges where the political meets the popular. This is the domain of "political society," where the dominant are forced to acknowledge the presence of, and to negotiate with, the dominated. In electoral representative democracies, particularly in the global South, the "political society" becomes a terrain where the marginalized can and do secure concessions that are often outside the formal ambit of the law. PARTHA CHATTERJEE, POLITICS OF THE GOVERNED: REFLECTIONS ON POPULAR POLITICS IN MOST OF THE WORLD 40-41 (2004) [hereinafter CHATTERJEE, POLITICS OF THE GOVERNED].

144. Partha Chatterjee, *Democracy and Economic Transformation in India*, ECON. & POL. WKLY April 19, 2008, 53, 57 [hereinafter Chatterjee, *Democracy*].

145. *Id.* at 57. Chatterjee acknowledges, however, that there remain marginal groups that "represent an outside beyond the boundaries of political society." *Id.* at 61. In the case of India he counts the tribal indigenous communities as the prime representatives of such groups. *Id.*

to question the ordering of everyday reality, through their capacity to ignore or transcend normal customary divisions."[146] Chatterjee sees the deployment of new forms of political associations of the urban subalterns and organizations of labor within the informal economy as "quite sophisticated forms of strategic politics."[147] However, outcomes of resistance in any given space produced as an effect of operations of power are not predetermined or predictable.

VI. PERFORMING RESISTANCE

The marginalized in India are accused of not resisting enough. The complaint is that:

> Successive governments in India have had reason enough to rely on the unending patience of the neglected and deprived millions in India who have not risen in fury about illiteracy, hunger, illness, or economic insecurity. The *stubborn persistence of these deprivations has much to do with that lack of fury*.[148]

In conditions of extreme marginality, survival itself is resistance, particularly when one perpetually has to transgress lines of legality to live, work, and survive. Under conditions where "housing is a verb," the daily struggle for shelter, food, water, and even a place to relieve oneself takes time, energy, innovation, and perseverance.[149] Squatting itself is a prolonged test of will and endurance against repressive apparatuses of the state, because "[i]t is not unusual to hear of a squatter settlement that has been constructed overnight, torn down by the police the next day, constructed again the following night, destroyed again, and reconstructed until the authorities tire of fighting."[150] Besides defense of what little they may have, the survival struggles of slum dwellers are often also "surreptitiously offensive," as they ceaselessly try to expand the survival space and the rights of the disenfranchised.[151] Slum dwellers also create sizable informal economies and mutual-help networks to sustain

146. Veena Das, *The Uses of Indian Sociology: Society and Cosmos in Hinduism*, 10 CONTRIBUTIONS TO INDIAN SOC. 245, 252 (1976); *see also* Veena Talwar Oldenburg, *Lifestyle as Resistance: The Case of the Courtesans of Lucknow, India*, 16 FEMINIST STUD. 259, 261(1990).

147. Partha Chatterjee, *Classes, Capital and Indian Democracy*, ECON. & POL. WKLY, Nov. 15, 2008, at 89, 92 [hereinafter Chatterjee, *Classes*].

148. JEAN DRÈZE & AMARTYA SEN, INDIA: ECONOMIC DEVELOPMENT AND SOCIAL OPPORTUNITY 87 (1995) (emphasis added).

149. *See* Sanjay K. Roy, *Slum-Dwellers' Movement in Calcutta, in* SOCIAL MOVEMENTS IN CONTEMPORARY INDIA 1 (Shibani Kinkar Chaube & Bidyut Chakraborty eds., 1999).

150. KENNETH L. KARST, MURRAY L. SCHWARTZ, & AUDREY J. SCHWARTZ, THE EVOLUTION OF LAW IN THE BARRIOS OF CARACAS 6-7 (1973).

151. Asaf Bayat, *Un-civil Society: The Politics of the "Informal People"*, 18 THIRD WORLD Q. 53, 56-57 (1997).

themselves. Doing this under conditions of extra-legality, without any external help, and in the face of public hostility borders on the miraculous. An anti-demolition activist from Dharavi states:

> You in the West so easily see the slum as a negative concept. Yes, it is beset by deep poverty and neglect, but Dharavi has also been mirroring India's economic revival and it has done so largely by rejecting a local government that has long ignored it and by recycling its own resources.[152]

Slum dwellers of Dharavi use both sustained and episodic collective action to secure access to necessities. In one instance, for example, women of Dharavi deployed sustained and organized action to have the municipal corporation reduce the users' fee for toilets for women and children.[153] It is remarkable that collective action unfolds in a setting where the internal demography is volatile due to a steady influx of newcomers, often resulting in "slums within slums."[154] The resulting spatial configurations are often fractured with "the outsiders and insiders unable to build relationships and coherent communities."[155] Nevertheless, collective resistance against evacuation and slum-removal is an ever-present feature of Dharavi.

In a city otherwise marred by inter-religious strife, residents display remarkable inter-religious solidarity to resist evictions and demolitions in Dharavi. While "developers want to transform this massive slum into a glossy, shining symbol of New India," the slum dwellers "people of all faiths—Hindu, Muslim, Christian—have come together to protest against the demolition of their homes."[156] This intra-slum solidarity arises from a sense of community understood in terms of shared kinship—the most common metaphor . . . is that of family.[157] Slum dwellers, like other urban poor adopt "highly emotive resources of solidarity and militant action."[158] Slum dwellers use eligious and cultural festivals, particularly those that involve rituals of role reversal, to cultivate solidarity and to imagine alternative social arrangements. Such rituals, seen as "safety valves" conceived to reinforce relations of power, become a site for sudden and unanticipated expressions of pent up subaltern anger with transformative

152. McDougall, *supra* note 36.

153. SHARMA, *supra* note 18.

154. Sabir Ali, *Squatters: Slums Within Slums*, *in* URBANIZATION & SLUMS 55 (Prodipto Roy & Shangon Das Gupta eds., 1995).

155. Ranjith Dayaratne & Raja Samarawickrama, *Empowering Communities in the Peri-urban Areas of Colombo*, 15 ENV'T & URBANIZATION 101, 102 (2003).

156. Karishma Vaswani, *Mumbai Slum Dwellers Fight Development Plan*, BBC NEWS, Aug. 30, 2007, *available at* http://news.bbc.co.uk/2/hi/business/6970800.stm.

157. CHATTERJEE, POLITICS OF THE GOVERNED, *supra* note 143, at 103.

158. Chatterjee, *Democracy*, *supra* note 144, at 61.

possibilities.[159] Deployment of religion to cultivate solidarity by "the marginalized in the shantytowns of neocolonial modernity" can be a "more radical" resistance than "participation in formal politics or labor unions."[160]

Dharavi residents also use elections and political patronage circuits to sustain a precarious yet resilient existence through political mobilization. Votes in elections are used as bargaining chips. This is facilitated by the fact that "vote-banks" and networks of patron-client relationships play a critical role in the electoral politics in India. Here slum dwellers can be seen as "occupy[ing] a liminal zone framed by the tension between their formal illegality . . . and electoral importance."[161] Election cycles become a particular opportunity for slum dwellers to secure protection and concessions. While the voter turnout in wealthy sections of Mumbai is a mere twelve percent, from the "squatters in the slum colonies, for whom the issue of who comes into power means the difference between living within four walls or on the street, it's eighty-eight percent. False. In India the poor vote."[162]

Slum dwellers also secure some measure of protection and benefits through a set of "paralegal arrangements" with the "political society."[163] This is critical, as their habitat and work in the informal sector rests upon violations of property laws, safety standards, pollution norms, and tax regimes. This makes the claims of the urban poor in political society "a matter of constant political negotiation and the results are never secure or permanent. Their entitlements, even when recognized, never quite become rights."[164] The claims for protection and benefits "cannot often be met by standard application of rules and frequently require the declaration of an

159. Ranajit Guha notes:

> The not too rare correspondence between sacred days and insurgency as witnessed, for instance, by the incursion of Wat Tyler's men into London on the morning of Corpus Christi, June 13, 1381, the beginning of the great series of peasant revolts in Germany during Fastnacht 1525, the conversion of a carnival featuring Mere Fella and her Infanterie into a riot in masquerade against royal tax officials in Dijon in 1630, the coincidence of some of the jacqueries of 1789 in France with Sundays, feast days, etc, as mentioned by Lefebvre and the threat of massive uprising in Bombay during Moharram and Diwali in the year of the Mutiny [1857].

RANAJIT GUHA, ELEMENTARY ASPECTS OF PEASANT INSURGENCY IN COLONIAL INDIA 31 (1999).

160. JEAN COMAROFF, BODY OF POWER: THE CULTURE AND HISTORY OF A SOUTH AFRICAN PEOPLE 259-63 (1985).

161. John & Deshpande, *supra* note 96, at 83, 85.

162. MEHTA, *supra* note 15, at 68 (quoting a member of the Parliament from Mumbai).

163. *Id.* at 56.

164. Chatterjee, *Democracy*, *supra* note 144, at 58.

exception."[165] The fragile basis of housing and livelihood in the grey zones of informality has to be protected through this on-going negotiation. Often collective action in the slums translates into grassroots organizations to protect extra-legal habitations and livelihoods from the police, other agencies of the state, and developers.[166] Usually styled "associations," they "spring from a collective violation of property laws and civic regulation."[167] A study of extra-legal street venders and squatters finds that they "operated strategically in political society, successfully mobilizing support among citizens and political parties to establish and maintain their tenuous, and clearly illegal, occupation of the streets."[168]

Economic and political forces unleashed by neoliberalism have aggravated the nexus between crime, urban poverty and segregation, and have reconstituted rights of citizenship.[169] Consequently, marginalized slum dwellers often survive by engaging in criminal behavior as those in power stymie legitimate means of survival.[170] Often the use of violence has a "calculative, almost utilitarian logic, designed to draw attention to specific grievances with a view to seeking appropriate governmental benefits. A range of deliberate tactics are followed to elicit the right response from officials, political leaders and especially the media."[171] Violence along intersecting ethnic, religious, caste, and class lines has become an endemic feature of politics in Mumbai since the rise of neoliberalism and the Hindu Right.[172]

The threat of a riot is ever present in Dharavi. Some scholars and

165. *Id.* at 61.

166. S*ee* Amita Bhide, *Shifting Terrains of Communities and Community Organization: Reflections on Organizing for Housing Rights in Mumbai*, 44 COMMUNITY DEV. J. 367, 371-73 (2009); Pimple & Kamat, *supra* note 99, at 340; Amita Bhide, *Housing Campaigns in India: An Overview*, 59 INDIAN J. SOC. WORK 340 (1999).

167. CHATTERJEE, POLITICS OF THE GOVERNED, *supra* note 143, at 59.

168. *Id.* at 61.

169. For a landmark study of this process, see TERESA P. R. CALDEIRA, CITY OF WALLS: CRIME, SEGREGATION, AND CITIZENSHIP IN SAO PAULO (2000).

170. For an evocative report on the entanglement of crime with economic opportunity in Mumbai, including in Dharavi, see MEHTA, *supra* note 15, at 185-249.

171. Chatterjee, *Democracy*, *supra* note 144, at 60. Chatterjee says:

> the proliferation of the tactical use of violence, not so much to intimidate or punish (although there is that too, but that is familiar political violence of the old kind) but to display in the public space, in spectacular fashion, the anger and moral outrage of "the people." Violence here serves the rhetorical function of converting populations into a people.

Chatterjee, *Classes*, *supra* note 147, at 92.

172. *See* THOMAS B. HANSEN, THE B.J.P. AND COMPULSIONS OF POLITICS IN INDIA (1998); THOMAS B. HANSEN, THE SAFFRON WAVE: HINDU NATIONALISM AND DEMOCRACY IN MODERN INDIA (1999); HANSEN, WAGES, *supra* note 129.

theorists see this threat as strategic use of illegality and violence.[173] Violence may be deployed to keep demolition squads at bay, to protest unfavorable changes in state policy, or to protest against worsening conditions of life. Ever since the global neoliberal turn, there has been a noticeable increase in protests by slum dwellers and the urban poor against the escalating cost of food, housing, and other basic amenities. One study counted one hundred and forty-six food riots in thirty-nine countries from 1976 to 1992, and dubbed them "IMF Riots."[174] The response to slum dwellers' protests has included expanded use of state violence through adoption of stricter criminal laws, enforcement of spatial segregation and isolation, and counterinsurgency measures.

Criminalizing slums and slum dwellers is increasingly becoming a part of counterinsurgency strategies.[175] While the governing classes increasingly designate slum dwellers as criminals, an "architecture of fear"[176] is creating gated communities and secure areas for the elites all over the global South,[177] where they can live a "real imitation life" modeled after television images from the global North.[178] Global security establishments are aware of the geopolitical implications of the rise of slums and slum dwellers' resistance movements. The journal of the Army War College opines: "The future of warfare lies in the streets, sewers, high-rise buildings, and sprawl of houses that form the broken cities of the world."[179] A RAND Corporation report bemoans that the U.S. military is not designed for urban counterinsurgency, while mega-slums are becoming zones of primary threat to the security of the existing order.[180]

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173. *See, e.g.*, HANSEN, WAGES, *supra* note 129; Adiya Nigam, *Secularism, Modernity, Nation: Epistemology of the Dalit Critique*, ECON. & POL. WKLY, Nov. 25, 2000.

174. JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 77 (2002); JOHN WALTON & DAVID SEDDON, FREE MARKETS AND FOOD RIOTS: THE POLITICS OF STRUCTURAL ADJUSTMENT 39-45 (1994).

175. *See* CATHY L. SCHNEIDER, SHANTYTOWN PROTEST IN PINOCHET'S CHILE 101 (1995); Michael Barke, Tony Escasany & Greg O'Hare, *Samba: A Metaphor for Rio's Favelas*, 18 CITIES 259, 263 (2001); Alfredo Rodriguez & Anna M. Icaza, *Chile: The Eviction of Low-income Residents from Central Santiago de Chile, in Questions Killing by Brazilian Police*, N.Y. TIMES, Dec. 8, 2009, at A12.

176. *See* TUNDE AGBOLA, ARCHITECTURE OF FEAR (1997).

177. *See* CALDEIRA, *supra* note 169; Solomon Benjamin, *Governance, Economic Settings, and Poverty in Banglore,* 12 ENV'T & URBANIZATION 39 (2000); Harold Leisch, *Gated Communities in Indonesia*, 19 CITIES 341 (2002); Andre Czegledy, *Villas of the Highveld: A Cultural Perspective on Johannesburg and Its Northern Suburbs, in* EMERGING JOHANNASBURG: PERSPECTIVES ON THE POSTAPARTHEID CITY 36 (2003).

178. *See* Laura Ruggeri, *Palm Springs: Imagineering California in Hong Kong*, www.spacing.org (last visited June 22, 2010).

179. Ralph Peters, *Our Soldiers, Their Cities,* 26 PARAMETERS 43 (Spring 1996).

180. JENNIFER MORRISON TAW & BRUCE HOFFMAN, THE URBANIZATION OF INSURGENCY: THE POTENTIAL CHALLENGE TO U.S. ARMY OPERATIONS (1994); *see also*

Stripping the slum-dweller, now deemed an "improper" citizen, of protections of the laws has implication that go beyond the space and state of habitat of the urban poor. Now placed both in a space of exception and state of exception, the slum dweller is a perpetual target of state violence.[181] Participation in or even proximity with the dark sides of the informal economy renders the slum-dweller an embodiment of crime and criminality. In the post-welfare and post-social-democracy global North a "language of deviance run[s] amok,"[182] and "people and places become pathologically labeled as undeserving 'others.'"[183] As da Silva shows in her work on state violence in *favelas* of Rio de Janeiro, the subalterns positioned "in/difference" are rendered "affectable subjects" and the "subject[s] of *necessitas* (outer-determination) and not life (self-determination)."[184] In the shadow of neoliberalism, the violence of the state braids with the violence of the market in the service of accumulation by dispossession yet again.

Another obstacle in the struggle of slum dwellers is the ubiquity of discourses and attendant apparatuses of "civil society."[185] This elusive construct, forged on the anvil of European history and reported in the annals of European social theory, is deployed in the global South to enable so-called NGOs to occupy the space being created by shrinking the state and silencing the marginalized.[186] In postcolonial formations the iron fist of the state remains within the supposedly velvet glove of "civil society," which is "not a domain of hegemony . . . but of domination. Its attempts to make economic liberalization the common sense of our times are accompanied by brutal state repression and the anomalous exercise of law."[187] When operating in slums, these NGOs, laying claims to expert knowledge, often monopolize the roles of traditional political machines[188]

Troy Thomas, *Slumlords: Aerospace Power in Urban Fights*, 16 AEROSPACE POWER J. 57 (2002).

181. *See* GIORGIO AGAMBEN, HOMO SACER: SOVEREIGN POWER AND BARE LIFE (Daniel Heller-Roaxen trans., 1998); GIORGIO AGAMBEN, STATE OF EXCEPTION (Keven Atell trans., 2005).

182. Neil Smith, *Giuliani Time: The Revanchist 1990s*, 57 SOC. TEXT 1, 10 (1998).

183. Macleod et al., *supra* note 81, at 1665.

184. Denise Ferreira da Silva, *No-Bodies: Law, Raciality and Violence,* 18 GRIFFITH L. REV. 212, 232 (2009), *available at* http://www.hrw.org/sites/default/files/reports/brazil1209web.pdf.

185. *See* Tayyab Mahmud, *Postcoloniality and Mythologies of Civil(ized) Society*, 26 CHICANA/O-LATINA/O L. REV. 41 (2006).

186. *See id.*

187. Amita Baviskar & Nandini Sunder, *Democracy Versus Economic Transformation?*, ECON. & POL. WKLY, Nov, 15, 2008, at 87, 89.

188. Ruben Gazzoli, *The Political and Institutional Context of Popular Organizations in Urban Argentina*, 8 ENV'T & URBANIZATION 159, 163 (1996).

and usurp the authentic voice of the slum-dwelling poor.[189] This process "has entrenched the position of a small, homogeneous 'iron triangle' of transnational professionals based in key government ministries (especially finance), multinational and bilateral development agencies, and international NGOs."[190] The "civil society revolution has bureaucratized and de-radicalized urban social movements."[191] The NGOs "end up functioning like the whistle on a pressure cooker. They divert and sublimate political rage, and make sure it does not build to a head."[192] By the account of a Mumbai housing activist, slum-oriented NGOs:

> subvert, dis-inform and de-idealize people so as to keep them away from class struggle. They adopt and propagate the practice of begging favors on sympathies and humane grounds rather than making the oppressed conscious of their rights. As a matter of fact these agencies and organizations intervene to oppose the agitational path people take to win their demands. Their effort is constantly to divert people's attention from the larger political evils of imperialism to merely local issues and so confuse people in differentiating enemies from friends.[193]

The antidote for the discourse of civil society and machination of NGOs are grassroots organizations of the marginalized, and concerted action with other subordinated sections of the society, guided by broader transformative political projects. This is the path Dharavi has chosen.

VII. CONCLUSION

Urban slums are spaces that radically depart from the original meaning of "city," a term derived from *civ'tade*, *civitat-em*, and *civitas*, "its primary sense was therefore 'citizenship'; thence concretely 'the body of citizens,' the community."[194] Slums testify to the unsustainability of the capitalist world order, and national policies imprisoned in bankrupt development models. They challenge us to cut through the ideological fog that envelops the operations and effects of socioeconomic orders procreated by the rule of unbridled capital accumulation. They underscore the urgency of the task to reimagine concepts of citizenship, class, identity formation, and social

189. VERMA, *supra* note 30, at 150.

190. Rita Abrahamsen, *Review Essay: Poverty Reduction or Adjustment by Another Name?*, 99 REV. AFRICAN POL. ECON. 184, 185 (2004); *see also* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX (INCITE! Women of Color Against Violence eds., 2009).

191. IVO IMPARATO & JEFF RUSTER, SLUM UPGRADING AND PARTICIPATION: LESSONS FROM LATIN AMERICA 255 (2003).

192. ARUNDHATI ROY, THE CHECKBOOK AND THE CRUISE MISSILE: CONVERSATIONS WITH ARUNDHATI ROY 82 (2004).

193. P. K. Das, *Manifesto of a Housing Activist*, *in* BOMBAY: METAPHOR FOR MODERN INDIA 170, 179-80 (Sujata Patel & Alice Thorne eds., 1997).

194. III THE OXFORD ENGLISH DICTIONARY 252 (1989).

change in tune with the rhythms of lived experiences of the urban poor. They warrant a deeper understanding of the relationship between power and resistance and the mutually constitutive role of law and extra-legality. The daily struggles and resistive ingenuities of slum dwellers should inform LatCrit's agenda of deploying critique as a strategic practice. By refusing to live a life of "living without alternatives," the slumdogs of Dharavi remind us that a "world without alternatives needs self-criticism as a condition of survival and decency."[195] Are we up to the task?

195. Zygmunt Bauman, *Living Without an Alternative*, 62 POL. Q. 35, 35, 44 (1991).