"Essentially Contested": Law, Literature, Postcoloniality

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> There are no easy conventions for the creation of meaning.
> Robert Cover, "Nomos and Narrative" (25)

In writing this introduction to "Law, Literature, Postcoloniality" I borrow the term "essentially contested" from W.B. Gallie's *Philosophy and the Historical Understanding* as a resonant concept with which to mark the interlocking terrain addressed by these ten essays.[1] Gallie's analysis of essentially contested meanings privileges concepts emergent within a field of social engagement that give rise to conflicted sets of social values and divergent practices of interpretation which fail to achieve resolution through imposed principles of universal judgement. His examples of such terms include "art," "democracy," "religion," and "social justice" (157), but the broader reach of his argument extends to the practical realm of human social activity in which these disputes vary according to their contested meanings. As he states, "concepts which are essentially contested [are] concepts the proper use of which inevitably involves endless disputes about their proper uses on the part of their users" (158). For Gallie, the apposite role of social criticism is to distinguish these terms as sites of communal interaction that by their very nature are irreducibly different from each other and cannot be resolved through the application of universal principles. As he explains, "if the notion of logical justification can be applied only to such theses and arguments as can be presumed capable of gaining universal agreement in the long run, the disputes to which the uses of any essentially contested concept give rise are not genuine or rational disputes at all" (183). What resonates as the force of the social in essentially contested terms is their ability to articulate the "essential contestedness [of] our basic moral notions and principles," which matter to us, as Gallie claims, insofar as

they designate conflicts that gain their oppositional force in their "wide bearings upon human life" (190).

To consider the terms law, literature, postcoloniality as *essentially contested* according to Gallie's definition necessitates a reassessment of these concepts in their broader engagements with social sites of discrepant meaning-making. Given the array of cultural and political issues addressed here, these essays signal the urgency and significance of such an undertaking. On the one hand, these papers challenge the interrelationships between law, literature, and postcolonial analysis through their engagements with contemporary issues that represent formative sites of contemporary cultural conflict. They examine issues generated in the encounter of law with indigenous cultural practices (Bracken, Cheyfitz, Karno), law in its manifestations through colonial governance (Mawani, Reichman), and law at the intersection of postcoloniality, violence, and legal ethics (Findlay, Gottlieb, Fitzpatrick). Their attention to law's generative capacities signals the inescapability of law's continuance at the "forefront of that very relation" in which the "West's relation to its 'other'" gets constituted and critically explored through the terrain of the postcolonial (Fitzpatrick and Darian-Smith 4). Yet, these essays also examine the inescapable violence of colonial conflicts by asking what form postcolonial legality might take in generating fundamental human rights and social justice. They address the uneasy relationship between human rights violations and colonial-imperial legacies to articulate the "becoming-time" of a postcolonial future that has yet to take shape (Patton, Ratti).

On the other hand, these essays also participate in a broader critical practice that may be characterized according to the "world building" capacity that Robert Cover identifies with law's social and normative functions. For Cover, the legal system's "professional paraphernalia of social control" represents but a small part of the wider legal habitus that articulates the "prescriptions," "narratives," "meanings," "constitutions," "epics," and "scriptures" of the "world in which we live" (4–5). Cover argues that this normative universe, which is so often taken up by the "formal institutions of law," is also established through a generative "system of tension or a bridge linking a concept of reality to an imagined alternative" that extends beyond and challenges law's seamless associa-

tions with "justificatory enterprises" (9). He claims for the world-building competencies of law a more utopian project of "alternity" which "entails the application of human will to an extant state of affairs as well as toward our visions of alternative futures" (9). An essential task in creating this future resides for Cover in our ability to formulate "legal meaning" in a two-fold initiative that not only provides the source for "a challenging enrichment of social life," but also represents "a potential restraint on arbitrary power and violence" (68).

The contradictions inherent in reformulating colonial laws to construct an alternative site of justice and moral obligation are explored in several papers in this issue, which probes the capacity of imposed legal frameworks to realize postcolonial ends. As many of the essays show, the colonial past with its "jurisgenerative" narrativization of events continues to represent our inherited order or "normative world," a world that Cover defines as staging the habitations of our "nomos," in which "[w]e constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void" (47, 4). Colonial legal inheritances persist in shaping and hierarchically ordering our social and legal world as essays by Christopher Bracken, Renisa Mawani, Eric Cheyfitz, Ravit Reichmann, Isobel Findlay, and Jason Gottlieb demonstrate. These scholars reveal that the project of conceptualizing justice in the interests of the powerless rather than the powerful remains urgent, even as we have been forced to recognize our implication in global legal realities in which "the paradigm of *universal human rights*" are giving way to "the paradigm of *trade-related, market-friendly human rights*" (Baxi 552). In linking law, literature, and postcoloniality, contributors articulate a conceptual shift that situates the postcolonial as a site of social positioning, one that varies across a spectrum of contiguous and uneven emplacements that need to confront the "globalization of law" in its new forms of "legal imperialism" (552). In this regard, Peter Fitzpatrick's engagement with the challenges of articulating a form of postcoloniality legality is highly suggestive.

The active reworkings of the law and literature paradigm, in which several of these essays take part, are also enabling new understandings from which to assess the social embeddedness of both disciplines and

their contributions to the cause of social and legal redress. Essays by Paul Patton, Valerie Karno, and Manav Ratti examine how literature provides a means for investigating epistemological and hermeneutical questions, questions that are not only imperative to our postcolonial politics, but also add to the enrichment of our current theories about the relationships between colonizing and colonized peoples. Their contributions focus on the capacities of literature to render visible the "unhistorical lives" (Ondaatje 59) that postcolonial writers have long been summoning to "reflect on the meaning and achievement of justice" (Morawetz 451). The creative and interpretive dimensions of their contributions shape and inform the transformational capacities that all of these essays propose in thinking together law, literature, postcoloniality. Collectively, the essays in this special issue participate in a continuing project that foregrounds the contested yet interrelated terrain of these terms while offering a necessary beginning point for further reflection and analysis.

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Works Cited

Baxi, Upendra. "Postcolonial Legality." *A Companion to Postcolonial Studies*. Ed. Henry Schwaz and Sangeeta Ray. Massachusetts: Blackwell, 2000. 540–55.

Cover, Robert. "Foreword: Nomos and Narrative." *Harvard Law Review* 97 (1983–1984): 4–68.

Fitzpatrick, Peter, and Eve Darian-Smith. "Laws of the Postcolonial: An Insistent Introduction." *Laws of the Postcolonial*. Ed. Eve Darian-Smith and Peter Fitzpatrick. Ann Arbor: U of Michigan P, 1999. 1–15.

Gallie, W.B. "Essentially Contested Concepts." *Philosophy and the Historical Understanding*. Second Edition. New York: Schocken, 1969. 157–91.

Morawetz, Thomas. "Law and Literature." *A Companion to Philosophy of Law and Legal Theory*. Ed. Dennis Patterson. Malden: Blackwell, 1999. 450–61.

Ondaatje, Michael. *Anil's Ghost*. New York: Vintage, 2001.