

# The Architecture of Critique

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Irony, contradiction, discontinuity, antagonism, ambiguity, paradox, antinomy, aporia, contingency, indeterminacy, ambivalence—in a list that continues. For decades, these have been the bywords of critical thought, whether within legal studies, left historiography, or humanistic inquiry at large. A constellation of such terms has defined what it means to do “theory,” for that philosophical tradition’s structuralist-Marxist, poststructuralist-deconstructive, and other contemporary proponents. On the one hand, those grammars capture the broad intellectual ethos or spirit that has animated critical and revisionist scholarship since theory’s heyday and institutionalization beginning in the 1970s. But on the other, they have also acted as *the* central apparatus of critique: it has been doctrinal that unmasking properties like contradiction, paradox, discontinuity, and antagonism will work simultaneously to disclose and to critique structures of power and domination. Vested with intensely political labor, that conceptual matrix has not only summed up the essence of a radical, left, or progressive politics but also been understood to distinguish such a political project from a (neo)liberal-legalistic-rationalist one.

Central to basically all schools and applications of theory has accordingly been a cohesive intellectual fabric woven by conviction in the analytic yield and superiority of insights derived from encounters with paradox, contradiction, and a web of analytic counterparts. Critics have sometimes sparred over the alleged divergences separating certain of those terms from others, for instance asking whether emphasis on “discontinuity” waters down more muscular critique instead fueled by “antagonism.”<sup>1</sup> While such disputes are at base fights over contending schools of theory, this essay is foremost interested in charting the terrain that connects this conceptual

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1. See, e.g., Christopher Tomlins, *What Is Left of the Law and Society Paradigm After Critique? Revisiting Gordon’s “Critical Legal Histories,”* 37 *LAW & SOC. INQUIRY* 155 (2012).

matrix and its diverse tenets—including uniting its many academic practitioners. As I will argue, an amalgam of qualities including not only contradiction and paradox but also friction, fragmentation, indeterminacy, discontinuity, dissensus, and more—qualities I will together refer to as the “paradox matrix”—are in fact mere variations on a single, uniform set of methodological assumptions, methods, conclusions, and themes. Faith in the critical, resistant, and transformative edge of those qualities has therefore represented a site of unrecognized intellectual consensus—or the location where Marxist ideology critique joins forces with Derrida and Foucault. Indeed, precisely when challenging the potency of certain such terms versus others do scholars end up reinforcing that overarching conceptual fabric, diverting attention from the methodological homogeneity that has come to characterize theory as an intellectual formation. What has largely gone unquestioned is therefore not so much critique but its central equipment, along with the premise that certain intellectual tools will prove inherently critical and resistant. This essay’s first goal is to take stock of that agreement, focusing in particular on the role of theory within critical legal history.

Its second goal is to inquire into the sources of this consensus—a consensus particularly striking given the rancor that can seem to roil some circles of theory. There are multiple reasons that the paradox matrix has both endured and proven all-encompassing. On one level, philosophical investment in qualities like paradox and contradiction derives from the vast and variegated intellectual labor those properties are enlisted to carry out, causing them to govern all stages and components of the reasoning process. While the machinery of critique, those properties have further been touted as the locus of a radicalized agency, activism, change, justice, ethics, and more. But on another level, such faith descends from its own multistranded genealogy, one thread of which lies with discourses of the modern. With startling regularity, modernity has been *both* diagnosed as a condition of mounting paradox *and* critiqued according to such a logic. As I will argue, the project of theory was both fashioned and ingrained *vis-à-vis* a recurring set of debates about modernity and its chameleon faces—faces similarly distilled in terms of those all-enveloping qualities. Since all theorists in essence inherit the same narrative of modernity and its decisive features, it is not surprising that this explanatory edifice would tower still today—just as critique itself is often deemed a quintessentially “modern” phenomenon.

Above all, this essay endeavors to raise questions about this intellectual fabric and its epistemology. To begin, we will observe certain limits to haunt prevailing tales of modernity, wherein consciousness of paradox and contradiction is imagined to materialize a sort of dividing line exiling a not-yet-modern (or insufficiently paradoxical) worldview from modernity as a threshold. Serving inextricably to critique and to consolidate modernity as

a category, the paradox matrix has thereby policed its enclaves, rationalizing modernity's exclusions and foreclosures. Theory has internalized this logic, including its colonialist underpinnings. Second, accompanying that shared framework have been default assumptions concerning not only critique but also the anatomy of power, ideology, and oppression. The architecture of critique has been erected on a highly specific (and, I will suggest, predictable) explanation of power: or the conceit that power is actualized as well as solidified by suppressing and mastering sites of paradox and contradiction. However, what if authoritarianism today looks very different from the mid-century political environment that hardwired these methodological warrants into theory?

Third, this essay examines why such reasoning tends to culminate with a neo-formalist privileging of style—or a pluralist “poetics” of history-writing as well as justice. Such an outcome is surely ironic, given the Realist complaints about legal formalism built upon by Critical Legal Studies (“CLS”) and other humanistic critiques of law (structuralist and poststructuralist alike). Yet nearly across the board, not only have all manifestations of power been thus diagnosed, assessed, and dismantled according to a stock and widely generalizable explanatory grid; in addition, the affirmative, transformative horizons of a radicalized politics have been deciphered by way of redemptive ideas about paradox, indeterminacy, ambivalence, and other related qualities. This investment in a distinct *style* and *aesthetics* of activism grounded in the perpetual staging of contradiction, irony, parody, and so on has not been an exclusive artifact of fields like literary studies. Such a method has also infused more materialist and structuralist variants of critique, including revisionist legal history.

There are, no doubt, salient divergences separating terms like “irony” or “indeterminacy” from “antagonism” and “contradiction,” notwithstanding their frequently interchangeable functions. But while parsing those distinctions, this essay mainly strives to map key conjunctures. The sheer number of issues and debates that have been routed through a pre-set itinerary of critique has come to empty theory of crucial analytic and critical precision. So notwithstanding the abiding imperative to question normativity, orthodoxy, and other guises of the status quo, the paradox matrix has functioned as its own settled doctrine—and doctrine capable of being grafted onto virtually any issue on the table. Hence, it is perhaps less that critique *per se* has run out of steam, as Bruno Latour famously cautioned, than that our central levers of critique have become not only rote but also ill-equipped to tackle the most urgent legal and political challenges of the present.<sup>2</sup>

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2. Bruno Latour, *Has Critique Run out of Steam? From Matters of Fact to Matters of Concern*, 30 CRITICAL INQUIRY 225 (2004).

## I. THE PARADOX-CONTRADICTION MATRIX

It is axiomatic within critical legal scholarship that the institutions of law demand unrelenting suspicion. Imagined as an invariable helpmate to power, law and especially its liberal or legalistic expressions have been oft-indicted—and sometimes in terms that can seem to scapegoat a ready if not caricatured target.<sup>3</sup> Integral to that chronic skepticism has been a uniform methodological-interpretive apparatus, which has been brought to bear upon myriad legal constructs, debates, and doctrinal areas. The diverse constructs of property, contract, rights, proceduralism, constitutionalism, and more have therefore all been analyzed by way of a constant and controlling critical repertoire: a repertoire orchestrated by paradox and its matrix of accompanying terms.

While what follows examines the evolution of this critical mode, we can look to one contemporary statement of such reasoning for those standard moves and assumptions. In textbook fashion, the entry for *Property* in the 2007 *Keywords for American Cultural Studies* exhibits multiple hallmarks of this methodological privileging of paradox and contradiction. The entry's author, Grace Kyungwon Hong, explains of property:

The keyword “property” thus indexes a contradiction between the ostensible universal endowment of the rights to property for all U.S. citizens and the uneven actualization of that right through forms of racial and gender dispossession. U.S. culture is a crucial site where this contradiction is managed, troubled, and destabilized. Diverse cultural artifacts and practices disavow this contradiction, even as they serve as sites where the histories of the propertyless can be articulated.<sup>4</sup>

Less a definition than a critique, Hong's entry begins by pinpointing an apparent “contradiction” intrinsic to property, which legal protection of that institution is charged with masking and thereby perpetuating. In Hong's thinking, the injustice of not only property but also rights concerns how their legalization works to “manage” and “disavow” contradiction. Exposing those tensions is furthermore held out as a surefire mechanism of critique, allowing Hong to arraign property as disbursed “unevenly” and predicated on “forms of dispossession” that “belie the ostensible universality of propertied citizenship.”<sup>5</sup>

Over the entry's course, Hong walks through a series of related contradictions understood to plague the law of property, reasoning support for which is found in not only Karl Marx but also texts like Cheryl I.

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3. For a paradigmatic example of this, see JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (1990).

4. Grace Kyungwon Hong, *Property*, in *KEYWORDS FOR AMERICAN CULTURAL STUDIES* 181 (Bruce Burgett & Glen Hendler eds., 2d ed. 2007), <https://keywords.nyupress.org/american-cultural-studies/essay/property>.

5. *Id.*

Harris's *Whiteness as Property*.<sup>6</sup> The disclosure of those contradictions is also imagined to carry innately radical-critical effects: to naturally "trouble" and "destabilize" that institution. But we can here begin to observe the ambidextrous labor performed by a quality like contradiction. While a constitutive feature of property culpable for that institution's structural oppressions, contradiction also emerges as a kind of answer to those crimes. As such, it is not accidental that Hong appeals to the contradictions latent within "cultural artifacts"—although to suggest how contradiction can become productive.

While traditions of critiquing capitalism represent one variant of such reasoning, Hong's basic assumptions have extended well beyond the orbit of Marxist analysis. That said, it is also within Marxist thought that insistence specifically on *contradiction* has been fundamental, including within historiography. Thus begins Frederic Jameson's 1981 *The Political Unconscious: Narrative as a Socially Symbolic Act*: "Always historicize!" Indeed, that "slogan" is one Jameson overtly embraces as his influential book's chief "moral."<sup>7</sup> Whereas Jameson (like Hong) reads culture as composed of "socially symbolic texts," his statement of method (and corresponding efforts to segregate Marxist critique from poststructuralist theory)—"the notion of contradiction is central to any Marxist cultural analysis"—could easily be mistaken as a platform of critical *legal* study.<sup>8</sup> As we will see, critical legal scholars have consistently submitted the operations of law *and* conventional law scholarship to an analogous critique: that law masks, buries, resolves, and contains social antagonism (i.e. class conflict) and its latent contradictions. Much like Jameson, critical legal thought has similarly sought to show law to be an "ideological act[] in [its] own right," possessing an unconscious "whereby real social contradictions, insurmountable in their own terms, find a purely formal resolution in the aesthetic realm."<sup>9</sup>

Still additional aspects of Jameson's thought render it an instructive starting point in an essay foremost addressing scholarship on law. Although Jameson stresses the paramountcy of contradiction in structurally materialist analysis, he nevertheless draws liberally from a host of adjacent terminologies and values. As he explains of literary criticism, "[i]t follows, then, that the interpretive mission of a properly structural causality will on the contrary find its privileged content in the rifts and discontinuities within

6. Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709 (1993). See also LISA LOWE, IMMIGRANT ACTS: ON ASIAN AMERICAN CULTURAL POLITICS 24-25 (1996).

7. Recent work on method within literary and cultural theory has often looked to Jameson as a kind of launching pad. For example, see Sharon Marcus and Stephen Best, *Surface Reading: An Introduction*, 108 REPRESENTATIONS 1 (2009).

8. FREDERIC JAMESON, *THE POLITICAL UNCONSCIOUS: NARRATIVE AS A SOCIALLY SYMBOLIC ACT* 80 (1981).

9. *Id.*

the work.”<sup>10</sup> *The Antinomies of Realism* exhibits a similar rhetorical profligacy, evident in Jameson’s argument that realism “has to be grasped as a paradox and an anomaly, and the thinking of it as a contradiction or an aporia.”<sup>11</sup> What seemingly matters to Jameson, then, is less the specificity of one particular term of art than the ends to which those different levers are enlisted. And in the process, they are all held out as “symptoms” that reveal apparent sites of unity and continuity to be a “mirage.”<sup>12</sup> Underpinning Jameson’s brand of Marxist critique is accordingly the premise that ideology both produces and is secured by the mystification and denial of contradiction, and his investment in that matrix of qualities is a direct corollary to that account of ideology.

In large part, contradiction was also the mandate that underwrote critical theory’s debut within the legal academy, acting as the core apparatus deployed to reveal the ideological sleights of hand confounding *legal* practice, doctrine, education and more. Duncan Kennedy’s and other early Critical Legal Studies (“CLS”) scholarship is here a case in point. As Kennedy’s 1976 *Form and Substance in Private Law Adjudication* avers, his structuralist-historicist-phenomenological approach to law is, more than anything, “the method of contradictions.”<sup>13</sup> Entailing significantly more than a realist or reformist pursuit of mere “contextualism,” Kennedy defends the need to tangle with the contradictions lying below the surface of even the “fundamental conflicts” within legal principles.<sup>14</sup> Further recalling Jameson, Kennedy, too, dismisses conventional legal reasoning and categories alike as one extensive “mechanism for denying contradiction.” Rather than confined to a single case study, that thesis is similarly the denouement of Kennedy’s *The Structure of Blackstone’s Commentaries*. Therein, Kennedy again demonstrates the entire history of legal reasoning to be a protracted process of “mediating” or hiding contradiction, leading Kennedy to sanction mainstream legal scholarship as representing a fundamentally “apologetic enterprise.”<sup>15</sup>

While contradiction was *a* if not *the* main driver within early CLS scholarship, that movement quickly evolved to incorporate a much wider arsenal of critical terms into its roster. Whether due to the influence of deconstruction or CLS’s self-identification as a charismatic movement, it absorbed much of the methodological eclecticism that today characterizes theory across the humanities. Although by many accounts CLS became marginalized within the legal academy, its many offshoots have maintained not only its broad political but also its underlying methodological

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10. *Id.* at 56.

11. FREDERIC JAMESON, *THE ANTINOMIES OF REALISM* 11 (2013).

12. *Id.* at 56.

13. Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685 (1976).

14. *Id.* at 1766.

15. Duncan Kennedy, *The Structure of Blackstone’s Commentaries*, 28 BUFF. L. REV. 205 (1979).

commitments—and especially its investment in paradox and contradiction. Even when actively dissenting from certain pillars of CLS, theorists of law have thus remained faithful to the paradox matrix and its analytic protocols.

For example, many inaugural statements of critical race theory broke ranks with CLS over discrete positions like the critique of rights, all the while reproducing that basic critical framework. Indeed, many of those rejoinders actively brought the “method of contradiction” back to bear upon CLS, charging that movement with blindness to the contradictions underlying its main principles. Mari Matsuda’s 1987 *Looking to the Bottom: Critical Legal Studies and Reparations* thus condemns CLS’s categorical rejection of rights as a sign of that movement’s elitism, abstraction, and historical amnesia.<sup>16</sup> Angela P. Harris’s contemporaneous work on *Race and Essentialism in Feminist Theory* instead calls out the contradictions haunting feminist thought along almost identical lines,<sup>17</sup> in a method similarly choreographed by the unmasking of paradox and contradiction. As Harris argues, MacKinnon’s thought displays “the very existence of feminism [to be] something of a paradox,” and even Patricia Williams’s scholarship becomes a lesson in “self-contradiction” and “paradox.”<sup>18</sup>

Kimberlé Crenshaw’s influential thought can illustrate how such a method has relatedly shaped the interpretation of isolated episodes within history. Like Harris, Crenshaw’s landmark 1989 *Demarginalizing the Intersection of Race and Sex* partly blames feminism’s exclusionary account of womanhood on indifference to contradiction. Hence, Crenshaw argues that the feminist movement became exclusionary precisely because feminists were too quick to “rationalize the contradiction[s]” that arose through their pretense to speak inclusively.<sup>19</sup> While predictably defining power (here, feminism’s) in terms of the contradictions it camouflages, however, Crenshaw simultaneously champions the revolutionary potential inherent to paradox. One central passage of *Demarginalizing* is a case in point. Gesturing historically, Crenshaw deciphers Sojourner Truth’s life and especially her 1851 speech, “Ain’t I A Woman?” as a vindication of the reasoning examined in this essay. As Crenshaw maintains of Truth, she “us[ed] her own life to reveal the contradiction” between myth and reality, enacting a “personal challenge to the coherence of the cult of true womanhood.”<sup>20</sup>

As suggested, such conviction in the critical potency of paradox and its

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16. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

17. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).

18. *Id.* at 592, 608-09.

19. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 153.

20. *Id.*

conceptual matrix has been central to revisionist historiography—within the legal academy and beyond. We can begin with Michel Foucault and his 1977 *Nietzsche, Genealogy, History* for a classic statement of the role of such thinking within genealogy. As Foucault inveighs, the revisionist historian's task is to “fragment[] what was thought unified,” “introduce[e] discontinuity into our very being,” demonstrate history to be “an unstable assemblage of faults, fissures, and heterogenous layers,” and lay bare its “systems of subjection” and “hazardous play of dominations.”<sup>21</sup> But even more instructive than the rhetorical and methodological overlap connecting Foucault with the other thinkers examined so far are the shared ideas about the ontology of power and domination that they all endorse. As Talal Asad explains of genealogy, it proceeds with the unstated assumption that “hegemonic power necessarily suppresses difference in favor of unity [and] abhors ambiguity.”<sup>22</sup> Both Marxist critique and genealogy, in other words, conceive of power/ideology according to a symmetrical formula. Almost unanimously have theorists thus understood power to shore itself up through—meaning that power can also be identified by—its deceptive manufacture of unity, order, and cohesion. The theorist's task relative to that semblance of unity, in turn, comes to be distilled according to a similarly recurring methodological framework. Whether by divulging “discontinuity” and “fragmentation” (within Foucaultian historiography) or “contradiction” and “antagonism” (for structural materialists), exposing unity and coherence to be, in Jameson's words, a “mirage” is the first step both to critiquing and to unraveling those liaisons between power and history.

Robert Gordon's scholarship not only exemplifies the importance of genealogy to critical histories of law but also widely promulgated a version of this basic method, rendering it the backbone of legal history and “law and society” scholarship alike. As Gordon submits in his seminal 1984 *Critical Legal Histories*, law and society need to be understood as “inextricably mixed” in ways that make “[o]ur accustomed ways of thinking about law and history [] as culturally and historically contingent as ‘society’ and ‘law’ themselves would likewise explain of critical history.”<sup>23</sup> For Gordon, such a project further requires an emphasis on “indeterminacy”—although an indeterminacy involving more than mere structural causality. Describing the thoroughgoing contingency of law, Gordon clarifies: “The same body of law, in the same context, can always lead to contrary results because law is indeterminate at its core, in its inception, not just in its

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21. MICHEL FOUCAULT, *Nietzsche, Genealogy, History*, in THE FOUCAULT READER 76, 82, 86 (Paul Rabinow ed., 1984).

22. TALAL ASAD, GENEALOGIES OF RELIGION: DISCIPLINE AND REASONS OF POWER IN CHRISTIANITY AND ISLAM 17 (1993).

23. Robert Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57, 107, 101 (1984).

applications. The indeterminacy exists because legal rules derive from structures of thought, the collective constructs of many minds, that are fundamentally contradictory.”<sup>24</sup> As for many others, Gordon underscores another reason for methodological investment in the paradox matrix: law is shaped by a type of “unconscious,” individual and collective.

## II. MODERNITY AND ITS OTHERS

One set of explanations for this methodological and conceptual unanimity lies with the diagnosis of modernity that critical theory emerges from and ratifies. Within theory and beyond, modernity has unfailingly been defined as a condition of mounting paradox and contradiction. Thus opens Marshall Berman’s classic 1982 *All That is Solid Melts Into Air: The Experience of Modernity*: “To be modern is to live a life of paradox and contradiction.”<sup>25</sup> As Berman further explains: “[M]odernity can be said to unite all mankind. But it is a paradoxical unity, a unity of disunity: it pours us all into a maelstrom of perpetual disintegration and renewal, of struggle and contradiction, of ambiguity and anguish.”<sup>26</sup> Though Berman foregrounds the “experiential” aspects of modernity, it is hard to find authoritative accounts of modernity that do not seize upon one grammar of paradox or another, drawing on that conceptual matrix in order to denominate modernity’s core dynamics—negative and positive together.

Berman adopts not only his book’s title but core insights into modernity from Marx. In many ways, his title quoting Marx and Friedrich Engels’ 1848 pamphlet is itself a statement of the omnipresent and constitutive status of modern contradiction. As Chapter One of *The Communist Manifesto* proclaims:

All fixed, fast-frozen relations, with their train of ancient and venerable prejudices and opinions, are swept away, all new-formed ones become antiquated before they can ossify. All that is solid melts into air, all that is holy is profaned, and man is at last compelled to face with sober senses his real conditions of life, and his relations with his kind.<sup>27</sup>

Far from peculiar to Marxist analysis, that rendition of modernity has been echoed across the canon of theory—and beyond. Epistemic disembedding, cultural disintegration, psycho-spiritual privation, and social rupture have been widely hallowed as the distinguishing features of modern existence. This tale of splintering and dissolution of the formerly unified is similarly implicit to Max Weber’s rationalization thesis, which associates

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24. *Id.* at 114.

25. MARSHALL BERMAN, *ALL THAT IS SOLID MELTS INTO AIR: THE EXPERIENCE OF MODERNITY* 13 (1988).

26. *Id.* at 15.

27. KARL MARX & FRIEDRICH ENGELS, *1 MARX/ENGELS SELECTED WORKS* 98, x (1969).

modernization with intensified modes of bureaucratization, efficiency, calculation, and control that entrap the individual within an “iron cage” or “steel-hard casing.”<sup>28</sup> Analogously does a text like Freud’s 1929 *Civilization and Its Discontents* endorse such an assessment regarding the unprecedented constraints that modernity imposes on both individual and society. In wrestling with the irony that “civilization” exacerbates anxiety and neurosis by compelling a “renunciation of instinct,” Freud mulls the contradiction that “what we call our civilization is largely responsible for our misery.”<sup>29</sup>

At the same time as insistence on paradox and contradiction issues a diagnosis, theorists’ main motive for singling out those qualities has been that of critique. Without fail, the finding of contradiction is a prelude to disclosing modernity’s dark sides and negative bequests, such as for Marx the predicament of estranged labor. Similarly do Max Horkheimer and Theodor Adorno in their 1947 *Dialectic of Enlightenment* wrestle with the contradiction that “the gifts of fortune themselves become elements of misfortune,” causing “enlightenment [to become] as totalitarian as any system.”<sup>30</sup> Even today, the identification of lurking contradiction remains a primary technique for exposing modernity’s gifts to be oppressive. Returning to critical race theory, substantial scholarship has therefore been devoted to displaying ostensible ideals like progress and civilization to paradoxically depend on structural practices of racialized dispossession. Hence, Paul Gilroy’s *The Black Atlantic: Modernity and Double Consciousness* (1993) defines “proximity to racial terror as the[] ‘inaugural experience’” of the modern.<sup>31</sup> Saidiya Hartman’s *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* likewise demonstrates the institution of slavery not only to have created economic prosperity but also to have lent intelligibility to ideals like self-determination and freedom. As Hartman argues, “The slave is the object or the ground that makes possible the existence of the bourgeois subject and, by negation or contradistinction, defines liberty, citizenship, and the enclosures of the social body.”<sup>32</sup> Effectively all of modernity’s endowments—whether democracy, rights, the nation-state, historicity, or Enlightenment reason—have been thus debunked via a method that seizes upon paradox and contradiction as the first step in a larger odyssey of critique.

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28. MAX WEBER, *WEBER: POLITICAL WRITINGS*, at xvi (Peter Lassman ed., Ronald Speirs trans., Cambridge Univ. Press 1994).

29. SIGMUND FREUD, *CIVILIZATION AND ITS DISCONTENTS* 51-52, 38 (James Strachey ed., James Strachey trans., W.W. Norton & Co. 2010) (1930).

30. MAX HORKHEIMER & THEODOR W. ADORNO, *DIALECTIC OF ENLIGHTENMENT* 24, iv (Continuum 1947) (1944).

31. PAUL GILROY, *THE BLACK ATLANTIC: MODERNITY AND DOUBLE CONSCIOUSNESS* 73 (1993).

32. SAIDIYA HARTMAN, *SCENES OF SUBJECTION: TERROR, SLAVERY, AND SELF-MAKING IN NINETEENTH-CENTURY AMERICA* 62 (1997).

As should be self-evident, there is no question that these and other liabilities of modernity demand urgent, vigilant, and never-ending critique and interrogation. Relatedly, there is little doubt that contradiction and paradox have offered potent tools in such an undertaking. However, the recurring equation between modernity and paradox has fulfilled significantly more complicated intellectual labor than simply to diagnose or to dismantle. Often in the same breath, the paradox matrix has channeled the affirmative, generative, fertile opportunities made available by modernity and its ambivalent fruits. Much as Berman suggests, modernity has encoded more than a specific set of historical developments; it has also been valorized as the dawn of a quintessentially modernist spirit, subject, and sensibility. Those creative energies of the modern have also been acclaimed through a grammar of contradiction and paradox—here, too, for thinkers ranging far beyond leftist or theoretical circles. With the collapse of conventional bastions of authority (church, state, feudalism), modern life became irrevocably fractured, and comprehensively so. Just as traditional vestiges of power lost their foundations, so did truth and knowledge become newly unstable—riddled with doubt and uncertainty. For some, a logic of partition best explains this trajectory that not only fragmented truth but also sequestered domains of expertise from one another, often placing them into competition. Whether bifurcating morality from politics (Reinhart Koselleck), “knowing” from belief (Jurgen Habermas), or science from politics (Latour), modern regimes of truth became not simply dualistic in a Cartesian sense but progressively fissured, compartmentalized, and embattled.<sup>33</sup> As Latour explains, these partitions both intensified and disseminated conditions of paradox, in part given the unprecedented burdens of self-justification that those emergent orders of disciplinary knowledge encountered.<sup>34</sup>

While brewing a mood of chronic crisis, this epistemic unmooring also forged modern skepticism—and in turn the (self-)critical subject. Along with accounts of the fractures of modern knowing arose a vision of the modern subject as comparatively riven by pervasive indeterminacy, irony, and contradiction. It goes without say that philosophy’s many approaches to delineating those manifold paradoxes endemic to modern selfhood are too many to recount. Yet whether implicit to Durkheim’s influential notion of *homo duplex* or psychoanalytic insistence on the repressions foundational to the subject or theories of “double consciousness” indebted to W.E.B. Du Bois, it has been doctrinal that the modern predicament is to be self-divided in ways that find the individual—like modern expressions of truth—torn

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33. JURGEN HABERMAS, *THE PHILOSOPHICAL DISCOURSE OF MODERNITY: TWELVE LECTURES* 19 (1990) (“separate[s] off . . . spheres of knowing . . . from the sphere of belief.”); REINHART KOSELLECK, *CRITIQUE AND CRISIS: ENLIGHTENMENT AND THE PATHOGENESIS OF MODERN SOCIETY*, at x (1988).

34. BRUNO LATOUR, *WE HAVE NEVER BEEN MODERN* 30 (Catherine Porter trans., 1993).

between rival and often irreconcilable imperatives. Like Latour, moral philosopher Alasdair MacIntyre thus understands modernity to “partition [] each life into a variety of segments,” producing a moral existence “after virtue.”<sup>35</sup> Similarly for Charles Taylor, the “moral world” of the moderns is “full of gaps, erasures, and blurrings.”<sup>36</sup>

Such an image of the paradox-riddled subject has been counterpart not only to rampant skepticism but also to modes of critique spearheaded by conviction in thoroughgoing contradiction and paradox. Not surprisingly, this temper of critique has at times been heralded as one of modernity’s positive endowments, including by some of the theory canon’s greatest sages of the untold dominations instated by modernity. For instance, Foucault thus disarticulates the ambivalent legacies of modernity (a label Foucault himself resisted) in his classic reformulation of Kant’s 1784 *What Is Enlightenment?* While jettisoning the “doctrinal elements” of Kantian critique, Foucault nonetheless pledges fidelity to Kant’s “attitude.” For Foucault, modernity occasions a “permanent reactivation of an attitude” involving “a permanent critique of our historical era.”<sup>37</sup> Infinite and ongoing, modern skepticism for Foucault furthermore involves a “limit-attitude,” or project “of analyzing and reflecting on limits” and their “possible transgression.”<sup>38</sup> Central among those ambivalent limits, moreover, is “the paradox of the relations of capacity and power”—offering another famed equation of modernity and endemic paradox.<sup>39</sup>

However, precisely this exaltation of paradox-fueled critique has simultaneously policed the borders of modernity, insulating that category from its pre-modern, insufficiently critical others. Importantly, that exclusionary cartography of the modern has been traced all the way down to the building blocks of modern skepticism, including the distinctive reading and interpretive habits associated with critique. As Michael Warner explains, “critical reading” since Kant has dictated “a negative movement of []disengagement or repudiation” that presumes “a clear opposition between the text object and the reading subject—indeed, critical reading could be thought of as an ideal for maximizing that polarity, defining the reader’s freedom and agency as an expression of distance from a text that must be objectified as a benchmark of distanciation.”<sup>40</sup> In Warner’s account, the imperative to modern critique relegates immediate, unabstracted, self-present, unified ways of knowing to the status of the non-modern and

35. ALASDAIR MACINTYRE, *AFTER VIRTUE: A STUDY OF MORAL THEORY* 204 (1981).

36. CHARLES TAYLOR, *SOURCES OF THE SELF: THE MAKING OF MODERN IDENTITY* 11 (1989).

37. MICHEL FOUCAULT, *What Is Enlightenment?*, in *THE FOUCAULT READER* 32, 42 (Paul Rabinow ed., 1984).

38. *Id.* at 45.

39. *Id.* at 47.

40. MICHAEL WARNER, *Uncritical Reading*, in *POLEMIC: CRITICAL OR UNCITICAL* 13, 24, 20 (Jane Gallop ed., 2004).

uncritical. But from another standpoint, this “polarity” or opposition between experiential immersion and objective judgment will itself disintegrate knowing and perception—in essence, breeding modern paradox and installing cognitive-epistemic dissonance at the heart of modern knowing.

For others, it is in particular when viewed as a *secular* mandate that critique disbursts such disciplinary and exclusionary effects, disallowing full modernity to certain lives, populations, and cultures. Akin to Warner, Saba Mahmood argues that the onus to secularity both postulates assumptions about and sanctions “improper reading practices.” For Mahmood, too, critique must therefore be conceived as actualized through distinctive habits of relating to symbols and signs—habits that, however, stigmatize non-Euro-American textures of belief and belonging. Rather than individualist versus collectivist *per se*, secularism in its Judeo-Christian derivations is better explained as a “semiotic ideology in which signifiers are arbitrarily linked to concepts,” or a representational economy involving a fundamental disunity of meaning that is, once again, fated to proliferate paradox.<sup>41</sup> While for Webb Keane this premium on objectifying distance is also profoundly anti-materialist, debates about secularism illustrate why not merely the compulsion to critique but rather the consciousness of paradox thus awakened can operate as a benchmark—and one long enlisted to deny the capacity for modernity to certain lives.<sup>42</sup>

Over time, theorists have singled out a range of other faculties for analogously policing the frontier separating modernity from its pre-modern others. A historical awareness, or “historicity,” has similarly been blamed for being exclusionary. As Asad suggests, “[t]he West defines itself, in opposition to all non-Western cultures, by its modern historicity.”<sup>43</sup> As a gauge, historicity similarly hinges on suppositions about what a lapse or failure of that quality looks like, entailing that “[a]ctions seeking to maintain the ‘local’ status quo, or to follow local models of social life, do not qualify as history-making.”<sup>44</sup> One goal of Asad’s observations is to probe the blind

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41. SABA MAHMOOD, *Religious Reason and Secular Affect: An Incommensurable Divide?*, 35 CRITICAL INQUIRY 836, 844, 841 (2009).

42. Both Mahmood and in particular Webb Keane trace such reasoning widely, locating its origins within foundational discourses of modernity, within social scientific literature (for Keane, both Weber and Durkheim’s notion of the “duplex character” of language), and within Continental theory (Keane singles out Marx and Heidegger as both differently equating modernity with objectification). Moreover, Keane in particular sees post-Saussurian linguistics as the summit of such profoundly dematerialized theories of language (and of everything those theories censure). WEBB KEANE, *CHRISTIAN MODERNS: FREEDOM AND FETISH IN THE MISSION ENCOUNTER* 21 (2007). See also TORIL MOI, *REVOLUTION OF THE ORDINARY: LITERARY STUDIES AFTER WITTGENSTEIN, AUSTIN, AND CAVELL* (2017).

43. ASAD, *supra* note 22, at 18.

44. *Id.* at 19. As Hayden White similarly explains, “it is possible to view historical consciousness as a specifically Western prejudice by which the presumed superiority of modern, industrial society can be retroactively substantiated.” HAYDEN WHITE, *METAHISTORY: THE HISTORICAL IMAGINATION IN NINETEENTH-CENTURY EUROPE* 2 (1973).

spots those warrants have introduced into anthropology, a field that has historically constructed its objects of analysis as “culturally marginal” to Europe and therefore in terms “often dependent on [a] contrastive sense of the modern.”<sup>45</sup> As Asad suggests, the notion of historicity has (like critique) thereby acted as a badge not only of modernity but of that category’s inverse and deficit. But while indicting anthropology for its colonialist pasts, even more revealing is the methodology Asad draws upon to expose that covert bias. Like so many, Asad’s method of critique is to call out and decry certain contradictions informing that field and its enabling assumptions.

While benchmarks like critique and historicity have thus served to banish the insufficiently modern from that category’s enclaves, arguably more than any other threshold has consciousness of paradox worked to shore up the putative modern-ancient divide. With great regularity has the paradox matrix acted as *the* central horizon imagined to offset a modern consciousness from the not-yet. Indeed, even when the category of modernity is placed under pressure, much as for Asad, has a methodology scaffolded by paradox functioned as an unstated yet compulsory baseline. Here again, I could gesture far and wide to demonstrate the pervasiveness of such reasoning. Beginning with Marxist thought, Georg Lukács’s influential 1914-15 *Theory of the Novel* is foremost a literary-intellectual history of the novel’s evolution. Yet Lukács’s study, not surprisingly by now, rests upon an opposition between a modern versus ancient fabric of knowing. As he avers, Greek culture was harmonious, homogenous, rounded, and totalizable, allowing for a “passively visionary accept[ance] of ready-made, ever-present meaning.” That experiential coherence is mirrored in the epic form, within which “life and essence are [] identical concepts.”<sup>46</sup> It is vis-à-vis those background assumptions about “integrated civilizations” (the title of Lukács’s first chapter) that Lukács instead theorizes the novel as, unlike the epic form, an internalization of the “fissures and rents,” “fragmentary” or “antagonistic” reality, and larger “transcendental homelessness” of modernity as a condition.<sup>47</sup> While within the novel those tensions become dynamic, Lukács nevertheless presents them as a kind of borderline or barrier. As he elaborates, “The Greek knew only answers but no questions, only solutions (even if enigmatic ones) but no riddles, only forms but no chaos. He drew the creative circle of forms this side of paradox, and everything which, in our time of paradox, is bound to lead to triviality, led him to perfection.”<sup>48</sup> In Lukács’s reasoning, paradox condenses everything distinctive about the modern, even while it patrols

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45. ASAD, *supra* note 22, at 23, 19.

46. GYÖRGY LUKÁCS, *THE THEORY OF THE NOVEL: A HISTORICO-PHILOSOPHICAL ESSAY ON THE FORMS OF GREAT EPIC LITERATURE* 32, 30 (Anna Bostock trans., MIT Press 1971).

47. *Id.* at 60, 41, 62.

48. *Id.* at 31.

modernity's perimeter.

This impulse to cite paradox as the watermark of modernity, as suggested, has been ubiquitous, connecting otherwise unrelated philosophical schools and styles. In variations on Lukacs's schism, paradox—or, rather, a dearth of that quality—has consistently structured myths of modernity's pre-lapsarian foil and antithesis. Notwithstanding the colonialist logic haunting such a polarity, it has acted as second nature. For instance, MacIntyre's *After Virtue* grounds its critique of modernity by surmising that within "heroic" societies, "morality and social structure are in fact one and the same," causing pre-modern art forms (again, the epic) to "embody" that givenness.<sup>49</sup> Taylor's 1989 *Sources of the Self* erects a parallel binary: contra modernity, "earlier civilizations" espoused "frameworks" of belief and judgment that were fundamentally "unquestioned."<sup>50</sup> For many, that imagined divide has conducted monumental intellectual labor. Revisiting Freud, *Civilization and Its Discontents's* study of the neuroses of the modern subject similarly hinges on a contrast between the ills of "civilization" and the "happier" ways of "primitive conditions."<sup>51</sup> Relatedly does Paul Ricoeur juxtapose the "hermeneutics of suspicion" whose three "masters" were Nietzsche, Freud, and Marx with the "univocity of meaning" characteristic of Greek philosophy and culture, especially Aristotle's law of identity.<sup>52</sup> Analogous examples could continue on and on.

Within theories of modernity, we can accordingly observe the complicated role played by paradox and its conceptual analogues. In one sense, the power of such reasoning lies with how it collapses the dual functions of, first, contradiction as a definitional feature of modernity into, second, contradiction as *the* primary tool enabling that category's critique. Counterintuitively, a recurring set of features is thus invoked as *both* modernity's constitution *and* the primary weapon for exposing its rampant violence. Yet in either case, paradox and its explanatory matrix ultimately indexes as well as inaugurates what is heralded as an elevated, superior awareness and way of knowing. But at what point does this conceptual architecture end up reinforcing the very prejudices and exclusions that have sanctioned modernity's worst abuses? Does methodological insistence on paradox, even when a vehicle of critique, reinscribe the exclusionary logic that has long plagued modernity as a developmental horizon?

Even more striking, this same conceptual matrix and set of terms has been widely taken to encode the unique opportunities for agency, ethics, and resistance afforded by a modernist sensibility—a sensibility analogously

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49. MACINTYRE, *supra* note 35, at 22-125.

50. TAYLOR, *supra* note 36, at 16.

51. FREUD, *supra* note 29, at 38.

52. PAUL RICOEUR, FREUD AND PHILOSOPHY: AN ESSAY ON INTERPRETATION 23 (Denis Savage trans., 1970).

comprised of all-devouring paradox. We can examine two revisionist histories of empire to illustrate the inextricability critical and redemptive thrusts of such methodological reliance. Even within anti-colonial thought, the privileging of qualities like paradox and contradiction can marshal a stagist or developmentalist logic and assumptions. For example, Dipesh Chakrabarty's *Provincializing Europe* (2000) deploys genealogy to bring critiques of imperialism to bear on history as a discipline and construct, indicting historiography's apologetics for colonial exploitation. Within Chakrabarty's study, contradiction and its conceptual kin thus not only diagnose modernity but also comment on the lacunae haunting mainstream historical scholarship. Like others, Chakrabarty in particular denounces the impulse to erase or submerge ambivalence as what implicates conventional modes of history-writing within "the formation of political modernity in the erstwhile European colonies" that "enabled European domination."<sup>53</sup> In essence, history and empire are charged with symmetrical (if not identical) errors: with manufacturing an illusion of unity that depends on the suppression of sites of contradiction. As Chakrabarty explains, historicism's league with empire lies precisely with the ways it "takes its object of investigation to be internally unified, and sees it as something developing over time."<sup>54</sup> Conversely, it is faith in contradiction that endows critical historiography with its progressivist and anti-colonial politics. As Chakrabarty reflects on his own method: "The idea is to write into the history of modernity the ambivalences, contradictions, the use of force, and the tragedies and ironies that attend it."<sup>55</sup> He deciphers the book's title in similar terms: "To provincialize Europe in historical thought is to struggle to hold in a state of permanent tension a dialogue between two contradictory points of view."<sup>56</sup>

Importantly, those "double binds" for Chakrabarty cannot be evaded, just as critique for Foucault cannot shirk its enlightenment inheritance.<sup>57</sup> But further interesting, here, is how ambivalence and its counterparts emerge as a kind of remedy or answer to that predicament. While promoting those properties' value as instruments of critique, Chakrabarty simultaneously recommends the staging of contradiction as a self-immunizing strategy for negotiating and potentially mitigating the inevitable complicities of history-writing. Chakrabarty thus importunes: "I ask for a history that deliberately makes visible, within the very structure of its narrative forms, its own

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53. DIPESH CHAKRABARTY, *PROVINCIALIZING EUROPE: POSTCOLONIAL THOUGHT AND HISTORICAL DIFFERENCE* 7 (2000).

54. *Id.* at 23.

55. *Id.* at 43; Dipesh Chakrabarty, *Postcoloniality and the Artifice of History: Who Speaks for 'Indian' Pasts?*, 37 *REPRESENTATIONS* 1, 21 (1992).

56. CHAKRABARTY, *supra* note 53, at 254.

57. *Id.* at 40, 5.

repressive strategies and practices.”<sup>58</sup> As such, irony, narrative, and other literary-aesthetic qualities operate as more than diagnoses or levers of critique. In addition, that critical arsenal comes to be imbued with its own productive agency.

We can look to another revisionist history of colonial modernity to grasp how such reasoning can culminate with something like an ethics. In terms reminiscent of Chakrabarty’s, David Scott’s *Conscripts of Modernity: The Tragedy of Colonial Enlightenment* (2004) promotes tragedy and irony as responses to colonial-political modernity and its structural contradictions. In his study, Scott re-reads C.L.R. James’s classic 1938 *The Black Jacobins* and its portrait of Toussaint L’Ouverture to draw a sequence of conclusions about modernity—conclusions we have already observed to be default positions. Scott hails the Haitian Revolution as “one of the founding events of the modern age,” given how it ushered in the fraught “cognitive-political terrain of modernity” marked by incessant “social crisis, the collision of embattled and irreconcilable social forces.”<sup>59</sup> What modernity thus entails for a historical actor like Toussaint is to be “obliged to act in a world in which values are unstable and ambiguous” and to confront “a broken series of paradoxes and reversals in which human action is ever open to unaccountable contingencies—and luck.”<sup>60</sup>

Although familiar, Scott’s account of modernity further feeds into a theory of political agency that takes paradox as its crux. For Scott, it is crucial that Toussaint be understood as a “conscript” rather than “resisting agent” of modernity. While tragic and compromised, however, his plight is something Scott ultimately venerates. For one, it engenders an unprecedented mode of modern *intellectualism*; Scott reads James’s original text as fixated on “the emergence of a new kind of individual, the modern intellectual” of which Toussaint is “paradigmatic.”<sup>61</sup> Accompanying that intellectual comportment is also a heightened awareness one might be inclined to attribute to Du Bois, for Scott similarly involving “the doubleness of knowledge: how it can obscure even as it reveals, how it can disable as much as it enables, how it can imprison at the very moment that it emancipates.”<sup>62</sup> Like many others, Scott valorizes that “doubleness” as occasioning a distinctive spirit and style, evident in Scott’s claim that James sought “to establish Toussaint as a figure of enlightened sensibility and modern—indeed, modernist—political desire.”<sup>63</sup> As elsewhere, this appeal to duality and ambivalence is multifaceted: it most

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58. *Id.* at 45.

59. DAVID SCOTT, *CONSCRIPTS OF MODERNITY: THE TRAGEDY OF COLONIAL ENLIGHTENMENT* 21 (2004) at 129, 133, 163.

60. *Id.* at 13.

61. *Id.* at 20, 163.

62. *Id.* at 207.

63. *Id.* at 98.

immediately embeds a diagnosis of power (concerning the colonial genesis of modernity) geared to conduct anti-colonial critique. Yet along the way, Toussaint's "conscripted" action comes to be lauded for multiple reasons, above all as an enhanced, elevated, and even aestheticized mode of being or *mentalité*.<sup>64</sup> Scott is emphatic that such an ethos, while dialectical, does not anticipate synthesis or overcoming, goals that Scott dismisses as "reductive."<sup>65</sup> Instead, Scott labels his revisionist history a "poetics" aimed at "constant renegotiation and readjustment."<sup>66</sup>

This essay's next section grapples with this allusion to a poetics, along with everything that term can telegraph. But for now, it is hard to deny that Chakrabarty and Scott deploy a conceptual framework that has long been enlisted to rationalize empire: to exile colonized lives from the fully modern in order to mask that category's failed universalism and other enabling contradictions. While Chakrabarty and Scott rely on the common gambit of weaponizing contradiction to critique and to unmask, their reasoning simultaneously affirms the prospect that a quintessentially modernist attunement to paradox will inaugurate more nuanced, sophisticated, and even ethical ways of knowing. It surely might seem ironic that anti-colonial critique would mobilize an exclusionary structure of justification in the hopes of indicting the very crimes that such a justificatory logic has historically sanctioned. Yet even more, there is a way in which Scott plots Toussaint's tragic struggle to conform to exactly such a developmental narrative of intensifying paradox—an exceptionalist tale we've seen to necessitate the backdrop of allegedly not-yet-modern lives for its intelligibility. It would go too far to suggest that these methodological investments become actively self-sabotaging. Nevertheless, there are real questions about whether those equations inadvertently solidify the very warrants for structural oppression that *Provincializing Europe, Conscripts of Modernity*, and so many other revisionist histories set out to challenge. Neither Scott nor Chakrabarty so much as begins to question whether attunement to paradox might *not* prove inherently critical, resistant, or subversive. An unthinking article of faith is accordingly the notion that paradox and its analogues will not only undermine power but also chart the pathway to justice and ethics.

### III. AESTHETICS, FORMALISM, AND STYLE

This all raises the question of why these equations have proven so resilient and alluring. What has allowed such a conceptual grid to be grafted onto so many disparate issues and debates? Within critical work on law,

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64. *Id.* at 106.

65. Instead, Scott evokes Horkheimer and Adorno's thought as a metric for "holding the contradictions of modernity in a more productive nonreductive tension." *Id.* at 189.

66. *Id.* at 21.

what about such reasoning has enabled virtually any legal institution, construct, or practice to be digested according to a recurring formula that excavates contradiction, weaponizes it to effectuate critique, and then assembles a mix of dialecticism-indeterminacy-paradox into a redemptive philosophy of agency--if not a full-blown ethics? Clearly, this versatility has itself proven gratifying. But what elements of this thinking that we've now observed widely have not only enabled those transfers but also worked to blind its practitioners to its rote, programmatic effects and uses?

I have already proposed one framework for addressing these quandaries, one involving the overwhelming consensus that has characterized debates about modernity and its many guises. The fact that the apparatus of critique was fashioned with reference to a remarkably consistent account of modernity offers one explanation for why so many theorists have invested exorbitant faith in contradiction and paradox. What follows considers still additional factors that have ingrained a "method of paradox and contradiction" as a kind of academic common sense, although with the hope of illustrating additional of such reasoning's deficiencies and errors.

The historical climate that witnessed the efflorescence and eventual institutionalization of theory contains other explanations for such reasoning's attractions. This 1970s milieu was, of course, that of the Cold War, and it naturally meant that the theorizations of political power crafted during that era foremost sought to anatomize totalitarianism, including its relationship to liberal democracy. Naturally, that historical backdrop has shaped debates about modernity and its limits—and, in fact, continues to dictate dominant approaches to theorizing modernity and its paradoxical logic. In particular, many (if not most) influential formulations of modernity that cropped up during that era are subtended by assumptions about power that, at base, reflect on mid-century authoritarianism and its distinguishing features. What this further means is that our regnant views about modernity and its bequests can seem to marshal a not-so-subtle conflation of pre-modern cultures and the centralized, monopolistic totalitarian state. Whatever epistemological unity, harmony, totality and coherence is projected onto the ancient thus must be simultaneously understood as a relic of historically dated fears about totalitarianism and absolutist expressions of power.

The Russian Formalist Mikhail Bakhtin's thought deals conspicuously in these sorts of elisions. Following translation into English beginning in the 1970s, Bakhtin's literary criticism experienced vogue within not only Marxist but also many poststructuralist and deconstructive circles. Disseminating a vocabulary of polyglossia, dialogism, hybridity, the carnivalesque, parody, spontaneity, the polyglot, and indeterminacy, Bakhtin's thinking injects those terms with a politically emancipatory and democratically anti-totalitarian flavor. But at once, with Bakhtin's corpus

those vocabularies issue commentaries on modernity and its central logic. Much as for Lukács, a presumed rift dividing ancient from modern cultures is foundational to Bakhtin's theory of the novel, which he elaborates in *The Dialogic Imagination*. As Bakhtin ruminates in familiar terms, the "epic world knows only a single and unified world view, obligatory and indubitably true," just as Greek "creative consciousness was realized in closed, pure languages."<sup>67</sup> In contrast, Bakhtin characterizes the novel as a struggle against those centralizing drives, a struggle realized through an almost modernist spirit of subversive play. As he comments of that form's influence on other literary genres:

They become more free and flexible, their language renews itself by incorporating extraliterary heteroglossia and the 'novelistic' layers of literary language, they become dialogized, permeated with laughter, irony, humor, elements of self-parody and finally — this is the most important thing—the novel inserts into these other genres an indeterminacy, a certain semantic openendedness, a living contact with unfinished, still-evolving contemporary reality (the openended present).<sup>68</sup>

Like others, these near-interchangeable grammars perform multiple functions within Bakhtin's reasoning. It is precisely a deficit or lapse of qualities like indeterminacy that warrants Bakhtin's critiques of *both* closed, static cultures *and* authoritarian political forms, and it is that dearth of paradox that betrays both to be comparatively repressive. In this vein does Bakhtin contrast novelistic discourse with the "absolutism of a single and unitary language" and the "centralizing" tendencies of other literary modes.<sup>69</sup> With those oppositions, Bakhtin can celebrate the heteroglossic elements of the novel as living, "free," "flexible," and evolving. Moreover, this "spirit of process and inconclusiveness" renders the novel, like modernity, innately "critical and self-critical."<sup>70</sup>

While Bakhtin's thought has lost the currency it once possessed, many of his core assumptions remain alive and well, if anything experiencing new life within contemporary political theory. Indeed, reasoning like Bakhtin's arguably reaches its summit with a thinker like Jacques Rancière, whose anti-instrumentalist vision of politics actively enlists art and aesthetic criticism to model radical democracy. Rancière delineates the intimacy between aesthetics and politics: "If there exists a connection between art and politics, it should be cast in terms of dissensus, the very kernel of the aesthetic regime: artworks can produce effects of dissensus precisely

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67. M. M. BAKHTIN, *Epic and Novel*, in *THE DIALOGIC IMAGINATION: FOUR ESSAYS* 3, 35, 12 (Michael Holquist ed., Caryl Emerson & Michael Holquist trans., 1981).

68. *Id.* at 7.

69. M. M. BAKHTIN, *Discourse in the Novel*, in *THE DIALOGIC IMAGINATION: FOUR ESSAYS* 259, 366 (Michael Holquist ed., Caryl Emerson & Michael Holquist trans., 1981).

70. BAKHTIN, *supra* note 67, at 7, 10.

because they neither give lessons nor have any destination.”<sup>71</sup> What Bakhtin, Rancière, and countless others thus promote as an antidote to power and oppression (whether totalitarian, colonial, or otherwise) is an explicitly aestheticized politics—or, rather, what we might term a conception of politics as *modernist* style. Far from confined to Bakhtin’s work, this faith in qualities such as irony, parody, and aesthetic indeterminacy is widely representative: of not only literary criticism but also of accounts of radical constitutionalism, revisionist historicism, progressive critiques of law, and more. As we noted in Scott, those synonyms for paradox have been recruited in order to describe why a radicalized history, change, agency, and activism will be fully “poetic” in expression and style.

In a way, this conceit that a “poetics” or distinct “style” of thought can guarantee a leftist or progressive politics met with its greatest popularity during the decades that saw theory come of age. But the imprint of that romance of an aestheticized politics remains comprehensive—still alive and well within critical legal history and much humanistic inquiry today. A broad swath of theory has been united by such preoccupation with style, ranging across disciplinary boundaries, debates, theoretical schools, and historical fields. Even while the impetus for such thinking can vary, it has been sufficiently contagious as to unite thinkers otherwise proceeding from markedly different intellectual-political allegiances and commitments.

To look briefly to three examples, Richard Rorty’s 1989 *Contingency, Irony, and Solidarity* offers one such tribute to an “intellectual history viewed as the history of metaphor” that culminates with a poetics.<sup>72</sup> For Rorty, moreover, that conspicuous aestheticization of political-historical thought adds up to what Rorty embraces as a “pluralism.” Akin to how Ricoeur aligns Freud, Nietzsche, and Marx by dubbing them the three “masters of suspicion,” for Rorty those thinkers’ affinity lies with their common investment in dialectical-ironic thinking, or “the attempt to play off vocabularies against one another.”<sup>73</sup> As Rorty connects Freud’s uses of metaphor with those of Freud’s literary-philosophical contemporaries: “They feed each other lines. Their metaphors rejoice in one another’s company.”<sup>74</sup> In one sense, Rorty, like others, applauds qualities like irony and “contingency” for illuminating the irrationalist dimensions of politics, even while Rorty himself retains the language of “liberalism.”<sup>75</sup> As Rorty inveighs, “[w]e need a redescription of liberalism as the hope that culture as a whole can be ‘poeticized’ rather than as the Enlightenment hope that it

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71. JACQUES RANCIÈRE, *DISSENSUS: ON POLITICS AND AESTHETICS* 140 (Steven Corcoran trans., Bloomsbury 2010).

72. RICHARD RORTY, *CONTINGENCY, IRONY, AND SOLIDARITY* 140 (1989).

73. *Id.* at 78.

74. *Id.* at 39.

75. *Id.* at 41.

can be ‘rationalized’ or ‘scientized.’”<sup>76</sup>

Just as telling are Rorty’s hopes for the collectivizing energies of an ironized-poeticized vision of both politics and history. Much as a shared reliance on metaphor is imagined to cohere his canon of philosophers, it informs Rorty’s dream of public belonging and community. Rorty rhapsodizes “the ‘radical diversity of private purposes, of the radically poetic character of individual lives, and of the merely poetic foundations of the ‘we-consciousness’ which lies behind our social institutions.’” And while advocating an “increasing willingness to live with plurality and to stop asking for universal validity,”<sup>77</sup> Rorty’s reasoning illustrates how such a collapse of the political into the aesthetic can work seamlessly to warrant a methodological-ideological-normative pluralism.

Not coincidentally, Rorty’s self-professed ironism is burnished by what he champions as “the presiding intellectual discipline”: literary criticism.<sup>78</sup> This self-conscious donning of an analytic mode adapted from literary studies is indicative of other frequent goals suggested by a “poetics.” For many, the label “poetics” has above all signaled a formalism derived from structuralist approaches to the study of literature. And although Rorty trumpets the synergistic play of poetic inquiry, those formalist leanings have frequently been understood to necessitate a strategic bracketing: to require the sidelining of important inquiries and considerations.

A formalist poetics aimed at charting recurring structures of thought has, not surprisingly, claimed separate influence within critical historicism—much as we observed of Scott. Indeed, Scott directly engages Hayden White’s influential 1973 *Metahistory*, with its “formalist approach to the study of historical thinking.”<sup>79</sup> White’s formalism aims at not only inquiry into the narrative-ideological significance of certain now familiar rhetorical-figural “tropes” (metaphor, metonymy, synecdoche, and irony) and thinkers (Nietzsche, Marx, Hegel, Croce) but also an overtly “linguistic paradigm.”<sup>80</sup> Notwithstanding the idiosyncrasies of White’s thought, he relies on a common basis for distinguishing poetics from other brands of inquiry: namely, he specifies the questions that such analysis omits or leaves off the table. As White stipulates in a proviso, “I will not try to decide whether a given historian’s work is a better, or more correct, account of a specific set of events or segment of the historical process []; I will seek to identify the structural components of those accounts.”<sup>81</sup> Just as White suggests, the stakes of a poetics frequently lie exactly with an intentional eschewal of judgments regarding truth status, content, normative

76. *Id.* at 53.

77. *Id.* at 67.

78. *Id.* at 82.

79. WHITE, *supra* note 44, at 4.

80. *Id.* at 37.

81. *Id.* at 3-4.

significance, or other such measures—offering another angle on the “pluralism” espoused by Rorty. Put differently, however, a formalist method can thus require the deliberate embargo of matters with which one might expect a critical or progressive history instead to tarry.

For many, one virtue of a structuralist-formalist poetics of history, culture, politics, and more involves its capacity to be extrapolated far and wide: to be transposed onto an unending range of context-specific yet formally mirroring scenarios (or for White, modes of emplotment). However, this very transposability raises questions about whether such analysis not only permits but actively thrives upon certain slippages: or whether it will outright encourage analogical transfers between disparate domains. As we saw for Scott, a poetics can facilitate broad generalizations, allowing him to deduce from Toussaint’s particularized struggles global conclusions about theory as an enterprise. I’d like to suggest that such traffic also renders the diverse paradoxes of tragedy, modernity, theory, history, and Toussaint’s life interchangeable—or, as Scott puts it, one and the same “irrepressibly illusive” phenomenon digestible according to a single and recurring conceptual scheme. And while intellectually exhilarating, those synchronicities must also be traced to the genesis of such a poetics in a “linguistic paradigm.” That linguistic derivation of the paradox matrix, moreover, lays bare still additional casualties of such thought, beyond those identified by thinkers like Mahmood and Keane. Just as *Metahistory*’s typologies require a moratorium on the normative and factual, privileging the symbolic-linguistic can contribute to an autonomization of those registers—or theory’s divorce from real-world, material referents. While allowing those metaphorical and other codes (as for Rorty) to take on a life of their own, that infinite play of language becomes noticeably unmoored, detached from the very contextualism it purports to navigate.

Whether culminating with a heady pluralism or a formalist bracketing of normative criteria, neither Marxist nor critical legal thought has been immune to the appeal of poetics. Berman’s *All That Is Solid Melts Into Air* again exemplifies that attraction. Amid Berman’s classic tale of waning faith in the synthesis promised by the dialectic post-’68, he simultaneously promotes an alternate “dialectics of modernization and modernism” that is just as much indebted to Nietzsche’s account of history as to Marx. Also like Rorty, Berman magnifies the commonalities between those thinkers, emphasizing how their shared style and voice “resonates at once with self-discovery and self-mockery, with self-delight and self-doubt.”<sup>82</sup> Berman similarly exalts the stylistic-aesthetic qualities of that unifying style, with its “rhythms” and “range” that become “ironic and contradictory, polyphonic and dialectical.”<sup>83</sup> Not coincidentally, it is Berman’s story of

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82. BERMAN, *supra* note 25, at 23.

83. *Id.*

warring modernities that allows him to arrive at a redemptive rewriting of Marx, as Berman plots a historical progression wherein the ironic energies of *modernism* as an aestheticized mode stage a rejoinder to the “bad,” lethal contradictions of *modernization*. Along with his memorable image of a countercultural “modernism” in the streets, Berman lionizes Baudelaire as the paragon of such a mindset. Yet irrespective of its progenitors, that mindset can ultimately be boiled down to style. As Berman concedes of the “New Left” whose “project was shot through with paradox from the start,” such an awareness “infused [a leftist politics] with a deep sense of irony, a tragic irony that haunted all our spectacular productions of political comedy.”<sup>84</sup>

This spirit of modernist comedy and ironic play has indeed left its mark on critical legal scholarship, evident even within early incursions of critical theory into the legal academy. Published within the same 1984 *Stanford Law Review* Symposium on “Critical Legal Studies” as Bob Gordon’s *Critical Legal Histories* is a staged debate between Kennedy and Peter Gabel. That text, titled *Roll Over Beethoven*, epitomizes each and every one of the above tendencies.<sup>85</sup> Parrotting a pseudo-Platonic dialogue or dialectic, Kennedy and Gabel’s agenda is not only to theorize but also to dramatize the consciousness-raising energies of effective social movements, conjuring their experiential dynamics. And while informing the dialogue’s subject matter, such an effort to pinpoint, rhetorically capture, and arouse the charismatic workings of insurrectionary sociohistorical change also animates its self-aestheticizing, subversive mode and ethos. In effect, *Roll Over Beethoven* exhibits its own prioritization of form, genre, and aesthetics as the starting point from which to imagine radical social progress.

Kennedy and Gabel entertain a range of different rationales for that often overt emphasis on style. Key moments within *Roll Over Beethoven* are meta-theoretical. For instance, Kennedy and Gabel don a simultaneously performative and ironic affect precisely in order to avoid what they describe as “falling into the trap of conceptual knowledge and ‘rationalism,’” which they further characterize as symptomatic of mainstream legal study.<sup>86</sup> Related are the text’s experimental features, which Kennedy and Gabel similarly justify as necessary to avoid ideological cooptation. They outwardly defend the need “to undercut [theory] the minute that it becomes frozen in the same way that rights discourse becomes frozen.”<sup>87</sup> Unlike normative constructs like rights or “philosophical”, “conceptualist” patterns of thought, the protean, slippery workings of a reflexive dialogue are

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84. *Id.* at 328.

85. Peter Gabel & Duncan Kennedy, *Roll over Beethoven*, 36 *STAN. L. REV.* 1 (1984).

86. *Id.* at 2.

87. *Id.* at 3.

celebrated as defiant of being “taken over and falsified to legitimate oppression.”<sup>88</sup>

The parodic joke is another rhetorical gesture put forward as structurally immune to liberal-legal cooptation. In many respects, the dialogue itself instantiates the “jokey, colloquial things” that Gabel and Kennedy exalt, although they are also deliberate in spelling out the qualities that inoculate jokes against opportunistic pillaging. As Gabel explains, “[t]hey can’t take over a joke, which has its momentary unveiling that can’t be captured by the other side. Whereas any philosophical discussion can be captured.”<sup>89</sup> As Kennedy later puts it, “we can defend the integrity of our own communication, the reality of our community better with jokes than we will ever be able to defend its integrity with a more abstract formulation.”<sup>90</sup> Indeed, effective jokes are contagious, breeding catching laughter that begs to be prolonged and repeated. Clever jokes summon their own retelling, and the more infectious their irony—and more delicious their feats of unveiling—the more automatically will such humor self-propagate.

In this vein, Kennedy and Gabel’s epigraph, taken from Chuck Berry’s song by that title, alludes to another vector of contagion: “I got the rockin pneumonia / Need a shot of rhythm and blues.”<sup>91</sup> Also infectious, we know, is aesthetic experience. It is tempting to attribute these “yearnings” for an aestheticized theory to left legal scholarship’s enclosure within a sterile professionalized setting. Yet popular music and especially rock-and-roll simultaneously furnish the dialogue’s titular motif for the aspirational consciousness-raising undertaken by critical and revisionist thought, along with the imperative to critique. Berry’s original title is clearly a plea to capsize the stodgy, rule-bound constraints of classical music à la Beethoven, “rolling over” tradition and its authority. While pointing to those roots of rock-and-roll, Kennedy and Gabel’s emblem of “having music at the meeting” further underscores the phenomenological, charged, lived, rhythmic modes of engagement that the dialogue itself strives to activate. Indeed, Berry’s music inaugurated an unprecedented cult of the popular, allaying another common fear of the academic left: a fear of losing touch with the very populace to which theory purports to lend expression.<sup>92</sup>

In the end, Kennedy and Gabel’s vision of an aestheticized politics is not so distant from Rorty’s or Berman’s pleas, in particular given their shared hopes that a poetics will both collectivize and politically awaken. To be sure, there are and were many salutary reasons for extolling such charisma—whether as an attempt to preserve the electricity of the late 1960s

88. *Id.* at 6.

89. *Id.* at 11-13.

90. *Id.* at 11.

91. CHUCK BERRY, *Roll Over Beethoven*, on CHUCK BERRY IS ON TOP (Chess Records 1956).

92. Hence, one might read here a yearning to forge the Gramscian “organic intellectual.”

or to evade the snares of liberal rationalism. However, it is hard to escape the conversions implicit to this common reasoning that this essay has examined. What begins as a diagnosis and critique (whether of modernity or of law) is fast transmuted into a redemptive cure. The very properties deployed to indict and to unmask the ideological mystifications of not only power but also mainstream legal, historical, and other scholarship are almost automatically transformed into an antidote to those same errors. Something about the logic of paradox, ambivalence, contradiction, indeterminacy, and those term's many counterparts can seem to alchemize these multitudinous functions.

This critical arsenal that I've described as the paradox matrix also demands historicization—from numerous perspectives. It is hard to dispute that this conceptual architecture has not become a methodological status quo, possessing an often compulsory orthodoxy that, in extreme form, can supervise the borders of what counts as "critical" "theory." But despite being brandished as both radical and dissident, that repertoire of stock moves has become not only predictable but also mechanistic. Even when espousing a poetic relish for contingency and play, such thinking has elicited highly formulaic applications. Beyond representing a foregone conclusion, the discovery of qualities like contradiction and paradox has become programmatic, circumscribing the kinds of recognitions madeavailable.

Another concern involves the dominant guises of power in the twenty-first century. One abiding premise of theory has been that power, ideology, and domination detest paradox and contradiction. It has been axiomatic that oppression camouflages itself with a façade of unity and coherence, shoring itself up by not only monopolizing meaning, truth, and authority but also suppressing pluralistic alterity and difference. Only within such a conceptual landscape does it make sense to endow the paradox matrix with such potent force and exorbitant hopes. Only if power cannot tolerate contradiction will faculties like irony, indeterminacy, and contingency be heralded as inherently subversive and political. Such modes of thought thus have depended on—and reinforced—a highly specific yet narrow and outmoded understanding of power and its anatomy.

Because, does power today really look the same as it did during the Cold War era that consolidated theory? Are domination and ideology always and invariably secured by masking structural contradiction, and does power in the twenty-first century really barricade itself by totalizing truth and meaning? Or to the contrary, is it more accurate to say that power today cultivates and exploits a vertiginous sea of half-truths and bottomless contradictions? One need not look far for evidence that contemporary displays of authoritarianism indeed encourage utter disregard for objectivizable truth, normative content, procedural integrity, and other such

liberal-rationalist-legalistic indicia. Rather than threatened by contradiction, power capitalizes on it, marshalling flagrant indeterminacy as a diversionary mechanism and ideological armor. Instead of opportunistically colonizing the rule of law, oppression can seem to delight in the transgression of all proceduralist protocols and safeguards. In our worst nightmares, it can thus seem like power has learned to commandeer the most trusted resources of the left, leveraging paradox and contradiction indeed to create a normative-ethical vacuum.

Perhaps, then, an eventuality that a thinker like Rorty found incomprehensible—that civic discourse would succumb to a public culture of irony—has taken hold, becoming the prevailing face of contemporary politics.<sup>93</sup> Yet regardless of how we denominate these developments, it seems increasingly clear that theory's usual war chest is ill-equipped to confront the greatest threats of the present. When power cloaks itself in paradox, it is hard to imagine that throwing still more paradox into the mix will counteract such a syndrome. Similarly, when public reason becomes a morass of indeterminacy, unearthing even more indeterminacy will neither dissipate that haze of untruth nor fill the resulting abyss. And when the "joke" becomes a smokescreen utilized to obscure power's abuses, it is not so clear that parody will in-and-of-itself provide a necessary counterweight capable of resetting civic discourse and its ethical-political compass. Rather, the very bywords and styles of critique that we have investigated can seem prone to compound the problem.

This essay has argued that a worship of paradox, contradiction, indeterminacy, antagonism, and a matrix of such qualities has unified the theory canon, harmonizing otherwise discordant schools of thought. This in part because those intellectual tools have not only been enlisted to diagnose and to critique but also been celebrated as *the* recipe for a transformative politics. The manifold functions fulfilled by that web of critical terms surely make it understandable that so many diverse thinkers would gravitate toward such reasoning. But this essay has foremost sought to raise a number of worries about that methodological privileging of paradox and contradiction, among others asking about the colonialist underpinnings of such a conceptual architecture. Yet perhaps most alarming is *not* how such thought can seem rote and predictable. Rather, dedication to such styles of theory can increasingly serve—with great irony—to neuter real difficulty, sterilizing real dilemmas that cannot be thus digested.

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93. See RORTY, *supra* note 72, at 87.