

Counterstorytelling in international economic law

Book or Report Section

Accepted Version

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(2021) Counterstorytelling in international economic law. In:
Bianchi, A. and Hirsch, M. (eds.) International Law's Invisible
Frames. Oxford University Press. ISBN 9780192847539
Available at <https://centaur.reading.ac.uk/92381/>

It is advisable to refer to the publisher's version if you intend to cite from the work. See [Guidance on citing](#).

Publisher: Oxford University Press

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COUNTERSTORYTELLING IN INTERNATIONAL ECONOMIC LAW

Matthew Windsor*

The greater part of the stories current today we shall have to reject.

Plato¹

I ONCE UPON A TIME ...

Let me tell you a story. In my first job after law school, I clerked for a judge at the Court of Appeal of New Zealand. A case that I worked on haunted me then and now. In the proceedings, almost 300 claims concerning historic claims of abuse in mental health institutions were struck out on procedural grounds. At the conclusion of his dissenting opinion, I persuaded the judge to include a passage from Janet Frame's autobiographical novel *Faces in the Water*, which concerned similar events.² The inclusion of this literary extract in an appellate judgment was an effort at counterstorytelling – an attempt to render the lived experience of the litigants legible in the law reports, despite the jurispathic resolution of the dispute.³

This chapter investigates the existence and efficacy of counterstorytelling in the field of international economic law. International law is saturated with storytelling, shaping our knowledge of the discipline as well as what sits outside orthodox professional parameters. International economic law's rules and normative preferences are embedded deeply in

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¹ Plato, *The Republic* (Penguin Books 1955) 115.

² *Crown Health Financing Agency v P* [2009] 2 NZLR 149, 276 (citing Janet Frame, *Faces in the Water* (1961): 'Every morning I woke in dread, waiting for the day nurse to go on her rounds and announce from the list of names in her hand whether or not I was for shock treatment ... Waiting in the early morning, in the black-capped frosted hours, was like waiting for the pronouncement of a death sentence').

³ Robert M Cover, 'The Supreme Court 1982 Term Foreword: *Nomos* and Narrative' (1983) 97 *Harvard Law Review* 4, 40-44.

narratives and myths that construct our understanding of their meaning and operation in specific contexts. In a very tangible sense, international law is both defused by and infused with narrative, its stories operating as mechanisms of 'blindness and insight'.⁴

This double movement is explored in what follows. Section II surveys the intellectual origins and conceptual assumptions of the narrative turn in legal thought. Section III critically appraises the shortcomings and strengths of counterstorytelling, a style of narrative jurisprudence that emerged primarily in the context of critical race theory, and whose power inheres in its myth-busting potential. Section IV illustrates the force of counterstorytelling in the context of the past, present, and future of international economic law, focusing respectively on: Adom Getachew's historical account of the New International Economic Order in *Worldmaking After Empire*;⁵ the diagnostic of the current backlash against economic globalisation in Lynn Nottage's play *Sweat*;⁶ and efforts to forecast the trajectories of neoliberal capitalism. If international law constitutes a 'bridge between the social past and the social future through the social present',⁷ we must be reflective about the stories that propel us forward, as well as the ones that hold us back.

II LAW AND NARRATIVE

Narrative is ubiquitous in life and law, offering an indispensable means of understanding our world and ourselves.⁸ Facts are not comprehensible in a vacuum, but always require a 'socially acceptable narrative to absorb, sustain and circulate them'.⁹ Indeed, in a

⁴ Paul De Man, *Blindness and Insight: Essays in the Rhetoric of Contemporary Criticism* (University of Minnesota Press 1983).

⁵ Adom Getachew, *Worldmaking After Empire: The Rise and Fall of Self-Determination* (Princeton University Press 2019).

⁶ Lynn Nottage, *Sweat* (Nick Hern Books 2018).

⁷ Philip Allott, *The Health of Nations: Society and Law Beyond the State* (Cambridge University Press 2002) 317.

⁸ François Ost, 'Towards a Critique of Narrative Reason' (2013) 7(1) *Law and Humanities* 55, 55 ('Of all the characteristics ascribed to the human entity ... it is this fictioning faculty which strikes me as the most fundamental one').

⁹ Edward Said, 'Permission to Narrate' (1984) 13 *Journal of Palestine Studies* 27, 34.

world without stories, Walter Benjamin cautioned that it would be as if something ‘inalienable to us, the securest among our possessions, were taken from us: the ability to exchange experiences’.¹⁰

Narrative has an overt affinity with both social cognition and knowledge production, the animating themes of this volume. In relation to social cognition, narrative operates as an ‘instrument of mind in the construction of reality’.¹¹ Cognitive narratologists have long illuminated the ‘storied nature of perception, sense-making, memory, and identity formation’,¹² maintaining that stories frequently exist in the mind independently of concrete representations in a particular medium.¹³ As far as knowledge production is concerned, Hannah Arendt famously posited the individual qua storyteller at the centre of her account of action, claiming that ‘[w]ith word and deed, we insert ourselves into the human world’.¹⁴ For Arendt, it is through storytelling that the meaning of action is retrospectively enunciated; in the absence of stories, the memory of past actions would not be preserved.

Narrative is not only in the business of recollection but also construction, with storytellers assiduously giving ‘shape and significance to life’.¹⁵ The historian Hayden White observed that narration is more than a chronological collection of events, but a process where events are given an ‘order of meaning’ that they do not convey as ‘mere sequence’.¹⁶ White further claimed that every historical narrative is produced from a larger assemblage of events,

¹⁰ Walter Benjamin, ‘The Storyteller’ in *Illuminations: Essays and Reflections* (Schocken Books 2007) 83.

¹¹ Jerome Bruner, ‘The Narrative Construction of Reality’ (1991) 18(1) *Critical Inquiry* 1, 6.

¹² Manfred Jahn, ‘Cognitive Narratology’ in David Herman, Manfred Jahn and Marie-Laure Ryan (eds), *Routledge Encyclopaedia of Narrative Theory* (Routledge 2005) 67. See also David Herman, *Storytelling and the Sciences of Mind* (MIT Press 2013).

¹³ Steven L Winter, ‘The Cognitive Dimension of the *Agon* Between Legal Power and Narrative Meaning’ (1989) 87 *Michigan Law Review* 2225.

¹⁴ Hannah Arendt, *The Human Condition* (University of Chicago Press 1958) 176.

¹⁵ Peter Brooks, ‘Narrative Transactions – Does the Law Need a Narratology?’ (2006) 18(1) *Yale Journal of Law and the Humanities* 1, 24.

¹⁶ Hayden White, ‘The Value of Narrativity in the Representation of Reality’ (1980) 7 *Critical Inquiry* 5, 9. For White’s classic account of emplotment, see *Metahistory: The Historical Imagination in 19th Century Europe* (Johns Hopkins University Press 1973).

which could have been incorporated but were not.¹⁷ Notwithstanding view from nowhere posturing to the contrary,¹⁸ the implication is that storytellers are never neutral: 'they investigate, but also suggest, create and legislate meanings'.¹⁹

That narrative knowledge production always already involves a knowledge reduction reveals something significant about the explanatory nature of stories.²⁰ Rather than subscribing to scientific metrics of causality or probability,²¹ stories achieve their explanatory effect through appealing to the affective – completing an 'emotional cadence'²² – and by producing an account that is broadly verisimilar.²³ The epistemological challenge this engenders is how an instrument as unreliable as narrative can be permitted to participate in creating a social consensus regarding truth.²⁴

Perhaps for that reason, many lawyers adamantly avoid acknowledging the law's narrative nature.²⁵ For such detractors, admitting that law may produce results other than those derived directly from legitimate authority risks provoking a 'massive housewrecking of judicial-rhetoric-as-usual'.²⁶ Yet storytelling is unquestionably a pervasive feature of legal practice. In a canonical contribution, Robert Cover observed that '[n]o set of legal institutions

¹⁷ White, 'The Value of Narrativity in the Representation of Reality' (n 16) 14.

¹⁸ Thomas Nagel, *The View from Nowhere* (Oxford University Press 1986).

¹⁹ Maria Aristodemou, *Law & Literature: Journeys From Her to Eternity* (Oxford University Press 2000) 3.

²⁰ Paul Kahn, *Finding Ourselves at the Movies: Philosophy for a New Generation* (Columbia University Press 2013) 71 ('Creating the narrative ... I cut the world one way rather than another').

²¹ Donald Polkinghorne, *Narrative Knowing and the Human Sciences* (State University of New York Press 1988).

²² James David Velleman, 'Narrative Explanation' (2003) 112(1) *The Philosophical Review* 1, 6.

²³ John Ruggie, 'Epistemology, ontology, and the study of international regimes' in *Constructing the World Polity: Essays on International Institutionalisation* (Routledge 1998) 85, 94.

²⁴ Albrecht Koschorke, *Fact and Fiction: Elements of a General Theory of Narrative* (De Gruyter 2018).

²⁵ Peter Brooks, 'Narrative in and of the Law' in James Phelan and Peter J Rabinowitz (eds), *A Companion to Narrative Theory* (Blackwell 2008) 415 ('one searches in vain for any recognition within legal doctrine that narrative is one of law's categories for making sense of its affairs').

²⁶ Peter Brooks, 'Policing Stories' in Austin Sarat, Lawrence Douglas and Martha Merrill Umphrey (eds), *Law's Madness* (University of Michigan Press 2003) 29, 43.

or prescriptions exists apart from the narratives that locate it and give it meaning'.²⁷ In the context of the courtroom, storytellers regularly 'give comfort, inspire, provide insight; they forewarn, betray, reveal, legitimise [and] convince'.²⁸

The insight that law is 'awash in storytelling'²⁹ is a testament to the intellectual contribution of the law and literature movement in American legal scholarship, which classically distinguished between law *in* literature, and law *as* literature.³⁰ As an interdisciplinary project, law and literature broadly drew on three intellectual strands:³¹ (1) humanism, offering literature as a corrective to the technocratic vision of law and economics;³² (2) hermeneutics, drawing on literary theory to destabilise orthodox modes of textual interpretation;³³ and (3) narrative, joining the humanist preoccupation with individual agency and a hermeneutic recognition of the multiplicity of meaning.³⁴ Notwithstanding this taxonomy, storytelling was at the centre of the law and literature project from its inception. In its foundational text *The Legal Imagination*, James Boyd White opined that:³⁵

²⁷ Cover, 'Nomos and Narrative' (n 3) 4.

²⁸ Anthony G Amsterdam and Jerome Bruner, *Minding the Law* (Harvard University Press 2000) 115.

²⁹ Amsterdam and Bruner, *Minding the Law* (n 28) 110.

³⁰ Simon Stern, 'Literary Analysis of Law: Reorienting the Connections Between Law and Literature' (2018) 5(2) *Critical Analysis of Law* 1 (dispensing with this choice to inquire how legal and literary forms and methods can be explored in tandem).

³¹ Jane Baron, 'Law, Literature, and the Problems of Interdisciplinarity' (1999) 108 *Yale Law Journal* 1059; Julie Stone Peters, 'Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion' (2005) 120(2) *Publications of the Modern Language Association* 442.

³² James Boyd White, *The Legal Imagination* (University of Chicago Press 1973); Martha Nussbaum, *Poetic Justice: The Literary Imagination and Public Life* (Beacon Press 1995).

³³ Stanley Fish, *Is There A Text in This Class? The Authority of Interpretive Communities* (Harvard University Press 1980); Sanford Levinson and Steven Mailloux (eds), *Interpreting Law and Literature: A Hermeneutic Reader* (Northwestern University Press 1988).

³⁴ Peter Brooks and Paul Gewirtz (eds), *Law's Stories: Narrative and Rhetoric in the Law* (Yale University Press 1998).

³⁵ White, *The Legal Imagination* (n 32) 243.

[T]he central act of the legal mind, of judge and lawyer alike, is this conversion of the raw material of life – of the actual experiences of people and the thousands of ways they can be talked about – into a story that will claim to tell the truth in legal terms.

Although law and literature has only made modest inroads in international law scholarship,³⁶ proficiency in storytelling is a crucial attribute for success in the discipline.³⁷ This is because stories either help safeguard or erode the authority of a given international legal interpretation.³⁸ Compelling examples of international legal scholarship exist which broadly correspond to the aforementioned taxonomy of humanism,³⁹ hermeneutics,⁴⁰ and narrative.⁴¹ The advent of fragmentation in the international law discourse exposed how different narratives are advanced to support different projects at different times by differently situated actors.⁴² Such narratives greatly influence what international lawyers identify both as problems and solutions.⁴³

Instead of regarding narrative as a Trojan horse engineered to stress-test and destabilise legal argumentation, the relationship between legal and literary modes of production is better

³⁶ Andrea Bianchi, *International Law Theories* (Oxford University Press 2017) 287-310.

³⁷ Andrea Bianchi, 'International Adjudication, Rhetoric and Storytelling' (2018) 9(1) *Journal of International Dispute Settlement* 28.

³⁸ Julia Otten, 'Narratives in International Law' (2016) 99(3) *KritV* 187.

³⁹ Joseph R Slaughter, *Human Rights Inc: The World Novel, Narrative Form and International Law* (Fordham University Press 2007); Christopher Warren, *Literature and the Law of Nations 1580-1680* (Oxford University Press 2015).

⁴⁰ Ed Morgan, *The Aesthetics of International Law* (University of Toronto Press 2007); Daniel Peat and Matthew Windsor, 'Playing the Game of Interpretation in International Law' in Andrea Bianchi, Daniel Peat and Matthew Windsor (eds), *Interpretation in International Law* (Oxford University Press 2015) 3-33.

⁴¹ Matthew Windsor, 'Narrative Kill or Capture: Unreliable Narration in International Law' (2015) 28 *Leiden Journal of International Law* 743; Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge University Press 2008); Ana Luísa Bernardino, 'The Discursive Construction of Facts in International Adjudication' (2020) 11 *Journal of International Dispute Settlement* 175, 188-191.

⁴² Surabhi Ranganathan, 'The Value of Narratives: The India-USA Nuclear Deal in Terms of Fragmentation, Pluralism, Constitutionalisation and Global Administrative Law' (2013) 6(1) *Erasmus Law Review* 17.

⁴³ Anne Saab, *Narratives of Hunger in International Law: Feeding the World in Times of Climate Change* (Cambridge University Press 2019) 56.

understood as a recursive exchange.⁴⁴ Despite a general disciplinary shift to more expansive analyses of the relationship between law and cultural production, the lingering legacy of the encounter between law and literature is to ‘unsettle whatever boundaries and confines may unwittingly restrain us’.⁴⁵ A focus on storytelling in international legal practice and process continues to be of intellectual assistance in ‘examining, critiquing and revising the particular narratives embedded in law, and the identities and institutions these narratives enable’.⁴⁶

III COUNTERSTORYTELLING AS MYTH-BUSTING

Who speaks and which stories get told? This section focuses on a specific strand of narrative jurisprudence, explicitly motivated by a desire to make the point of view of outsiders audible.⁴⁷ A specific methodological intervention in critical race theory was to use storytelling as a ‘window onto ignored or alternate realities’.⁴⁸ In a ‘plea for narrative’, Richard Delgado asserted that stories are ‘powerful means for destroying mindset – the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse takes place’.⁴⁹ For critical race theorists, such shared understandings privilege the pale, male and stale, and pay short shrift to the ‘experiences of people of colour, of the poor, of women, of those who cannot describe their experiences in the language of the law’.⁵⁰ To transpose the aesthetic credo of novelist Toni Morrison, the ambition

⁴⁴ Robin Wharton and Derek Miller, ‘New Directions in Law and Narrative’ (2019) 15(2) *Law, Culture and the Humanities* 294, 299.

⁴⁵ Elizabeth S Anker and Bernadette Meyler (eds), *New Directions in Law and Literature* (Oxford University Press 2017) 25.

⁴⁶ Guyora Binder and Robert Weisberg, *Literary Criticisms of Law* (Princeton University Press 2000) 23.

⁴⁷ Kim Lane Scheppele, ‘Foreword: Telling Stories’ (1989) 87 *Michigan Law Review* 2073, 2077 (defining outsiders as ‘those whose perspectives had been excluded in the law’s construction of an official story for the particular case’); Mari Matsuda, ‘Looking to the Bottom: Critical Legal Studies and Reparations’ (1987) 22 *Harvard Civil Rights-Civil Liberties Law Review* 323, 324 (advocating ‘looking to the bottom’ as ‘adopting the perspective of those who have seen and felt the falsity of the liberal promise’).

⁴⁸ Richard Delgado and Jean Stefancic, *Critical Race Theory: An Introduction* (3rd ed, New York University Press 2017) 46; Derrick Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice* (Basic Books 1987). See also Sandra Harding (ed), *The Feminist Standpoint Theory Reader: Intellectual & Political Controversies* (Routledge 2004).

⁴⁹ Richard Delgado, ‘Storytelling for Oppositionists and Others: A Plea for Narrative’ (1989) 87 *Michigan Law Review* 2411, 2413.

⁵⁰ Scheppele, ‘Foreword: Telling Stories’ (n 47) 2084.

was to 'free up the language from its sometimes sinister, frequently lazy, almost always predictable employment of racially informed and determined chains'.⁵¹

As a key critical race theory tactic, counterstorytelling offered alternative stories that could be deployed to call dominant narratives into question, and pave the way for new ones. Such stories set out to disrupt institutional logics, often revealing an underbelly of 'pain, exclusion, and both petty and major tyranny'.⁵² In an emblematic example, Patricia Williams recounted her experience of being denied entry to Benetton's on racial grounds, and the challenges she faced in publishing about the experience in a law journal symposium.⁵³ The editors of the symposium on 'Excluded Voices' first replaced Williams' 'active personal' with the 'passive impersonal',⁵⁴ and subsequently omitted all references to Benetton's and her race. For Williams, this resulted in an 'aesthetic of uniformity' that eliminated her experience from the realm of the legally cognisable.⁵⁵ Williams was subsequently excoriated for 'privileging a racial perspective' and failing to include the 'salesman's side of the story'.⁵⁶ Yet subject position is everything in Williams' oeuvre, which to this day rejects any 'linguistic effacement of agency' that 'tells us where to look and where not to'.⁵⁷

With popularity came controversy for counterstorytelling in the American legal academy. For adherents, standpoint epistemologies offered a promising terrain for the pursuit of identity politics.⁵⁸ Less sanguine commentators impugned critical race theorists for

⁵¹ Toni Morrison, *Playing in the Dark: Whiteness and the Literary Imagination* (Vintage Books 1992) xi.

⁵² Delgado, 'Storytelling for Oppositionists' (n 49) 2439.

⁵³ Patricia J Williams, *The Alchemy of Race and Rights* (Harvard University Press 1991) 44-51.

⁵⁴ Williams, *The Alchemy of Race and Rights* (n 53) 47.

⁵⁵ Williams, *The Alchemy of Race and Rights* (n 53) 48.

⁵⁶ Williams, *The Alchemy of Race and Rights* (n 53) 51.

⁵⁷ Patricia Williams, 'Language is part of the machinery of oppression – just look at how black deaths are described' *The Guardian* (10 June 2020).

⁵⁸ Francesca Polletta, *It Was Like a Fever: Storytelling in Protest and Politics* (University of Chicago Press 2006).

presupposing the inherent truth of stories,⁵⁹ privileging the emotive impact of stories over reasoned analysis,⁶⁰ and producing scholarship that eluded orthodox modes of evaluation.⁶¹ Critics of counterstorytelling, understood as methodological gatekeepers, clearly feared the subversive implication that ‘stories if well told can become part of the narrative base and so change the way we understand the world’.⁶²

Persuasive rejoinders to the truth, emotion and evaluation critiques can readily be advanced. Regarding the truth critique, the whole point of counterstorytelling was to resist narrative banalisation,⁶³ recasting dominant narratives as ‘stories’ rather than ‘reality’.⁶⁴ Outsider storytelling helped to reveal the ‘unstated reference points of ostensible universals’,⁶⁵ and offered a safe discursive terrain for the formation of subjects with different truths to convey.⁶⁶ Through sustained narrative denaturalisation, the reader is forced to reckon with the following questions:⁶⁷

Can my world still stand? What parts of it remain valid? What parts of the story seem true? How can I reconcile the two worlds, and will the resulting world be a better one than the one with which I began?

⁵⁹ Daniel Farber and Suzanna Sherry, *Beyond All Reason: The Radical Assault on Truth in American Law* (Oxford University Press 1997).

⁶⁰ Mark Tushnet, ‘The Degradation of Constitutional Discourse’ (1991) 81 *Georgetown Law Journal* 251.

⁶¹ Edward L Rubin, ‘On Beyond Truth: A Theory for Evaluating Legal Scholarship’ (1992) 80(4) *California Law Review* 889.

⁶² Richard Delgado, ‘Rodrigo’s Final Chronicle: Cultural Power, the Law Reviews, and the Attack on Narrative Jurisprudence’ (1995) 68 *Southern California Law Review* 545, 565.

⁶³ Bruner, ‘The Narrative Construction of Reality’ (n 11) 9 (the idea that a narrative is ‘so socially conventional, so well known, so in keeping with the canon, that we can assign it to some well-rehearsed and virtually automatic interpretive routine’).

⁶⁴ Catharine MacKinnon, ‘Law’s Stories as Reality and Politics’ in Peter Brooks (ed), *Law’s Stories: Narrative and Rhetoric in the Law* (n 34) 235.

⁶⁵ Francesca Polletta, Pang Ching Bobby Chen, Beth Gharrity Gardner and Alice Motes, ‘The Sociology of Storytelling’ (2011) 37 *Annual Review of Sociology* 109, 113.

⁶⁶ Maki Kimura, ‘Narrative as a Site of Subject Construction: The ‘Comfort Women’ Debate’ (2008) 9(1) *Feminist Theory* 5, 13.

⁶⁷ Delgado, ‘Storytelling for Oppositionists’ (n 49) 2435.

An eloquent response to the emotion critique is offered by Amia Srinivasan, who defends the ‘aptness of anger’ in some circumstances.⁶⁸ For Srinivasan, the invidious choice between acting prudentially and getting angry gives rise to a situation of affective injustice for the oppressed.⁶⁹ Affective injustice might be alleviated by taking steps to dissolve the perceived dichotomy between ‘reason’ and ‘emotion’: ‘Since it is oppressed people who have greatest reason to be angry, excluding anger from the public sphere is an efficient rationalisation for excluding those who most threaten the reigning social order’.⁷⁰

In relation to the evaluation critique, counterstorytelling studiously avoided capitulation to conventional modes of assessment. Indeed, the purpose was to provide a space in which dominant cultural myths might be disrupted.⁷¹ To the extent that myths make ‘contingency appear eternal’,⁷² they were regarded as susceptible to contestation and rupture. As a style of myth-busting, counterstorytelling did not necessarily purport to be ‘epistemologically more complete than the knowledges that were their base’, but was instead targeted towards the ‘metacognitive task of strengthening the struggles against oppression’.⁷³

Acknowledging the narrativity of international law enables us to ‘open up our usual stories’, making the ‘space for new ones to be told’.⁷⁴ Although they do not directly employ the language of counterstorytelling from critical race theory, a number of approaches in international legal scholarship foreground the dynamics of power and perspective at work in

⁶⁸ Amia Srinivasan, ‘The Aptness of Anger’ (2018) 26(2) *Journal of Political Philosophy* 123.

⁶⁹ Srinivasan, ‘The Aptness of Anger’ (n 68) 127.

⁷⁰ Srinivasan, ‘The Aptness of Anger’ (n 68) 142. See also Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford University Press 2009).

⁷¹ See generally Peter Fitzpatrick, *The Mythology of Modern Law* (Routledge 1992).

⁷² Roland Barthes, *Mythologies* (Paladin 1973) 155.

⁷³ Boaventura de Sousa Santos, *The End of the Cognitive Empire: The Coming of Age of Epistemologies of the South* (Duke University Press 2018) 147.

⁷⁴ Saab, *Narratives of Hunger in International Law* (n 43) 171.

conventional narratives,⁷⁵ including feminist approaches to international law,⁷⁶ the New Haven School's sensitivity to 'observational standpoint',⁷⁷ David Kennedy's sensitivity to 'blind spots and biases' in the operation of international legal expertise,⁷⁸ and revisionist historiography.⁷⁹ As far as the emotion critique is concerned, the affectedness of a scholarly idiom that styles itself as an affect-free zone has not escaped comment.⁸⁰ Regarding the evaluation critique, third world approaches to international law share an anti-subordinating mandate with critical race theory,⁸¹ given that they seek to 'disrupt and hopefully dismantle the racial hierarchies on which unequal production about the knowledge of international law is practiced'.⁸² The next section transposes the practice of counterstorytelling from critical race theory to an economic modality of domination: neoliberal capitalism, and its expression in international economic law.⁸³

⁷⁵ Windsor, 'Narrative Kill or Capture' (n 41) 766 ('The struggle for control of the narrative is ultimately a struggle for interpretive power, with the resulting ability to 'kill or capture' conflicting narrative visions').

⁷⁶ Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85(4) *American Journal of International Law* 613; Loveday Hodson and Troy Lavers (eds), *Feminist Judgments in International Law* (Hart 2019).

⁷⁷ Myres S McDougal and Harold Lasswell, 'Trends in Theory About Law: Maintaining Observational Standpoint and Delimiting the Focus of Inquiry' (1976) 8(1) *Toledo Law Review* 1.

⁷⁸ David Kennedy, 'The Disciplines of International Law and Policy' (1999) 12 *Leiden Journal of International Law* 9. The work of international legal scholarship that arguably bears the greatest aesthetic resemblance to counterstorytelling in critical race theory is David Kennedy, *The Rights of Spring* (Princeton University Press 2009).

⁷⁹ Immi Tallgren and Thomas Skouteris (eds), *The New Histories of International Criminal Law: Retrials* (Oxford University Press 2019) 11 (understood as efforts to write 'beyond, against, or in the shadow of the master narrative').

⁸⁰ Gerry Simpson, 'The Sentimental Life of International Law' (2015) 3(1) *London Review of International Law* 3, 11; Naz K Modirzadeh, 'Cut These Words: Passion and International Law of War Scholarship' (2020) 61(1) *Harvard International Law Journal* 1.

⁸¹ Makau Mutua, 'Critical Race Theory and International Law: The View of an Insider-Outsider' (2000) 45 *Villanova Law Review* 841; James Thuo Gathii, 'Writing Race and Identity in a Global Context: What CRT and TWAIL Can Learn From Each Other' (2020) 67 *UCLA Law Review* (forthcoming).

⁸² James Thuo Gathii, 'The Promise of International Law: A Third World View' (2021) *Proceedings of the American Society of International Law* (forthcoming).

⁸³ Richard Delgado, 'Rodrigo's Reconsideration: Intersectionality and the Future of Critical Race Theory' (2011) 96 *Iowa Law Review* 1247, 1287-8 (urging the 'race-crits' to move 'beyond their original perimeters'). For linkages between racial and economic modalities of domination in international law, see Robert Knox, 'Valuing Race? Stretched Marxism and the Logic of Imperialism' (2016) 4(1) *London Review of International Law* 81; Ntina Tzouvala, *Capitalism as Civilization: A History of International Law* (Cambridge University Press 2020).

IV NARRATING THE NEOLIBERAL

A 'This Little State Went to Market ...'

Economic life is motored by storytelling.⁸⁴ There is no convincing way to determine a priori what belongs in the domain of the market and the domain of politics,⁸⁵ outside the realm of ideological preference – and narrative is integral to the production of ideological effects.⁸⁶ In 1944, two highly influential stories were told about the relationship between the state and the market. Friedrich Hayek's *The Road to Serfdom* famously cautioned that the suppression of market competition through state planning would lead to the destruction of freedom.⁸⁷ Meanwhile, Karl Polanyi's *The Great Transformation* observed that the establishment and maintenance of 'free' markets required ongoing state intervention, with regulation helping to achieve freedom for all.⁸⁸

The latter half of the twentieth century was dominated by the neoliberal narrative.⁸⁹ Rejecting Keynesianism and democratic socialism, neoliberalism foregrounded free market mechanisms through the liberalisation of trade, investment and finance policies, and favoured the dismantling of the welfare state through an ensemble of privatisation, deregulation and austerity reforms. International economic law was deeply implicated in the neoliberal enterprise as a project that sought to 'transform all states into liberal states, entrench market

⁸⁴ Jens Beckert and Richard Bronk (eds), *Uncertain Futures: Imaginaries, Narratives, and Calculation in the Economy* (Oxford University Press 2018).

⁸⁵ Ha-Joon Chang, *Economics: The User's Guide* (Pelican 2014) 378.

⁸⁶ Jack Balkin, *Cultural Software: A Theory of Ideology* (Yale University Press 1998) 188-215.

⁸⁷ Friedrich von Hayek, *The Road to Serfdom* (Routledge 1962).

⁸⁸ Karl Polanyi, *The Great Transformation* (Octagon Books 1975).

⁸⁹ Adam Tooze, 'Neoliberalism's World Order' *Dissent* (Summer 2018) ('Milton Friedman, the Chicago School, Pinochet, Thatcher and Reagan's market revolution, IMF structural adjustment, and shock-therapy transition programs from the post-Communist states are all fixtures in the narrative of the neoliberal turn').

principles as the basis of government both domestically and internationally, and organise itself around the idea of freedom'.⁹⁰

Repeated invocation of the invisible hand of market competition myth masks the state's active role in facilitating neoliberal policy.⁹¹ Neoliberal policy always required a strengthening of the state to implement the rules necessary for market competition and to develop the subjectivities required for a neoliberal social order.⁹² A significant recent intervention is Quinn Slobodian's intellectual history of neoliberal globalism. In a 'narrative [that] corrects this storyline', Slobodian insists that neoliberalism is 'less a discipline of economics than a discipline of statecraft and law'.⁹³ For Slobodian, neoliberals consciously deployed the regulatory state in their project of protecting capitalism on a global scale.

To eschew the 'stories we like to tell' regarding the bifurcation of the economic and non-economic realms in our discipline,⁹⁴ how might the project of counterstorytelling as myth-busting be advanced in international economic law?⁹⁵ We must start by recognising the general distinction between 'hegemonic tales' which 'reproduce existing relations of power and inequity', and 'subversive stories' that help make 'explicit the connections between particular lives and social organisation'.⁹⁶ More specifically, we must recognise that neoliberalism has

⁹⁰ Anne Orford, 'Food Security, Free Trade, and the Battle for the State' (2015) 11(2) *Journal of International Law and International Relations* 1, 26.

⁹¹ Andrew Lang, 'Market Anti-Naturalisms' in Justin Desautels-Stein and Christopher Tomlins (eds), *Searching for Contemporary Legal Thought* (Cambridge University Press 2017) 312.

⁹² Loïc Wacquant, 'Three steps to a historical anthropology of actually existing neoliberalism' (2012) 20(1) *Social Anthropology* 66; Honor Brabazon (ed), *Neoliberal Legality: Understanding the Role of Law in the Neoliberal Project* Routledge 2016).

⁹³ Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard University Press 2018) 2, 11.

⁹⁴ John Linarelli, Margot E Salomon and M Sornarajah *The Misery of International Law* (Oxford University Press 2018) 30, 33 (rejecting the 'fictitious neoliberal construction that pits the state against the market').

⁹⁵ Daniel Tarullo, 'Logic, Myth, and the International Economic Order' (1985) 26 *Harvard International Law Journal* 533, 552 (advising to 'take seriously experiences that do not fit the 'normal' world, to see how the history that was not written might have looked'). Two notable initiatives are the AfronomicsLaw blog (www.afronomicslaw.org/) and the IEL Collective (<https://warwick.ac.uk/fac/soc/law/research/centres/globe/ielcollective/>).

⁹⁶ Patricia Ewick and Susan S Silbey, 'Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative' (1995) 29(2) *Law & Society Review* 197.

long been in the business of suppressing ‘narratives that promoted more egalitarian distributive measures’.⁹⁷ Given that the phenomenon of accumulation by dispossession occurs both materially *and* narratively, how can the economic subaltern speak?

B *Potential of the Past: The New International Economic Order*

One of international law’s most frequently recited progress narratives goes something like this:⁹⁸ the project of building nation states in the era of decolonisation inaugurated true universality in the field of public international law. Characterised by ‘discipline optimism’,⁹⁹ the self-determination story zeroed in on formal sovereign equality. However, this narrative focalisation paid short shrift to continuing inequalities of political power and relations of economic dependence after empire.¹⁰⁰

A powerful exemplar of counterstorytelling has been offered recently by political scientist Adom Getachew.¹⁰¹ Rejecting ‘[n]arratives that equate decolonisation with the transition from empire to nation-state’,¹⁰² Getachew recast anticolonial nationalism as ‘worldmaking’ - a project that sought institutions in the international domain to ensure non-domination.¹⁰³ A site of ‘conceptual and political innovation’,¹⁰⁴ worldmaking was sensitive to

⁹⁷ David Harvey, ‘Neoliberalism as Creative Destruction’ (2007) 610 *Annals of the American Academy of Political and Social Science* 22. See generally Wendy Brown, *Undoing the Demos: Neoliberalism's Stealth Revolution* (Zone Books 2015).

⁹⁸ Thomas Skouteris, *The Notion of Progress in International Law Discourse* (Asser Press 2009).

⁹⁹ Oliver Diggelmann, ‘The Periodisation of the History of International Law’ in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford University Press 2012) 997, 1008.

¹⁰⁰ Walter Rech, ‘International Law, Empire, and the Relative Indeterminacy of Narrative’ in Martti Koskeniemi, Walter Rech, and Manuel Jiménez Fonseca (eds), *International Law and Empire: Historical Explorations* (Oxford University Press 2017) 57.

¹⁰¹ Getachew, *Worldmaking After Empire* (n 5).

¹⁰² Getachew, *Worldmaking After Empire* (n 5) 9.

¹⁰³ Getachew, *Worldmaking After Empire* (n 5) 15. See also Partha Chatterjee, *Nationalist Thought and the Colonial World: A Derivative Discourse?* (University of Minnesota Press 1986).

¹⁰⁴ Getachew, *Worldmaking After Empire* (n 5) 75.

the persistence of racial hierarchy in a statist international order, and motivated by a desire for equality of integration in a post-imperial world.

The project of economic worldmaking was conducted under the banner of the New International Economic Order (NIEO).¹⁰⁵ The objective of the NIEO was to transform the governance of the global economy by directing more of the economic benefits of integration towards developing countries. Its egalitarian demands included permanent sovereignty over natural resources, increased regulation of multinational corporations, and colonial reparations. For Getachew, the NIEO envisaged a 'welfare world' that aimed to 'enhance the bargaining power of postcolonial states, democratise decision-making, and achieve international redistribution'.¹⁰⁶

According to Getachew's historical narration, the worldmaking prefigured by the NIEO was swiftly displaced by a neoliberal counterrevolution.¹⁰⁷ The fall of self-determination paved the way for Washington Consensus prescriptions of structural adjustment and policy conditionality, and the juridification of international economic law under conditions of formal state equality in a reformed GATT.¹⁰⁸ Yet, for Getachew, it remains vitally important to re-tell the story of the NIEO. Although she does not seek to directly transpose the NIEO's 'welfare world' to the present, she regards it as a 'mistake to collapse the partiality and eventual decline of a set of languages and strategies for making a world after empire with the demise of the moral and political vision that looked forward to an egalitarian and domination-free world'.¹⁰⁹

¹⁰⁵ Besides the demand for a New International Economic Order, Getachew also focuses on the institutionalisation of a right to self-determination at the United Nations, and efforts to realise regional federation in Africa and the Caribbean.

¹⁰⁶ Getachew, *Worldmaking After Empire* (n 5) 12.

¹⁰⁷ Getachew, *Worldmaking After Empire* (n 5) 174. See also Slobodian, *Globalists* (n 93) 220 ('The scaling up of the democracy principle to the international level after the end of decolonisation threatened the doubled world of global capitalism envisaged by neoliberals').

¹⁰⁸ Slobodian, *Globalists* (n 93) 218-262.

¹⁰⁹ Getachew, *Worldmaking After Empire* (n 5) 181.

On this account, the fall of self-determination ‘marks not only a dead end but also a staging ground for reimagining [the] future’.¹¹⁰

Getachew’s counterstorytelling of anti-colonial worldmaking chimes with recent analyses of historical contingency in international legal scholarship.¹¹¹ Although a consideration of how international law might have been otherwise can be challenging to convey in narrative form,¹¹² a promising counterstorytelling strategy is to focus on unrealised ‘potentials’ rather than concrete ‘possibilities’.¹¹³ In a corrective to orthodox disciplinary teleology, Getachew’s narrative retrieval of the NIEO catalyses a reckoning with the fact that the real ‘progress’ may have been in the past.¹¹⁴

Getachew’s counterstorytelling also offers the salutary lesson that our capacity to transcend our present knowledge horizons is undermined if we rely exclusively on Western narratives that disregard other traditions. We must resist the tenacious mythology that posits the Global North as the site of epistemic production, and the Global South solely as a site of

¹¹⁰ Getachew, *Worldmaking After Empire* (n 5) 181.

¹¹¹ Ingo Venzke and Kevin Jon Heller (eds), *Situating Contingency in International Law* (Oxford University Press 2021) (forthcoming). See Robert Gordon, ‘The Arrival of Critical Historicism’ (1997) 49 *Stanford Law Review* 1023, 1024 (calling for ‘rival perspectives (such as those of the losers rather than the winners) for surveying developments, or that posit[] alternative trajectories that might have produced a very different present’).

¹¹² On this phenomenon, see Kahn, *Finding Ourselves at the Movies* (n 20) 194 (‘Contingency is banished; reasons replace causes; and narrative organises our world’).

¹¹³ Ingo Venzke, ‘Possibilities of the Past: Histories of the NIEO and the Travails of Critique’ (2018) 20 *Journal of the History of International Law* 263-265 (claiming that a return to the NIEO is not an ‘expression of nostalgia’ but ‘evidence of its normative surplus’); Nils Gilman, ‘The New International Economic Order: A Reintroduction’ (2015) 6(1) *Humanity* 1, 10 (classifying the NIEO as an ‘unfailure’ – ‘the paradox that many seemingly failed political and social movements ... often live on as prophetic visions, available as an idiom for future generations to articulate their own hopes and dreams’).

¹¹⁴ See David Scott’s recommendation of tragic – rather than romantic - narrative emplotment in narrating the history of anticolonial struggle, recognising that the past, present and future do not ‘line up neatly as though history were heading somewhere’: *Conscripts of Modernity: The Tragedy of Colonial Enlightenment* (Duke University Press 2004) 166. See also Adil Hasan Khan, ‘Ghostly Visitations: ‘Questioning Heirs’ and the Tragic Tasks of Narrating Bandung Futures’ in Luis Eslava, Michael Fakhri and Vasuki Nesiiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (Cambridge University Press 2017) 108.

reception.¹¹⁵ In this regard, *Worldmaking After Empire* contributes to the counter-archive,¹¹⁶ signifying an effort to assert some control over the ‘construction of our common histories and narratives’.¹¹⁷

C *Problems of the Present: On Sweat and Sacrifice*

The current geopolitical conjuncture is characterised by a backlash against economic globalisation.¹¹⁸ The ‘rising tide lifts all boats’ mantra has repeatedly been exposed as myth, given that the form of globalisation prescribed by neoliberal policy was inattentive to issues of inequality between and within states.¹¹⁹ Recent international economic law scholarship has responded by appealing to a different ‘normative narrative’ that is more attuned to questions of distribution.¹²⁰

Lynn Nottage’s play *Sweat* tells a powerful story about the shuttering of industrial factories in the American rustbelt, the impact of technological change on the conditions of labour, and the limits of class mobility.¹²¹ When *Sweat* received the Pulitzer Prize for Drama in 2017, Nottage was commended for ‘remind[ing] audiences of the stacked deck still facing

¹¹⁵ Priyamvada Gopal, *Insurgent Empire: Anticolonial Resistance and British Dissent* (Verso 2019) 8-9.

¹¹⁶ Stewart Motha and Honni van Rijswijk (eds), *Law, Memory, Violence: Uncovering the Counter-Archive* (Routledge 2016).

¹¹⁷ Gabriel Rockhill, *Counter-History of the Present: Untimely Interrogations into Globalisation, Technology, Democracy* (Duke University Press 2017) 9.

¹¹⁸ Martti Koskeniemi, ‘International Law and the Far Right: Reflections on Law and Cynicism’ (Asser Press 2019).

¹¹⁹ Matthew C Klein and Michael Pettis, *Trade Wars are Class Wars: How Rising Inequality Distorts the Global Economy and Threatens International Peace* (Yale University Press 2020).

¹²⁰ Harlan Grant Cohen, ‘What is International Trade Law For?’ (2019) 113 *American Journal of International Law* 328; Gregory Shaffer, ‘Retooling Trade Agreements for Social Inclusion’ (2019) 2019 *Illinois Law Review* 1.

¹²¹ Nottage, *Sweat* (n 6).

workers searching for the American Dream'.¹²² The play also offers an effective theatrical distillation of neoliberal capitalism and its contradictions.¹²³

Commissioned as part of an artistic programme on American Revolutions, Nottage chose to focus on the American 'De-Industrial Revolution', where people who were 'invested in using their hands as a means of living no longer [had] a place in the economic food chain'.¹²⁴ The play was based on two and a half years of ethnographic work in the town of Reading in Pennsylvania, which – at the time of the play's writing – was the poorest city of its size in America. During her interviews, Nottage found that her subjects repeatedly spoke of their city in the past tense, leading her to conclude that a 'city that couldn't imagine itself in the present or in the future was a city that had lost its narrative'.¹²⁵

A chief reason for Reading's industrial decline was likely the passage of the North American Free Trade Agreement and its effects upon the American manufacturing industry and the unions upon which its workers relied.¹²⁶ Yet NAFTA only makes the most fleeting of appearances in *Sweat*. Early in the play, in a local bar where steel workers congregate, the barman quips: 'You could wake up tomorrow and all your jobs are in Mexico, whatever, it's this NAFTA bullshit'. One of the steel-workers responds: 'What the fuck is NAFTA? Sounds like a laxative'.¹²⁷ Although the play's central characters are not well-versed in the detail of

¹²² <https://www.pulitzer.org/winners/lynn-nottage-0> (accessed on 6 July 2020).

¹²³ Charles Isherwood, 'Sweat Examines Lives Unraveling by Industry's Demise' *New York Times* (17 August 2015) (describing the play as examining the 'mechanics of 21st century American capitalism bearing down on these characters with the brutal power of a jackhammer smashing through concrete').

¹²⁴ Jocelyn L Buckner, 'On Creativity and Collaboration' in Jocelyn L Buckner (ed), *A Critical Companion to Lynn Nottage* (Routledge 2016) 180, 186.

¹²⁵ Nottage, *Sweat* (n 6) 6.

¹²⁶ Courtney Elkin Mohler, 'Three Readings of Reading, Pennsylvania: Approaching Lynn Nottage's *Sweat* and Douglas Carter Beane's *Shows for Days*' (2016) 68 *Theatre Journal* 79.

¹²⁷ Nottage, *Sweat* (n 6) 32.

international trade policy, its distributional effects are their lived reality, compounding their economic precarity.¹²⁸

According to the neoliberal logic of labour market flexibility, the shuttered factory is not a 'tombstone to a lost way of life, but a monument to the forward march of the market'.¹²⁹ But the story that focuses on net gain through outsourcing, pursuant to comparative advantage, distracts from the job losses that inevitably ensue. The disempowerment experienced by the steelworkers in *Sweat* is not an 'unfortunate side of a largely benevolent and successful model – it is part of the sacrificial logic of its functioning'.¹³⁰ However, repeated patterns of sacrifice by the same citizens, with no prospect of redistribution of the burdens, give rise to disappointment and resentment, and contributes to the erosion of democratic life.¹³¹

Although set in the years 2000 and 2008, *Sweat* vividly anticipated the election of Donald Trump and the current agonistic political moment.¹³² When asked in an interview about her apparent prophetic voice, Nottage's response was simple: 'I showed up and listened'.¹³³ *Sweat* helps its audience to confront their 'empathy walls' in relation to Trump's blue-collar electoral base by conveying the 'deep story' of sacrificial citizenship.¹³⁴ One need not engage

¹²⁸ Susan Silbey, 'Let Them Eat Cake: Globalisation, Postmodern Colonialism, and the Possibilities of Justice' (1997) 31(2) *Law & Society Review* 207.

¹²⁹ Slobodian, *Globalists* (n 93) 51.

¹³⁰ Susan Marks, 'Exploitation as an International Legal Concept' in *International Law on the Left* (Cambridge University Press 2008) 281, 301-302; Wendy Brown, 'Sacrificial Citizenship: Neoliberalism, Human Capital, and Austerity Politics' (2016) 23(1) *Constellations* 3.

¹³¹ Danielle Allen, *Talking to Strangers: Anxieties of Citizenship Since Brown v Board of Education* (University of Chicago Press 2004).

¹³² Michael Billington, 'Sweat review – breathtaking drama about life in the American rustbelt' *The Guardian* (20 December 2018) ('I can't think of any recent play that tells us so much, and so vividly, about the state of the union').

¹³³ Nottage, *Sweat* (n 6) 7.

¹³⁴ Arlie Russell Hochschild, *Strangers in Their Own Land: Anger and Mourning on the American Right* (New Press 2016) 5, ix.

in romanticising the rustbelt to acknowledge the ‘important agenda of democratic reform disrupting elite democratic politics’, and concede that anti-populism is not the only response.¹³⁵

While some might balk at a critical race theory method being deployed to better understand those who seek to ‘make America great again’,¹³⁶ *Sweat* engages in counterstorytelling to the extent it highlights the impact of multilateral trade regulation on local communities,¹³⁷ rather than parroting the neoliberal narratives preferred by those in positions of power.¹³⁸ Lynn Nottage’s play is perhaps best understood as inhabiting a liminal space prior to Trump’s inauguration,¹³⁹ offering a jeremiad for the afflictions of those who later felt compelled to seek solace in economic nationalism.

D *Forecasting the Future*

The future has long been a political and scientific project.¹⁴⁰ Yet for some time, neoliberal capitalism has been the only game in town, exerting a stranglehold on the imagination.¹⁴¹ However, a generative line of economic inquiry has recently maintained that

¹³⁵ Robert Howse, ‘Epilogue: In Defense of Disruptive Democracy – A Critique of Anti-Populism’ (2019) 17(2) *International Journal of Constitutional Law* 641, 641.

¹³⁶ Frank B Wilderson III, *Afropessimism* (Liveright 2020) 229 (rejecting the equivalence framing of ‘Blackness’ and ‘oppressed worker[s]’).

¹³⁷ Joseph Singer, ‘Persuasion’ (1989) 87 *Michigan Law Review* 2442 (discussing stories of plant closings and job losses as a pedagogical tool). In the context of international investment law, see Nicolás M Perrone, ‘Making Local Communities Visible: A Way to Prevent the Potentially Tragic Consequences of Foreign Investment?’ in Alvaro Santos, Chantal Thomas and David Trubek (eds), *World Trade and Investment Law Reimagined: A Progressive Agenda for Inclusive Globalisation* (Anthem Press 2019) 171.

¹³⁸ Nicolas Lamp, ‘How Should We Think About the Winners and Losers from Economic Globalisation? Three Narratives and their Implications for the Redesign of International Economic Agreements’ (2020) 30(4) *European Journal of International Law* 1359 (juxtaposing ‘Trump’ and ‘establishment’ narratives).

¹³⁹ I am grateful to David Schneiderman and Ruth Buchanan for this point.

¹⁴⁰ Jenny Andersson, *The Future of the World: Futurology, Futurists and the Struggle for the Post Cold War Imagination* (OUP 2018).

¹⁴¹ Mark Fisher, *Capitalist Realism: Is There No Alternative?* (Zero Books 2009) 2 (describing the ‘widespread sense that not only is capitalism the only viable political and economic system, but that it is now impossible to even *imagine* a coherent alternative to it’).

narratives not only come about as a result of economic realities, but may also drive them.¹⁴² Recent efforts to think economics *after* neoliberalism demand to be understood as stories in this vein.¹⁴³ Mariana Mazzucato, for instance, has decried the ‘biased storyline’ of the inefficiency of the public sector vis-à-vis the private sector.¹⁴⁴ For Mazzucato, this ‘mythmaking’ has given rise to an ‘immense amount of value extraction’, necessitating the need for ‘new stories’ about wealth creation in the contemporary economy.¹⁴⁵ Storytelling emerging from the law and political economy camp involve similar efforts to displace the protagonismo of the market and reclaim the state,¹⁴⁶ often using Polanyi to trump Hayek.

The COVID-19 pandemic - ongoing at the time of this chapter’s writing – also gave rise to a narrative outbreak regarding future political economies.¹⁴⁷ Historian of medicine Charles Rosenberg once described epidemics operating as a form of ‘dramaturgy’,¹⁴⁸ and the present coronavirus has been no exception. The myth that the economy must come first was swiftly shattered in countries that had hitherto subscribed to Thatcherite ‘there is no alternative’ dogma.¹⁴⁹ While some have styled the pandemic as a ‘portal’ to a post-neoliberal future,¹⁵⁰

¹⁴² Robert Shiller, *Narrative Economics: How Stories Go Viral and Drive Major Economic Events* (Princeton University Press 2019); Jens Beckert, *Imagined Futures: Fictional Expectations and Capitalist Dynamics* (Harvard University Press 2016).

¹⁴³ Suresh Naidu, Dani Rodrik and Gabriel Zucman, ‘Economics After Neoliberalism’ *Boston Review* (15 February 2019) (discussing a willingness to subordinate textbook economic efficiency to other values such as democratic rule and egalitarian relationships among citizens).

¹⁴⁴ Mariana Mazzucato, *The Entrepreneurial State: Debunking Public vs Private Sector Myths* (Penguin 2015) 7-8.

¹⁴⁵ Mariana Mazzucato, *The Value of Everything: Making and Taking in the Global Economy* (Penguin 2018) xviii.

¹⁴⁶ Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski and K Sabeel Rahman, ‘Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis’ (2020) 129(6) *Yale Law Journal* 1784, 1792 (‘understanding that the economy is always already political in both its origin and its consequences ... [and requiring] attentiveness to the ways in which economic and political power are inextricably intertwined with racialised and gendered inequity and subordination’).

¹⁴⁷ Anthea Roberts and Nicholas Lamp, ‘Is the Virus Killing Globalization? There’s No One Answer’ *Barrons* (15 March 2020).

¹⁴⁸ Charles Rosenberg, ‘What is an Epidemic? AIDS in Historical Perspective’ (1989) 118 *Daedalus* 1; Priscilla Wald, *Contagious: Cultures, Carriers and the Outbreak Narrative* (Duke University Press 2008).

¹⁴⁹ Adam Tooze, ‘Coronavirus has shattered the myth that the economy must come first’ *The Guardian* (20 March 2020).

¹⁵⁰ Arundhati Roy, ‘The Pandemic is a Portal’ *Financial Times* (3 April 2020).

others have concluded more pessimistically that post-COVID-19 futures will more likely be an instance of never letting a serious crisis go to waste.¹⁵¹

This narrative dissensus is a microcosm of the challenges that attend storytelling in the Anthropocene.¹⁵² Climate change has been described by Dipesh Chakrabarty as presenting formidable challenges to several metanarratives of humanist history.¹⁵³ The Dark Mountain Project offers a useful corrective in this respect.¹⁵⁴ A network of writers and artists and activists, the Project's manifesto is a striking paean to counterstorytelling:¹⁵⁵

We believe that the roots of these crises lie in the stories we have been telling ourselves. We intend to challenge the stories which underpin our civilisation: the myth of progress, the myth of human centrality, and the myth of our separation from 'nature'. These myths are more dangerous for the fact that we have forgotten they are myths. We will reassert the role of storytelling as more than mere entertainment. It is through stories that we weave reality ... We will celebrate writing and art which is grounded in a sense of place and of time. Our literature has been dominated for too long by those who inhabit the cosmopolitan citadels.

Should international lawyers – those quintessential inhabitants of the cosmopolitan citadels – be entrusted with the task of forecasting the future of the international economy? Two notes of caution must be advanced. Faith in progress often imperils forecasting regarding the future of capitalism,¹⁵⁶ and international lawyers are perennial sinners in that respect.¹⁵⁷

¹⁵¹ Philip Mirowski, *Never Let a Serious Crisis Go To Waste: How Neoliberalism Survived the Financial Meltdown* (Verso 2013).

¹⁵² Amitav Ghosh, *The Great Derangement: Climate Change and the Unthinkable* (University of Chicago Press 2016) 8 ('Are the currents of global warming too wild to be navigated in the accustomed barques of narration?').

¹⁵³ Dipesh Chakrabarty, 'The Climate of History: Four Theses' (2009) 35(2) *Critical Inquiry* 197.

¹⁵⁴ The Dark Mountain Project *Walking on Lava: Selected Works for Uncivilised Times* (Chelsea Green Publishing 2017).

¹⁵⁵ <https://dark-mountain.net/about/manifesto/> (accessed on 6 July 2020).

¹⁵⁶ Francesco Boldizzoni, *Foretelling the End of Capitalism: Intellectual Misadventures Since Karl Marx* (Harvard University Press 2020) 225-231.

¹⁵⁷ Martti Koskenniemi, 'The Subjective Danger of Projects of World Community' in Antonio Cassese (ed), *Realising Utopia: The Future of International Law* (Oxford University Press 2012) 3.

More fundamentally, even heterodox modes of knowledge production in international economic law demand to be understood not as oppositional to the neoliberal social context in which they are produced, but as ‘part and parcel of that context’.¹⁵⁸

Learning from the Dark Mountain Project’s warning about the myth of progress, one approach would be to imagine the future by ‘projecting ourselves into it, adopting its standpoint, [and then] ... retroactively insert[ing] into its past (the past of the future) counterfactual possibilities’.¹⁵⁹ Science fiction might be called in aid as a means of anticipating different economic futures,¹⁶⁰ perhaps more productively in its dystopian rather than utopian variants. As science fiction author cum international law theorist China Miéville noted:¹⁶¹

Utopias are necessary but not only are they insufficient: they can, in some iterations, be part of the ideology of the system, the bad totality that organises us, warms the skies, and condemns millions to peonage on the garbage scree.

David Scott once observed that it is ‘precisely when the future has ceased to be a source of longing and anticipation that the past has become such a densely animated object of enchantment’.¹⁶² Although the ongoing appeal of the turn to history in international law shows no sign of abating, international lawyers must also seek to cultivate a sense of an ending.¹⁶³ International lawyers should approach the crystal ball with humility, remembering to distinguish between the progress narratives of the profession and their own political posture.

¹⁵⁸ Jana Bacevic, ‘Knowing Neoliberalism’ (2019) 33(4) *Social Epistemology* 380, 389 (‘It is perfectly possible to engage in ever-more-sophisticated analyses of the nature of the ‘neoliberal beast’ from within its belly’).

¹⁵⁹ Slavoj Žižek, *First as Tragedy, Then as Farce* (Verso 2009) 151. For a useful application, see Ingo Venzke, ‘International Law and the Spectre of Inequality’ (Amsterdam University Press 2019).

¹⁶⁰ William Davies (ed), *Economic Science Fictions* (Goldsmiths Press 2018); Orna Ben-Naftali and Zvi Triger, ‘The Human Conditioning: International Law and Science-Fiction’ (2018) 14(1) *Law, Culture and the Humanities* 6. See also the literature on Afrofuturism: Alondra Nelson, ‘Introduction: Future Texts’ (2002) 20(2) *Social Text* 1.

¹⁶¹ China Miéville, ‘The Limits of Utopia’ in Thomas More, *Utopia* (Verso 2016) 16-17.

¹⁶² David Scott, *Omens of Adversity: Tragedy, Time, Memory, Justice* (Duke University Press 2014) 13.

¹⁶³ Frank Kermode, *The Sense of an Ending* (Oxford University Press 1967).

Failure to forecast the future altogether likely involves capitulation to the pernicious path-dependencies of management consultants involved in scenario planning – a dystopian prospect indeed.

V POLYPHONIC INTERNATIONAL LAW

Novelist Chimamanda Adichie once described the ‘danger of a single story’.¹⁶⁴ Without proper scrutiny, the ‘single story’ can constitute an invisible frame.¹⁶⁵ The formidable analytic purchase of counterstorytelling is to render that frame visible and other frames viable.¹⁶⁶ Counterstorytelling is less invested in endorsing a hermeneutic of suspicion than affirming a ‘right to narrate’.¹⁶⁷ The aesthetic aspiration might be to achieve a kind of polyphony, with texts comprising a multiplicity of voices that do not merge into a singular perspective.¹⁶⁸ Polyphony in practice requires learning how to listen without ‘interrupting, negating, minimising, or inserting a dominant narrative’.¹⁶⁹ In an earlier article on narration in international law, I urged international lawyers to foster multi-perspectival narration as a ‘valiant effort to narrate without silencing, without consuming the voices of others’.¹⁷⁰ I

¹⁶⁴ https://www.ted.com/talks/chimamanda_ngozi_adichie_the_danger_of_a_single_story (accessed 6 July 2020).

¹⁶⁵ Delgado, ‘Storytelling for Oppositionists’ (n 49) 2413 (‘They are like eyeglasses we have worn a long time’); Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Beacon Press 2015) xxiii (‘The ultimate mark of power may be its invisibility; the ultimate challenge, the exposition of its roots’).

¹⁶⁶ Friedrich Nietzsche, *On the Genealogy of Morals* (Penguin 2013) 112 (‘There is *only* a perspective seeing, *only* a perspective ‘knowing’; and the *more* affects we allow to speak about one thing, the *more* eyes, different eyes, we can use to observe one thing, the more complete will our ‘concept’ of this thing, our ‘objectivity’ be’).

¹⁶⁷ Homi K Bhabha, ‘The Right to Narrate’ (2020) 38 *Harvard Design Magazine* (affirming the ‘dialogic right to address and be addressed, to signify and be interpreted, to speak and be heard’).

¹⁶⁸ Mikhail Bakhtin, ‘Theory and History of Literature v8’ in *Problems of Dostoevsky's Poetics* (University of Minnesota Press 1984). See eg Svetlana Alexievich, *Second-Hand Time* (Fitzcarraldo Editions 2017) (powerfully assembling a chorus of individual monologues regarding the post-Soviet condition). Cf Rose Sydney Parfitt, ‘Newer is Truer: Time, Space, and Subjectivity at the Bandung Conference’ in *Bandung, Global History, and International Law* (n 114) 49, 64 (noting the risk that ‘polyphony’ can become ‘cacophony’).

¹⁶⁹ Milton Reynolds, ‘Shifting Frames: Pedagogical Interventions in Colorblind Teaching Practice’ in Kimberlé Crenshaw et al (eds), *Seeing Race Again: Countering Colorblindness Across the Disciplines* (University of California Press 2019) 352, 367-8.

¹⁷⁰ Windsor, ‘Narrative Kill or Capture’ (n 41) 768.

conclude this one by renewing an appeal for insurgent storytelling against all modalities of domination – past, present and future.