

SHATTERED:

AFTERWORD FOR DEFINING RACE, A JOINT SYMPOSIUM OF
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SCIENCE AND TECHNOLOGY©

*Anthony Paul Farley**

INTRODUCTION: THE OTHER SCENE

What happened shattered whatever it was that we once were. Slavery happened. We are the fragments of that happening. And it is still happening. We the fragments are citizens of the undiscovered country. We the fragments, striving for a lost union, continually burst apart.

Adam Smith's *The Wealth of Nations* makes no mention of what happened.¹ We will not find the flag of our undiscovered country within its binding, or on any pages written within capital's long spell. Smith wrote of *previously* acquired capital. The origin of this *previously* acquired capital is made a mystery, a foundational mystery. This *previously* acquired capital is the navel of the modern world. Karl Marx, writing at the time of the 13th Amendment's novelty, described what happened at our beginning as "primitive accumulation": I will call it the original accumulation²,

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* James Campbell Matthews Distinguished Professor of Jurisprudence, Albany Law School. I thank Bridgette Baldwin, Vince Boneventre, Phyllis Goldfarb, Neil Gotanda, Peter Halewood, Cesar Cuauhtemoc Garcia Hernandez, Hope Lewis, Bekah Mandell, Janai Nelson, Reggie Oh, Christian Sundquist, Deborah Post, Deleso Alford Washington, and Donna Young for their brilliant presentations. I thank Acting Dean Connie Mayer, Tim Lytton, and the Faculty Enrichment Fund. I thank Dean Tom Guernsey and Associate Dean James Gathii. I thank the editors of the two journals: Andria Bentley, Brian Borie, Dan Bresler, William Lowe, Rebecca Solomon and all the other editors. I thank Theresa Colbert, Legal Assistant, whose work made this symposium possible. And, finally, as always, I thank Maria Grahn-Farley.

¹ ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS (1776).

² See *infra* p. 1055.

and I will call portraits of its repetitions primal scenes of accumulation³:

The discovery of gold and silver in the Americas, the extirpation and entombment in the mines of the indigenous populations. . . The beginnings of the conquest and plunder of India. . . and the conversion of Africa into commercial hunting grounds for the capture of black skins. These idyllic proceedings are the chief moments of primitive accumulation.⁴

Defining Race has been a symposium of definitions. I will begin the end of *Defining Race* with a definition of race that is itself intended to bring race to an end: *Race is the mode of repetition by which we refuse memories of the original accumulation*. In what follows, I will show the place of all the essays of *Defining Race* within *this* definition of race.

The world that is modern was made so by millions upon millions of murders. Lives and ways of living, forms of life, were shattered. Blood became money. Money became capital. Capital became nation. Nation is the perfect disguise for people, as in “We the people. . .”⁵ People, in other words, became white, or they failed to become anything at all. We who are not people, we who are in material fact less than nothing at all, we colors of those millions of murders merely ripen and fall and cease, season after unforgiving season, like falling leaves, with the original accumulation as the rhyme and the rhythm and the repressed reason.

Reader, take note that what I have just offered is an order of things, but not a temporal order. Time ceases with the original accumulation. Life, at that point, call it the navel of the dream, becomes a commodity, a thing like any other thing, a thing to be bought or sold, and the logic that describes the commodity made out of the space for human development is the logic of capital. As

³ See *infra* p. 1055.

⁴ KARL MARX, CAPITAL: VOLUME 1: A CRITIQUE OF POLITICAL ECONOMY 1 (Ben Fowkes trans., 1976) (1867).

⁵ C.L.R. James made this point most clearly:

The political organization of Europe has been based upon the creation and consolidation of national states. And the national state, every single national state, had and still has a racial doctrine. This doctrine is that the national race, the national stock, the national blood, is superior to all other national races, national stocks and national bloods.

C.L.R. JAMES, MARINERS, RENEGADES AND CASTAWAYS: THE STORY OF HERMAN MELVILLE AND THE WORLD WE LIVE IN 11 (2001). Neil Gotanda, at, and, in part, as, the beginning of Critical Race Theory, also made this point in his now classic but still vital debut article, *A Critique of ‘Our Constitution is Colorblind.’* Neil Gotanda, *A Critique of “Our Constitution is Color-blind”*, 44 STAN. L. REV. 1 (1991).

promised above, what Marx called *primitive accumulation* I will designate with two terms, *original accumulation* and *primal scene of accumulation*. I will use the term *original accumulation* to discuss the traumatic moment that seems always to have occurred just before the curtains of history were raised, and I will use the term *primal scene of accumulation* to designate the always-tentative nature of our attempts to reconstruct that time-before-time.

When a form of life is shattered the fragments come together in the form of the shattering force itself, not the form of life that was shattered. It is as if the fragments, each feeling in itself the lack of a former, albeit unrecognized, unity, are drawn to each other, but only in a way that preserves a certain lack. The lack is the shattering force itself. And the shattering is a certainty. The lack becomes the free-floating principle of reunification, and thus all attempts at reunification fail, in perpetuity.

The lack about which I write is not a simple one. The lack is in fact the world-destroying force, the missing piece of all our reconstructions. The lack is the missing piece and world-destroying force that we are. It is always what we are becoming. Because we *are* that world-shattering force, the force of the original accumulation, whatever institutional film we wrap around that which we mistake for ourselves is doomed by the deadly contents that we ourselves are, both in ourselves and for ourselves, albeit without conscious awareness. Time, vanquished by the original accumulation, now reappears as a never-ending puzzle we feel compelled to complete.

Our puzzle cannot be completed, for what it depicts is the end of the world that has already ended. The puzzle that we feel mysteriously compelled to put back together is not whatever was before the original accumulation, it is instead the world-shattering force of that original accumulation. If it ever seems as if we have found the final piece of the institutional puzzle that is the achievement of social, industrial and perpetual peace, and it often seems so, then we can be as sure as the original accumulation, as certain as the grave we are already in, that the seemingly final piece will shatter everything; and it will do so with all the eternity of the Middle Passage, the Black Atlantic, the undiscovered country, our source and final resting place, the navel of our contemplations.

The repetitions are not repetitions of a form of life, they are repetitions of the force that opposed and shattered that form of life; they are repetitions of the original accumulation, of the total

extinction event at the beginning of what is modern. The fragments come together in the form of the force that shattered the unity of their former life. That shattering force was the force of the original accumulation, and it shatters them again. Thus it is that we never cross the event-horizon of the original accumulation.

The invisible hand of the market and the shattering force of race-making genocide were and are one and the same. The market is the ghostly return of genocide. The world of the market, of capitalism, looks like life, “idyllic,” but it is not, not for the have-nots whose not-having is the secret source of all capital accumulation. Capitalism is the repetition *and intensification* of the racial genocide of its origin. Repetition and intensification of the great death event of the world is not life; it is death, only death, and that continually. She comes in colors, like November.

Today, 14 November 2008, we have charted, with great accuracy, several of the various terrains of the original accumulation’s repetition. We are the unfed.⁶ We are the executed.⁷ We are the banished.⁸ We are the unrepresented.⁹ We are the speculum¹⁰ in which the other rainbow appears¹¹; the rainbow of the other scene¹², the rainbow that promises nothing but the eternal duration of the death we are unable to acknowledge having died.¹³ We are the despised.¹⁴ The colorline, the border of the undiscovered country, runs through our bodies. We even chase each other, connecting the

⁶ Bekah Mandell, *Cultivating Race: How the Science and Technology of Agriculture Preserve Race in the Global Economy*, 72 ALB. L. REV. 939 (2009).

⁷ Phyllis Goldfarb, *The American Way of Death*, Defining Race Symposium, November 14, 2008.

⁸ Bridget Baldwin, *Colorblind Diversity: The Changing Significance of “Race” in the Post-Bakke Era*, 72 ALB. L. REV. 863 (2009); Cesar Cuauhtemoc Garcia Hernandez, *La Migra in the Mirror: Immigration Enforcement, Racial Profiling, and the Psychology of One Mexican Chasing After Another*, 72 ALB. L. REV. 891 (2009).

⁹ Janai Nelson, *Defining Race: The Obama Phenomenon and the VRA*, 72 ALB. L. REV. 899 (2009).

¹⁰ Peter Halewood, *Laying Down the Law: Post-Racialism and the De-Racination Project*, 72 ALB. L. REV. 1047 (2009); Reginald Oh, *On Account of Race or Color: The Meaning of Race in Historical Context*, 72 ALB. L. REV. 1027 (2009); Donna Young, *Defining Race Through Law*, 72 ALB. L. REV. 1041 (2009).

¹¹ Deleso Alford Washington, *Critical Race Feminist Bioethics: Telling Stories in Law School and Medical School in Pursuit of “Cultural Competency”*, 72 ALB. L. REV. 961 (2009).

¹² Neil Gotanda, *Computer Games, Racial Pleasure and Discursive Racial Spaces*, 72 ALB. L. REV. 929 (2009).

¹³ Anthony Paul Farley, *The Station*, in AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA (David Dante Troutt ed., 2006).

¹⁴ Hope Lewis, *Blackness in Multiple Dimensions: Obama, Race, and Human Rights in a Complex World*, 72 ALB. L. REV. 999 (2009); Deborah W. Post, *Cultural Inversion and the One-Drop Rule: An Essay on Biology, Racial Classification and the Rhetoric of Racial Transcendence*, 72 ALB. L. REV. 909 (2009).

dots like children, if children had the unseeing eyes of corpses,¹⁵ and we do this to ourselves, for them. We connect the stigmata, our stigmata, policing these bodies that are not ours, for them, for they know not what they do, and neither do we.¹⁶

The undiscovered country is the only one we can call ours. And it is a nation we must leave. There is a fear we dare not name, and so we misname it “race” and misunderstand its cruelties with ever more frenetic misnomers. Like so many scattered leaves, it means nothing, or so the scattering makes it seem. What is to be done? Repetition is a refusal of memory. Refused memories cannot be worked through, and without that working through we cannot leave the undiscovered country.

This joint symposium of the Albany Law Review and the Albany Law School Journal of Science and Technology has been a moment of clarity, of civic courage (the sort that does not exile the political from the civil), of solidarity, of what was once called the unstoppable power of the people. It takes a lot of courage to remember and work-through what happened. Before working through these essays, let us remember to thank those whose efforts created this autonomous zone. The idea of *Defining Race* came to the law review from somewhere, perhaps from the same place that enabled Senator Barack Obama to become President Barack Obama. When Maria Grahn-Farley got word of it from the editors of both publications, she immediately suggested Neil Gotanda, one of the nation’s leading legal theorists. I repeated her suggestion. When asked in October to secure additional speakers, I invited Bridgette Baldwin, Phyllis Goldfarb, Peter Halewood, Cesar Cuauhtemoc Garcia Hernandez, Hope Lewis, Bekah Mandell, Janai S. Nelson, Reginald Oh, Christian Sundquist, Deborah W. Post, Deleso Alford Washington, and Donna E. Young. And, per my promise to editors Brian Borie, Daniel Bressler, William Lowe, and Rebecca Solomon, all speakers confirmed within a few hours of my call.

Acting Dean Connie Mayer was helpful, as was the grant from the Albany Law School Faculty Enrichment Fund. None of this would have been possible without the organizing skills and hard work of Theresa Colbert, Legal Assistant to the Faculty. Theresa Colbert took care of all the tasks, large and small, that had to be taken care of in order to make this symposium a reality.

¹⁵ Christian Sundquist, *On Race Theory and Scientific Doctrine*, 72 ALB. L. REV. 953 (2009).

¹⁶ Gotanda, *supra* note 12.

DEFINITION, REPETITION AND WORKING THROUGH

Brown v. Board, Bridgette Baldwin reminds us in *Colorblind Diversity: The Changing Significance of "Race" in the Post-Bakke Era*, was fifty-plus years after *Plessy v. Ferguson*.¹⁷ *Defining Race* will make it to print fifty-plus years after *Brown v. Board*. The temporal mirror image, fifty some years before and fifty some years after, reveals a fault, a basic fault that I discussed earlier, which runs through and ultimately predicts the shattering of all our attempts to reconstruct the fragments. The original accumulation continues to the present and thus brings into question our supposed progress from then till now. There has been no progress, only repetition and intensification of the original accumulation. Baldwin examines our lack of progress from then till now by revisiting *Regents of the University of California v. Bakke (Bakke)* to make two arguments and one suggestion. *Bakke*, Baldwin observes, used a "language of race neutrality" that "detached the law from the social and historical context of racial inequalities." She writes:

The language on race is so neutral that it has allowed whites to argue that racial preferences constitute discrimination under the law. The same language that was once used to right past wrongs is not being used to support 'white skin privilege.'¹⁸

In addition: "...denying the social and historical context of governing standards like *Bakke* allows society to ignore the fact that white preferences still exist."¹⁹ This is important because "the ostensible advantage that affirmative action may give African Americans is meager considering the countless rewards continuously conferred upon white Americans based solely on race."²⁰ In other words, *Bakke* shatters the space between *now* and *then*. White privilege is the norm, still. *Bakke* helps to repress that fact through its depiction of race as separate from the white-over-black of the original accumulation and its continued repetitions and intensifications.

Repression of the fact of white-over-black results in a view of race

¹⁷ Bridget Baldwin, *Colorblind Diversity: The Changing Significance of "Race" in the Post-Bakke Era*, 72 ALB. L. REV. 863 (2009).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

as something akin to the blood that everyone possesses. Everyone has a pulse and the way one's blood beats should occasion no public result. Blood has no history. Blame it on the rain, but no public result should flow from a supposedly history-less fact like *falling leaves* or *race* or *November* or *the sound of rats' feet over broken glass* or *Southern trees*, or so they claim. *Programs designed to reduce "white skin privilege" are viewed and reviewed, post-Bakke, as forbidden interruptions of the race neutrality norm and therefore discriminatory.* *Bakke's* amputation of history allows the entirely fictional race-neutrality norm to supersede the fact of blackness, the black fact of constant white racism. The disease we already died of is repeated through *Bakke* as the cure. This is repetition, not life, and not progress. Repetition is neither life nor progress, it is the domain of the original accumulation.

Post-*Bakke*, the pain of white-over-black is a phantom pain of the post-amputation sort; the sort that continues, mysteriously, to be felt in the limb that is forever gone. The Court amputated the history of white-over-black. The still-present pain of white-over-black is, juridically speaking, phantom pain, pain fit for phantoms, pain fit and proper for the dead. Pain is the only property of *November's* scattered leaves.

Bakke had to do with allotments of seats in medical school. Deleso Alford Washington, in *Critical Race Feminist Bioethics: Telling Stories in Law School and Medical School in Pursuit of "Cultural Competency,"* reminds us of the blackness of the body of medical knowledge consumed by the university.²¹ "Sister Anarcha got a story to heed. Her-story cuts so deep, make you bear down, close your eyes and legs. . .," writes Washington in *A Sister Song Ballad*, the poem with which she begins her article about the shattering of three slave women, Anarcha, Betsy and Lucy, that was the beginning of modern gynecology.²² The leaves of the medical textbooks were literally cut out of the bodies of blacks, and that fact is still celebrated, which amounts to another trauma. The cut brings *then* and *now* together, again. Washington writes:

The reproductive and surgical exploitation. . . [of] Anarcha, Betsy, and Lucy (among other un-named enslaved Black women) 'othered' their skin based upon a construction of 'race' yet 'samed' their bodies for purposes of extracting reproductive knowledge, surgical inventions and innovations

²¹ Washington, *supra* note 11.

²² *Id.*

to benefit all women.²³

Washington works through the memory of their shattered bodies as a matter of ethics or “historical truth telling.” On another level, Anarcha’s shattered body tells a more profound story, a story of anarchy, the undoing of property and law that is a way out of the undiscovered country and into life.

There is no race, only racism. My colleagues Donna Young, Peter Halewood, and Christian Sundquist write of race as racism. Sundquist, in *On Race Theory and Scientific Doctrine*, writes:

From Lennaeus to Blumenbach, from pre-modern anthropologies to nineteenth century race scientists, from eugenics to population geneticists, science has purportedly provided empirical backing throughout time to notions of biological race. However we know that this has been uniformly rejected. We know that race as a social construction is devoid of biological meaning.²⁴

This leads to a question:

Why are some geneticists, prosecutors, law enforcement, and courts insisting on this biological conception of race? Why have our courts largely failed to interrogate the shaky legal grounds on which these probability estimates [of race of perpetrator based on DNA] rest? Why has the choice been made to produce a probability estimate that relies on race as a reference point, as opposed to the general population?²⁵

Sundquist’s answer: “One answer to these questions lies in the *enduring folk appeal* of understanding race to represent a natural biologically based method of categorization.”²⁶

Halewood reverses and yet supports Sundquist’s answer by locating the “enduring folk appeal” of race within the legal system itself. In *Laying Down the Law: Post-Racialism and the De-Racination Project*, Halewood writes:

If whiteness is the ideology, then corrective justice, formal equality, negative rights, and color blindness have been the jurisprudential tools that implement and operationalize it. Thus distributive justice, substantive equality, positive rights and race consciousness are likely to threaten it.²⁷

²³ *Id.*

²⁴ Sundquist, *supra* note 15.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Halewood, *supra* note 10.

Halewood argues that we “discount the material facts of oppression in favor of a narrative of neutral, colorblind fairness that maintains racial hierarchy in the interest of capital accumulation.”²⁸ He is right.

Young, like Halewood, places emphasis on the material consequences of the marriage of racial illusion to force of law. In *Defining Race Through Law*, Young, argues that:

[F]rom the founding of our nation our legal system has played a central role in determining racial membership in order to distribute privilege. The courts have been adept at developing categories that sheltered the white race from the onslaught of those who might lay claim to whiteness.

“[F]rom the founding” might be expressed “blood on the vine, blood at the root.” Young cautions against the export of the U.S. model’s strange fruit. Young’s essay calls to mind Aime Cesaire’s famous observation that American colonialism is the one from which no one ever recovers.

Reginald Oh, revisiting the time of the Reconstruction Amendments, lends support to Young’s argument about racial shelter and to Halewood’s argument about capital accumulation. Oh argues, in *On Account of Race or Color: the Meaning of Race in Historical Context*, that the Court’s current characterization of race as a physical and therefore ahistorical trait was not the understanding that guided those who framed the Reconstruction Amendments:

A careful examination of nineteenth and early twentieth century court decisions, decisions which include *Plessy v. Ferguson* and *Strauder v. West Virginia*, suggests that the framers of the Reconstruction Amendments and the Supreme Court Justices of that era thought of race, not as a physical trait, but as an entity with a corporate existence. In short, the original understanding of race was of race as a corporation.

Bekah Mandell matches Oh’s focus on race as an institutional arrangement. The accumulation, for Mandell, is on a global scale:

In 2008, nearly one-sixth of the world’s population went hungry. The vast majority of the world’s hungry live in the developing world; only a fraction of the underfed are residents of the global North. The burden of hunger falls

²⁸ Halewood, *supra* note 10.

disproportionately on the world's people of color who make up the majority of the population of the global South. This inequitable distribution of hunger is not a geographic accident, but rather the result of the systems that have reified race and reinforced its construction through the centuries and across the continents.

Mandell sees the world system reflected in the feeder/fed relationship of slavery. In the fractures of production, we see that the producer, the slave, must appeal to the parasite, the master, for food. The slave is made to grovel before the parasite for food:

During slavery complete subjugation and denial of control over one's personal acts, including command of one's own food supply, became essentialized as racial characteristics of the subordinate group. Though slavery has long since been outlawed, race and the marks used to define it are constantly evolving. . . In the centuries between African slavery in the "new world" and the New Green Revolution of the early twenty-first century, the marks of racial subordination have incorporated new technologies and systems of oppression, but the underlying white/black hierarchy that began during slavery has not wavered. The New Green Revolution has placed ownership of the global food supply soundly in the hands of a few powerful corporation. Their ownership and command over the global food supply is carefully guarded by the system of international law and international institutions, most notably the WTO TRIPS agreement and U.S. intellectual property law, ensuring that the white/black, feeder/fed hierarchy retains its salience in a rapidly globalizing world.

Whiteness is a corporate power. Like the *Green Revolution*, the *New Green Revolution* places control of food in the hands of the corporate power that is white. The producer must bow down before the parasite for food, before and after Emancipation, before and after the *Green Revolution*, before and after the *New Green Revolution*. The black producer must pray to the white parasite for food, must kneel before the New Green Revolution. The new arrangements are repetitions of the old arrangements.

Mandell's proof of *the lack of a between* separating the deployment of hunger *then* and *now*, finds a match in the existentialist jurisprudence of Cesar Cuauhtemoc Garcia Hernandez. Garcia Hernandez returns home to McAllan, Texas, a bordertown, to find that the separation between here and there, "here" being this side of

the border and “there” being the other side, runs through individuals and communities, choices and emotions, loyalties and betrayals, just like roads and real estate. In Garcia Hernandez’ words:

In South Texas, the Border Patrol’s reliance on Mexican Americans to police the Border creates a dichotomized intragroup racial divide that is destructive of the people who are charged with doing the policing, tht is destructive of the people who are being targeted, and that is destructive of the very social fabric that has held the communities along the border together for generations.

The fragments use the word “border” to describe the deadly space between. What separates one falling leaf from another? What separates this November from the others? In Garcia Hernandez’ hometown the absurdity is more obvious because they patrol each other, and they do so in the name of the one that is not Other: “racial profiling is being conducted by people with similar racial, cultural, linguistic, and presumably physical characteristics as the people being targeted.”²⁹ And so:

We are all suspected criminals, for simply being who we were born as, and for simply living where we choose to live. . . [R]acial profiling that relies on stereotypes and uses deep-rooted cultural practices to detect insiders and outsiders is destructive of the very community fabric that has kept generations of families along the Texas border going through economic hardship and geographic isolation. By exploiting cultural and linguistic practices to serve polices that target the very people with whom they share those practices the Border Patrol threatens to forever destroy the foundations of South Texas communities.

They even stop Garcia Hernandez and his partner for walking.

President Barack Obama, then Senator Barack Obama of Illinois, who is black, defeated Senator John McCain of Arizona, who is white, in the Presidential election of 2008. No one thought the day would come when we would see a black president of the United States. Deborah W. Post, Hope Lewis, and Janai S. Nelson explore the Obama phenomenon and the fact of blackness.

Nelson’s essay, *Defining Race: The Obama Phenomenon and the Voting Rights Act*, is an examination of the uncanny. Does

²⁹ Garcia Hernandez, *supra* note 8.

President Obama's electoral success mean, as some race-focused conservatives have already asserted, that the colorline has faded to the point at which race and race-based remedies ought to be discarded in the area of voting rights? Nelson shows that while some things have changed, some things have not. Obama '08 lost the white vote to his opponent, and would have lost the election but for the geographic distribution of the voters, near total support from blacks, and heavy support from other nonwhites.

Conservative voices claim Obama's 2008 victory as *proof* that the protections of the Voting Rights Act are superfluous. Voters no longer vote on race, they claim. They are wrong. *After-the-fact euphoria* is not *before-the-fact voting*, an obvious truth that conservatives ignore. The personal is political, and vice versa, especially when it comes to voting. How many whites wanted to see Senator Barack Obama win, but were simply unable to move the voting lever against history? Some whites, maybe many, are happy *now*, even though they could not do the right thing *then*, when left alone in the voting booth with the angels of their lesser natures, the angels that speak with the voice of the original accumulation. President Obama's own Secretary of State, Hillary Clinton, for example, seemed to collapse into racism when, as contender for the Democratic Party's Presidential nomination, her lead was first lost. Clinton made what appeared to be an appeal to white voters as white voters, and met with some success in the low-information sections of the white electorate. On another note, it is interesting to observe the way that Clinton, reversing, as though in a mirror, the central theme of this *Afterword*, spoke to white women of a glass ceiling, cracked by each Clinton vote, and to be shattered by the future's voters.

Obama '08 lost the white vote but went on to win the election because of the Other vote, the vote that was not white, the non-white vote that has as its genesis and life-line the supposedly superfluous protections of the Voting Rights Act. In other words, President Obama's victory would not have been possible without the vote that was not white and the vote that was not white would not have been possible without the Voting Rights Act. It is perverse to claim, as some conservatives have already claimed, that the Obama victory somehow proves the superfluity of that upon which it in fact depended. The final piece of the 15th Amendment puzzle thus makes a perverse and uncanny appearance as the elimination of the selfsame black vote it was supposed to protect. Once again the space between *then* and *now* is shattered.

Post confronts the “caste-like” nature of the colorline directly in *Cultural Inversion and the One-Drop Rule: An Essay on Biology, Racial Classification and the Rhetoric of Racial Transcendence*.³⁰ Specifically, Post looks to the dismantling of the legal “prescription of endogamy” and “proscription of exogamy” to find out whether or not those changes eroded the caste-like nature of racial classifications. Post’s father was the grandson of a runaway slave who escaped to Auburn, New York on the Underground Railway. Post’s mother was a Canadian who moved to Rochester, New York as a child. Chattel slavery is within our living memory. In 1948, the year Orwell wrote 1984, there would have been former slaves still living in Rochester, New York. Post, born in 1949 to a mother who happened to be white and a father who happened to be black, reminds us in her discussion of *Perez v. Sharp* that in 1948 “there were thirty states that had anti-miscegenation laws.” States were free to enforce caste exclusion of blacks from marriage until 1967, the Summer of Love, and the time of *Loving v. Virginia*. From before the founding of the nation, and at least until the grade school years of the present’s power elite, the doctrine of white supremacy came with the imprimatur of Supreme Court approval. Post reminds us of that these juridical insults, these unforgivable legal mutilations, these state-sponsored mortifications of the flesh, happened to her, to her family, to us, within our national family story, within our personal family stories, not once upon a time, not to someone else, not somewhere else, and not by accident. Post reminds us that these unthinkable and lawful things happened for a purpose, white-over-black, from *then* till *now*.

1967 did not go anywhere. The Jimi Hendrix Experience, Star Trek, and the Black Panther Party are all 1967 moments and living memories for the families of the readers and writers of this *Defining Race* symposium. Someone in your family experience was part of 1967, and that means you were too.

After Jamaica, Tanzania, Libya, Puerto Rico, and perhaps a few other places, my childhood unfolded in the same Upstate, New York about which Post writes. Post’s presentation brought something with it, a shard of shared experience in the form of a fractal square dance in a physical education class at the Elizabeth C. Barclay School some time, but not much time, after the end of the flowerchildren’s summer of love, it might have been November. I remember falling leaves. And black rain. The folk dance involved

³⁰ Post, *supra* note 14.

the entire physical education class. We were to move in rotating squares. When boy-corners met girl-corners they were supposed to hook arms with each other and each thereby spin into the other's now-former square. The squares kept falling apart. The class continued for the fifty or forty-minute hour as the squares kept falling apart. The squares shattered, each after the other, over and over, and with the same rhyme and rhythm, like a clock, like falling leaves, and for the same reason. None of the white children were willing to touch the black child, me, but we were all made to keep spinning around and around in our fractal folk dance.

Every corner shattered precisely where I was. *Every corner shattered precisely where It was.* Every corner shattered precisely where I was becoming. What, one once upon a time wondered, could the becoming of this be?

The original accumulation was the rhyme, rhythm, and reason. The untouchable black was in class, yes, but forever out of season, *if they do these things when the tree is green*³¹, and that is what made the education of desire, the square dance, both possible and necessary. The dance went on and on for a fifty-minute hour. And it goes on and on. And it will go on and on until the day comes when the day does not come. It has gone on from *then* till *now*, and no one seemed to mind the fragments.

Hope Lewis reminds us that "black" flags a complex of oppressions in *Blackness in Multiple Dimensions: Obama, Race, and Human Rights in a Complex World*.³² Lewis writes: "The legacy of African diasporas, contemporary cross-border labor migration, and the globalization of cultural, economic, and political trends requires that we explore the meanings and contradictions of racial criteria in a transnational context." If I read Lewis correctly, this means addressing the fact that the struggle continues on all its fronts. Black, the color of the original accumulation and its repetitions, is as complicated as anything else within the wind's twelve corners. What addressing the repetitions might mean in one context, might mean something else in another. The fragments of the original accumulation are many and varied and black, like the Middle Passage, like shadows on falling leaves, like the undiscovered country, like November, and this has been so from *then* till *now*.

Lewis is from Jamaica, like me.³³ She begins her essay with a

³¹ Luke 23:30 KJV.

³² Lewis, *supra* note 14.

³³ Lewis herself writes:

I am (am not) "Jamaican"--I was born in Brooklyn (Bed-Stuy), which makes me "African-

discussion of the national motto, “Out of Many, One People,” and its appearance on “the somewhat ambiguous national coat of arms.” The ambiguity comes from the original accumulation: it depicts two Arawak people, a woman and a man, greeting the viewer. All of the Arawak are dead. The Arawak are dead. Christopher Columbus and his men arrived in paradise and killed everyone. The original accumulation was like nothing history has ever witnessed. History, indeed, cannot witness it.³⁴

The Europeans killed the Arawak for gold, for love and sex and friendship, for something to do, for sport, for god and country, for nothing, forever. Before the infants of the white arrival could become adults, Columbus and his men killed everyone in the world. What was the Arawak word for the end of the world? What were the words that bound them together? What were their words of memory and loss? What were the words that gathered them together as one people? There are no words. Their language – the form of life itself – was also murdered. Columbus and that which he represented killed them all, one by one and also as a people and also as a history, as a time, as a separation between *then* and *now*. Even the reptile depicted above the Arawak pair on Jamaica’s national seal is extinct.

Hydrogen in abundance starts to gather. As the hydrogen atoms move closer together the force of their gathering brings them in touch with each other more and more frequently. *Touch* is the wrong word, *frequency* is not quite right either. Two similar particles cannot exist in the same position at the same velocity. As the atoms gather, the velocity of exclusion increases. The heat of this interaction eventually becomes so great that the individual hydrogen atoms no longer reflect each other, but instead merge,

American” and Black I was born to Jamaican immigrants and started going to Jamaica almost every year from the time I was about 6 months old (that makes me “Jamaican-American”). I grew up in East Flatbush, an intensely Caribbean enclave of NY (which makes me “Jamaican”). All of the above makes me “Black” as well. . . In any event, just wanted to correct the potential inaccuracy in your statement “Lewis is from Jamaica. . .” but the paragraph above illustrates what I’m trying to get at about blackness in the essay as well.

Communication with Hope Lewis, 4 July 2009.

³⁴ As Lewis is well aware: When I shared my reading of the emblem, Lewis replied: The “ambiguity” of the Arawak emblem is intended to be entirely sarcastic--the Arawak are dead, as are the indigenous reptiles... Just as the “E Pluribus Unum” of the US was false from its inception, just as Obama’s “we are one” is false from its inception (even though I believe it might be intended more benignly?). The assimilationist myth in both locations depends on the death of the original or most hated peoples (or at least of their strongest and most threatening characteristics).

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becoming helium. The heat born of this becoming is what makes a star. Heat, a force of expansion, meets gravity, a force of contraction, as the star's stability, as its long duration. Eventually the fire runs down. The star dies. The star contracts as it cools.

Subrahmanyan Chandrasekhar, thinking about the exclusion principle and the speed of light as a maximum, posited a limit to the mass a cold star could have and still support itself against gravity. The speed of light is a limit on velocity. Chandrasekhar understood that the limit on velocity was also the limit on the force of exclusion. A cold star with a mass beyond the Chandrasekhar Limit, with a mass with a gathering force, a gravitational force, beyond the limit of the force of exclusion, becomes a black hole in the universe. The atoms gather with a force that exceeds the force of exclusion and then fall out of the universe. Dead stars that die this second death do not finish dying, they fall forever, and they pull everything in after them. Not even light escapes the death of stars beyond the Chandrasekhar Limit.

Whether the paragraphs immediately above represent the *truth* or *fiction* of science is beside the point. Scientific truth is never absolute. And fiction's absolute truth is that it is never absolutely fiction. I deploy them, science and science fiction, pick one or pick the other or pick both, to describe a possible world. Possible worlds contain unthinkable, that is to say, impossible, objects. Indeed, the impossible object is, in many ways, the container of the possible world's possibility. With that in mind, we can move from this fiction or truth of science to Lewis' essay, to the subject of this symposium, to the world of the colorline, and to the impossibility that is its condition of possibility and container, the navel of the dream, which I will compare to a black hole.

Consider the Chandrasekhar Limit as a jurisprudence: Death appears as a peculiar shadow, a one-way surface, an event horizon. There is no exit, just a dearly-departed-shaped nothing. Some things are worse than death. How dark can it be? What is the blackness of blackness? The black hole of science and of the fiction of science has a one-way surface, an event horizon, into which objects can fall, but out of which nothing comes, not even light. Is death like this? And what could be worse? Is there a death that is more—and therefore worse—than death? Primitive accumulation is mass murder beyond the limit.

Language is life. Life is a sort of light. Past a certain limit, beyond a certain mass, murder, mass murder, becomes a one-way surface, an event horizon, into which objects can fall, but out of

which nothing comes; nothing that lives, not even light. Murder that is repeated to the point at which a language is also murdered opens a black hole in the universe, a hole into which objects fall forever and are forever dragging the rest of the universe in after them. What is the New World's newness if not the Arawak-shaped hole in it? And this is not a tale of the drowned and the saved. Capital is universal drowning. The mass murder that creates a hole in the universe, the hole that pulls everything in after it, is what I have referred to in this *Afterword* as the original accumulation. The murdered Arawak were replaced by kidnapped and enslaved Africans, the blacks. This is the blackness of blackness. This is the primal scene of accumulation.

Lewis' essay is useful to read as an analysis of the Arawak-shaped hole into which the blacks were dragged and out of which nothing comes, nothing that lives. "Out of Many, One People" is indeed "ambiguous." As is the echo of that motto which Lewis recognizes in President Barack Obama's Philadelphia speech on race, "Out of many. . .we are one." The national motto, "Out of Many, One People," and the potential national motto, "Out of many. . .we are one," both seem innocent. And at some level they are what they seem to be, but on another deeper level, before the dawn of the national times and tides they celebrate, there is a black hole, a one-way surface, an event horizon, something into which objects can fall, but out of which nothing comes, nothing that lives. This hole pulls everything in after it: "capital not only lives upon labor. Like a master, at once distinguished and barbarous, it drags with it into its grave the corpses of its slaves, whole hecatombs of workers, who perish in the crises."³⁵

There is a tide. The tidal forces of the black hole at the center of every nation state produce the display of the diversities. Lewis has written powerfully about the diversities, about what black is and is not, as well as about what cannot be decided. Why? Because litigation against the outrages of the colorline requires understanding of subtle things. Lewis does an excellent job—better than I could hope to reproduce in this Afterword—of sorting, clarifying and, most importantly, showing certain racial antinomies as points for political engagement, coalition building, not enervating and increasingly speculative philosophy. There are echoes of Laclau and Mouffe in this aspect of Lewis' new work; there is also and more

³⁵ KARL MARX, WAGE-LABOUR AND CAPITAL (1849),

importantly the promise of more and better litigation possibilities.³⁶

The black hole exerts a tidal force. That which is dragged into the black hole experiences a tide. The tide pulls more fiercely on that which it reaches more easily. As one is dragged out of the universe, that which is nearest to the hole is pulled faster and therefore further away from that which is farther from the hole. Tidal force pulls that which is one into many new, or perhaps just newly-observable, component parts. Like light spread out into a rainbow, that which falls into the black hole of original accumulation is stretched into the diversities. Each diversity shows some sort of blackness. The fragmentation runs all the way down. The black part is the part closer to the singularity, the part that has fallen farther, the part that reflects nothing, the part beyond the event horizon. This is the blackness of blackness, the rainbow of the Other Scene. It looks like a promise, but it is only the undiscovered country.

Plaintiffs may or may not consciously experience the force of history. Time and tide do not wait for anyone's understanding. Maybe that comes only when all is said and done. Plaintiffs may simply be trying to get through the days and weeks of a trying situation. And trying to help with litigation is important. Lewis treats it as important. There is a force of history, it is the original accumulation. Seeing the original accumulation for what it is – murder so massive that it opens a black hole in the universe and drags all life down through its one way surface – is not *getting through* the day or the weeks or the years. *Getting through* is not the same as *working through*. The latter, however, is necessary to make those days and weeks and years into a life that is lived, as opposed to simply something that can only be spent. The problem and the Problem both require our attention. Lewis writes:

Defining “race” presents problems that make the international community—including the human rights

³⁶ Lewis comments:

I like your hopeful reference to litigation, and maybe defining blackness in more complex ways will help—but only incrementally and temporarily. What I am aiming at in the international law and other contexts is merely this—the awareness of complexity, impermanence, instability, and the guilty hands of racism everywhere and at all levels. Thus requiring constant regrouping, renegotiation, re-evaluation of coalitions and conflicts (friends and enemies) in the struggle to emerge from the black hole...(as it happens NPR's science show is talking about black holes as I write). What will emerge on the other side? I have no idea; nor do I have any reason to believe it will be better than domestic law...just more of the same struggle. But more is better, isn't it?
Communication with Hope Lewis, July 2009.

movement—uncomfortable. Such a project would further expose the privileges assigned to dominant racial groups and the costs imposed on subordinated racial groups, the horrendous legacy of the pseudo-scientific theories that supported slavery, colonialism, the Holocaust, and other efforts to determine life chances by racial category, as well as the perceived threat to national sovereignty and stability posed by internal or cross-border racial solidarity. Defining race, as such, therefore, grew to become a politically and scientifically unviable enterprise in the period following the end of World War II and the founding of the United Nations. “Race” was left to the realm of concepts in which international actors were supposed to “know it when they see it.”³⁷

At the event horizon, there is a rainbow. It is the rainbow of the Other scene. The colors and varieties of blackness are an effect of spinning down and out of the universe. Death comes in colors. Some of the bright fragments even look like life: Lewis writes of “Controversies over Black identity and representation,” identifying four “problematic definitional themes”: (1) Blackness as United States-ian, (2) Blackness as Class Limitation, (3) Blackness as Physical Appearance or “Biology”, and (4) Blackness as Cultural Essence.³⁸

Lewis observes that while black is a United States phenomenon, it is not only is not only a United States phenomenon. Lewis observes that while black is an underclass identification, the underclass is not black only, nor are blacks entirely absent from other class formations. Lewis observes that while blackness is a color, blacks come in all colors. Finally, Lewis observes that while there is a cultural form one might call black, where precisely that cultural form begins and ends cannot be said, nor can its content be explained with anything other than a magical claim to realism. Despite all the contradictions and paradoxes identified by Lewis, the attempt to define race is, for her, a necessary part of the attempt to expand the protection of international law. The always-changing fragments, the diversities, are an effect of the tidal force of the black hole as we all fall down to through its one-way surface to the undiscovered country.

Neil Gotanda’s *Computer Games, Racial Pleasure and Discursive*

³⁷ Lewis, *supra* note 14.

³⁸ Lewis, *supra* note 14.

*Racial Spaces*³⁹ unveils a new approach, one that begins with a return to my first law review article, *The Black Body as Fetish Object*, in which I developed the concept of race-pleasure.⁴⁰ Gotanda's new approach, the method that he deploys for the first time in the pages of *Defining Race*, looks at computer games, a mode of expression or experience that "has gained an enormous audience and may surpass [television and cinema] in influence," for insight regarding the nature of the colorline. Gotanda takes us into cyberspace and to the "*World of Warcraft*," a "massively multiplayer online role playing game."⁴¹ The subscriber population of the *World of Warcraft*, eleven million, exceeds the number of Jamaicans or Swedes in the world. "Within computer games, there are countless worlds of human and creature images. When you see the images, you look at some and observe, 'these are racialized.'"⁴² Why? Gotanda looks to develop an analysis of the racial images in this expanding world of fantasy that can provide a link to existing legal discussions, and it is to accomplish this new and needed task that Gotanda turns to "flow theory"⁴³ and to *The Black Body as Fetish Object*.⁴⁴

Gotanda writes, "...we can link the pleasures of computer gaming with Farley's identification of race-pleasure."⁴⁵ Gotanda quotes *Fetish Object*:

Not all bodily pleasure are sexual. People can create pleasure out of very peculiar things, even out of suffering or inflicting pain. Race is such a pleasure. The colorline, like love, is a many-splendored thing, and its definition is elusive. The colorline, in one aspect, is comprised of the rules of the sadomasochistic game also known to us as race relations. In other aspects the colorline appears as a form of economic or political exploitation. The economic and political contours of colorlined space are well-charted but the sensual aspects of colorlined space remain an undiscovered country.⁴⁶

Race is a fetish, in both the psychoanalytic and Marxist senses of

³⁹ Gotanda, *supra* note 12.

⁴⁰ Anthony Paul Farley, *The Black Body as Fetish Object*, 76 OR. L. REV. 457 (1997).

⁴¹ Gotanda, *supra* note 12.

⁴² Gotanda, *supra* note 12.

⁴³ "Flow" refers to the sort of complete involvement with what one is doing that causes other ordinary considerations to fall away. Gotanda, *supra* note 12.

⁴⁴ See Farley, *supra* note 40.

⁴⁵ Gotanda, *supra* note 12.

⁴⁶ See Farley, *supra* note 40.

that term. The matter of race is thus no empirical matter, at least not entirely. Race is blind to the material realities it was born of and that it guarantees. Race *is* blindness. The original accumulation is somewhere beyond the navel of the dream. The essays of *Defining Race*, taken together, taken separately, taken apart, allow us to put together a primal scene of accumulation. More importantly, they are proofs of the original accumulation, repetitions of which we are, repetitions of which take the shape of the undiscovered country.

At the very beginning of this article I referred to *the other scene*. Gotanda tests my *Fetish Object* thesis in cyberspace, *another scene*. Gotanda's visit is to the *World of Warcraft*, a cyberspace situation inhabited by eleven million subscribers. Cyberspace allows for a certain relaxation. One is removed from day-to-day conscious concerns. Indeed, the body almost altogether floats away. What sort of thoughts are thought in such unguarded moments? As with dreams, symptoms, jokes, and slips of the tongue, the censor is not present. This means that choices made in cyberspace, like dreams, symptoms, jokes, and slips of the tongue, may have a meaning, a repressed meaning, and we might come to know ourselves better by adopting an interpretive attitude toward these and other signs. *Fetish Object* was my first argument that the imagined constraints of legal interpretation, particularly those having to do with racial equality, are imagined constraints and therefore reveal repressed meanings, like dreams, symptoms, jokes, and slips of the tongue. The race-pleasure of *Dred Scott* is the race-pleasure of *Plessy* is the race-pleasure of *Adarand* and so it goes, from harmony to harmony, white-over-black to white-over-black to white-over-black, the end is the beginning.

Gotanda enters cyberspace and discovers race without bodies. Race, in other words, without race. What is the use value of this discovery? The *World of Warcraft* is a game, not *like* a game. Within such a reality-free space, if race appears, it is because desire invited it. Remember, there is no race, there is only racism, only white-over-black. Wherever the desire for race appears the citizen of the *fantasy* paradoxically comes face to face with the absolute *reality* of her or his desire. The citizen of the virtual reality is a body without organs, and thus free to be you and me, you or me, or anything at all. This is all subject to one law: There can be no disavowal of the fantasy. Whatever appears on the scene is and can only be the absolute Real of the subscriber's desire. Dreaming in this way is wanting, and wanting in this way is being, really being,

really being it, *essentially* being *It*. What is *It*? What is it that continues to be wanted even after the you of you is gone, even after the surly bonds of identity have slipped away? You are whatever *It* is. *It* is all you can be, once everything else has fallen away.

What does the desire for race reveal? Race, recall, is white-over-black, only white-over-black, and that continually. Slavery to segregation to neosegregation is white-over-black to white-over-black to white-over-black, with ever-increasing perfection as law gains our fidelity, intensifies our forgetting, and takes us back to the original accumulation that is law's always occulted source of authority. Slavery is death, only death, and that continually. Perfect slaves experience their enslavement as an ecstasy, and as a free choice. The desire for race thus reveals the desire for death.

Gotanda explores cyberspace and finds race. In cyberspace we are free from whatever political economy has made and remade of readymade and otherwise irrelevant marks on the body. In cyberspace, where we are free to be or not be anything or anyone at all, Gotanda finds race. Race cannot be there without invitation. Race, then, may be charted as the absolute Real of our desire. There is nothing to race save for white-over-black and there is nothing to white-over-black save for slavery and slavery is death, only death, and that continually. What does the desire for race reveal? Race, reading Gotanda's reading of my own work in *Fetish Object*, emerges as the desire for the death that we have already died, the one that came in colors.

Gotanda's new work, rich in possibilities, calls to mind the fish in the mirror. The fish appears in a Borges short story. Once, the story goes, one could come and go between this and the other side of the mirror. Then there was war. The "Yellow Emperor" defeated the mirror people, "imprisoned them in their mirrors, and forced on them the task of repeating, as though in a kind of dream, all the actions of men." The tale does not end:

[A] day will come when the magic spell will be shaken off. The first to awaken will be the Fish. Deep in the mirror we will perceive a very faint line and the color of this line will be like no other color. Later on, other shapes will begin to stir. Little by little they will differ from us; little by little they will not imitate us. They will break through the barriers of glass or metal and this time will not be defeated. Side by side with these mirror creatures, the creatures of water will join the

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battle. . .⁴⁷

The original accumulation is the beginning and end, the reason for our repetitions, the life we who gave up the ghost at the original accumulation do not have, and the death we repeat: *It* is in everything, a fractal. We are still in *It*. But the day will come when the long spell of the original accumulation will be shaken off.

CONCLUSION: THE FISH IN THE MIRROR

Leibniz is sometimes taken to be the one who first gained awareness of the fractal, of the uncanny repetitions we find in nature, including, by some definitions, leaves. Leibniz described a line as a curve identical to itself in every segment. A fractal displays self-similarity on all scales. This is a fit way to describe the colorline. *It* is everywhere:

Each portion of matter may be conceived as like a garden full of plants and like a pond full of fishes. But each branch of every plant, each member of every animal, each drop of its liquid parts is also some such garden or pond. And though the earth and the air which are between the plants of the garden, or the water which is between the fish of the pond, be neither plant nor fish; yet they also contain plants and fishes, but mostly so minute as to be imperceptible to us. Thus there is nothing fallow, nothing sterile, nothing dead in the universe, no chaos, no confusion save in appearance, somewhat as it might appear to be in a pond at a distance, in which one would see a confused movement and, as it were, a swarming of fish in the pond, without separately distinguishing the fish themselves.⁴⁸

Race is the mode of repetition by which we refuse memories of the original accumulation.

“There is nothing fallow, nothing sterile, nothing dead in the universe. . .” Let Leibniz’ pond, lying at a distance, a peculiar distance, the space belonging to the uncanny, the domain of the repetitions, be our Walden, our place of reflection. A black pool empties its nothingness into a dark sky, or the other way round. Either way, you are now a point of captivation, a moment of capture. Two dark mirrors, each presenting a lack that fills another

⁴⁷ Jorge Luis Borges, *Animals That Live in the Mirrors*, in *THE BOOK OF IMAGINARY BEINGS* 18, 18–19 (Andrew Hurley trans. 2006).

⁴⁸ G. W. LEIBNIZ, *MONADODOLOGY* (1714).

lack, and you, somewhere else, see yourself in and then as the imago that appears to be between the one and the other one. A confused movement appears in the angle of the one and the other. November comes in colors. Falling leaves? What happens above appears below. But there are things that live below, and the life below can mistake itself for something else entirely, including things that are dead, as with mirror crossings of falling leaves and fish.

We are citizens of the undiscovered country. *It* is a country we must leave. And *It* is everywhere, as the passage above from the *Monadology* shows, and as all the essays of *Defining Race* show. Seeing the undiscovered country for what we *are* is an invitation to another, better world.

We fragments have made memory out of repetition. Making memory out of what was repetition is making life out of death. The repetitions, remember, are not life. The repetitions are not choices. The repetitions oppose freedom, freedom requiring, as it does, knowledge as to the *why* of why we do what we do, and knowledge of the why of what we do requiring, as it does, that we face what it is that brings us so breathlessly to the crisis that we ourselves are, that we have made of ourselves.⁴⁹ We are more than whatever “I” we have made of ourselves and that is why it is possible to work through the repetitions.

Making memory out of what was repetition, we can work through the trauma of the original accumulation. The working through of the original accumulation reveals property, which we were made to be, and law, which we were made on pain of inequality to produce, as repetitions of the death we have already died. After *Defining Race* we know much more of that which we knowingly did not know before.

There is a price to be paid for such knowing, something like what Baldwin called the price of the ticket or what Bonhoeffer called the cost of discipleship. But what of *It*? We have an entire world to win, nothing to lose but scattered leaves, and it is only November.

⁴⁹ WALTER A. DAVIS, DEATH'S DREAM KINGDOM: THE AMERICAN PSYCHE SINCE 9-11 (2006).