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Introduction: Identity and Crisis: The Critical Race Project and Postmodern Political Theory

IDENTITY AND CRISIS: THE CRITICAL RACE PROJECT AND POSTMODERN POLITICAL THEORY

GIL GOTT*

The arrival of the current post-Civil Rights, postcolonial, post-Cold War era has presented movement activists and progressive scholars with a unique set of challenges. Mobilizing constituencies within, let alone across, identity, national, and class lines has proven difficult as 19th and 20th century forms of white supremacy, imperialism, and Fordist forms of capitalism fade from view. Scholars of the (now older) New Left generation, as well as those of the poststructural and postcolonial Left have responded to the changing circumstances with calls for fundamental theoretical and strategic ground-clearing, in many cases suggesting nothing short of a fundamental redefinition of the political. Progressive legal scholarship necessarily processes the crisis¹ through its own long-standing ambivalence regarding law's relationship to politics.² Indeed, as social conflict and systemic contradiction seem increasingly to be channeled and managed through expanding transnational and domestic legal processes, the sphere of the political seems to shrink and itself fade from view.³ While few progressive legal scholars doubt the political nature of all law, a different concern is raised by the possibility that law increasingly functions as a colonizer of the political.

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1. See discussion *infra* notes 40-44 and accompanying text for a definition of the "political crisis" as discussed in this paper.

2. See generally MORTON HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1870-1960: THE CRISIS OF LEGAL ORTHODOXY* (1992) (presenting the intellectual history of modern American legal thought as fluctuating between several traditional polarities that draw their real meaning from the underlying separation of law from politics); ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN A POST-CIVIL RIGHTS AMERICA* 128-149 (1999) (discussing critical race theory's "practical turn" that is based on an understanding of the real limitations and potentials of using law and legal process in the pursuit of racial justice).

3. The anti-globalization Left offers an interesting case for understanding the limits of movement politics in the current conjuncture. To date, this impressive movement has primarily targeted the international legal and governmental institutions (WTO, World Bank, IMF, Global Economic Forum, G-8) that structure globalization from above. The pressure the protest movement creates is therefore likely to lead to legal reform through these institutions. It is as yet unclear how effective anti-globalization can be as a movement that structures change "from below." For an interesting analysis of the various responses to globalization, see generally Patrick Bond, *Strategy and Self-Activity in the Global Justice Movements at* http://www.fpif.org/papers/gjm_body.html (representing a "Foreign Policy in Focus Discussion Paper" that presents excerpts from a forthcoming book by the author describing the approaches of various anti-globalization movements) (last visited Sept. 12, 2001).

Briefly surveying the range of left-liberal scholarly responses in the United States, we can discern three categories of prescriptions for what progressive politics should look like under current conditions.⁴ Some commentators, disaffected by Civil Rights-style race, gender or sexuality-based coalitional politics, attribute perceived social movement stagnation to the rise of “identity politics,” to them, a form of politics that is divisive and lacking in material focus. Instead, these writers envision a kind of progressive populism that would circumvent identity politics and emphasize common economic and quality-of-life concerns shared across social groups and economic strata.⁵ Others combine a post-structural aversion to politics based on essentialized group identities with a loss of faith in the various meta-narratives of emancipation (socialism, feminism, color conscious anti-racism, and anti-colonial nationalism). Politics, from this perspective, should remain pluralistic, open-ended and shifting, ever vigilant against reductive ideological claims regarding fixed identities (sexual, racial, gender, national) and broad-scale emancipatory projects.⁶ A third group that advocates a form of postmodern (neo) pragmatism foregrounds the political potential inherent in the affective forces of human compassion and the harmony-creating dynamics of procedural fairness, even in the face of the postmodern contingency of truth, knowledge and justice claims. From this perspective, too, politics remains provisional, and emphasis is placed on situational and local responses and necessarily shifting solidarities.⁷

Behind such substantive prescriptions for a defensible progressive politics in the postmodern era are deeper theoretical problems regarding the very possibility of political contestation, questions about whether “the political” still even exists and in what form.⁸ Disagreements regard-

4. I focus here only on post-Civil Rights and post-Labor models. Of course, the older forms of race and class struggles remain the operative models for many, if not most politically active individuals and groups on the Left. Various critical approaches to identity and law (Critical Race Theory, LatCrit, postcolonial legal studies, Third World Approaches to International Law) that have emerged recently have debated the issues and approaches mentioned here.

5. See, e.g., TODD GITLIN, *THE TWILIGHT OF COMMON DREAMS: WHY AMERICA IS WRACKED BY CULTURE WARS* (1995) (blaming, in part, identity politics for the demise of a common left-liberal politics).

6. See, e.g., E. San Juan, *Post-Colonialism and the Question of Nation-State Violence*, 78 *DENV. U. L. REV.* 889 (2001) (discussing and critiquing this approach). The LatCrit project has incorporated certain elements from this category in its fundamental organizing philosophy, although its very name implies a program based on the assertion of a collective (perhaps necessarily “essentialized”) racial grouping. See Francisco Valdes, *Afterword: Theorizing ‘OutCrit’ Theories: Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits and LatCrits*, 53 *U. MIAMI L. REV.* 1265, 1278-1294 (1999) (discussing the coalitional model of LatCrit and the “anti-essentialist essentialism” of LatCrit method).

7. See generally RICHARD RORTY, *CONTINGENCY, IRONY, AND SOLIDARITY* (1989) (frequently cited as a leading neopragmatist text, written by a scholar of the American pragmatist tradition).

8. Increasing concern about the problems of a robust political sphere in late modern societies is reflected in the spate of recent publications revisiting modern theoretical foundations of the

ing the progressive potential of identity politics, the continued salience of class struggle (and the relationship between the two), and the meaning of globalization imply less openly debated but, nevertheless, divergent understandings of the current structure of the political.⁹ A theoretical reworking of the political seems especially crucial if we are indeed experiencing an epochal shift in the constitution of authority and power of the magnitude suggested by prognostications regarding the demise of the nation-state. What each of the progressive prescriptions outlined above shares is a certain national imaginary or sovereign ontology that seems to inadequately respond to globalized conditions of authority and domination.

The four articles critically analyzed in this essay speak to various problems of the nation and its transcendence, while implicating the broader theoretical problems of a globalized political. E. San Juan's essay on violence and the nation is in large part a repudiation of particular postcolonial/poststructural¹⁰ reworkings of the modern political. Ratna Kapur's article on the political significance of subaltern sexuality in the case of Indian sex workers stands as an indictment of the international anti-trafficking movement's use of legal reform to address the multiform subjugation of subaltern sex workers. Charles R. Venator Santiago's paper on the spatial determinants of the neocolonial form of Puerto Rican statutory citizenship argues that modern racist ideology played a mediated role in the creation of Puerto Ricans' second-class citizenship. Santiago's emphasis on the operation of ambiguity in the "Othering" of Puerto Rican citizens reveals the hegemonic force of a race jurisprudence that corresponds to more recent, global forms of race-based domination.¹¹

political. There are books discussed in this article that approach the problem of the political with a postmodern understanding of the changes accompanying globalization. See MICHAEL HARTD & ANTONIO NEGRI, *EMPIRE* (2000); GEORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* (Daniel Heller Roazen trans., 1998) (1995) [hereinafter AGAMBEN, *HOMO SACER*]; GEORGIO AGAMBEN, *MEANS WITHOUT END: NOTES ON POLITICS* (Vincenzo Benetti & Casare Casarino trans., 2000) (1996) [hereinafter AGAMBEN, *MEANS WITHOUT END*]; R.B.J. Walker, *Political, International, Theoretical* (2001) (delivering an unpublished manuscript as a paper at the International Studies Association Annual Meeting, Chicago, Illinois) (manuscript on file with author). The challenges of reconceptualizing the political under conditions of utilitarian liberal democracy are usefully spelled out in the works of Carl Schmitt. Schmitt, a Nazi sympathizer, is an embarrassing, though important precursor of contemporary reworkings of political theory, even for progressives, because of his recognition of the dulling effects on the political of liberal democracy in capitalist societies. See CARL SCHMITT, *THE CONCEPT OF THE POLITICAL* (George Schwab trans., 1996) (1932).

9. See generally David Kennedy, *Receiving the International*, 10 CONN. J. INT'L L. 1 (1994) (mapping the various understandings of how internationalization may affect politics).

10. I will use the term postcolonial/poststructural as shorthand for the particular body of theory that San Juan critiques. It should be clear that the term on its face could include theoretical approaches that San Juan does not specifically critique here, and with which he may be in substantial agreement. The reader should refer to San Juan's article for a closer designation of the particular postcolonial and poststructural theory he critiques. See E. San Juan, *Post-Colonialism and the Question of Nation-State Violence*, 78 DENV. U. L. REV. 891 (2001).

11. See *infra* text accompanying notes 97-98.

Finally, Sylvia R. Lazos Vargas's piece on the role of racism in the Spanish-American War and its colonial aftermath, which also contains a reflection on positivist historiography, exemplifies a studied pragmatism vis-à-vis the question of racism as a structural historical determinant. Lazos Vargas thus advocates a more "disciplined" vision of politically relevant critical race scholarship, which in this case means understanding the fundamental imbrication of race and nation.

Reading through these pieces, one becomes aware of a common sense of urgency, albeit uniquely expressed by each writer. It is almost as if the writers were trying to warn of an impending catastrophe awaiting progressives pursuing the wrong political strategy. In at least three of the pieces there is a sense that some of us may be unwitting accomplices to a politics we would otherwise wish to avoid. In some real sense a "crisis of the political" seems to animate the work of these highly perceptive intellects. I propose reading the articles in this section as responses to the political dilemmas posed by "Empire," an emerging system of global domination that is distinguishable from previous modern political forms of imperialism.¹²

I have grouped the articles thematically in pairs, looking first at San Juan and Kapur, then Santiago and Lazos Vargas. I will highlight the points of convergence and disagreement within the pairs of articles and, in the final section, consider the political crisis that is, arguably, the unnamed referent of these four articles. I will suggest how each writer's work contributes to a reconceptualization of the (postmodern) political.

San Juan's essay works as part of a longer critical project he has pursued over a span of years. His recent book, *Beyond Postcolonial Theory*, critiques mainstream postcolonial theory from the perspective of radical political economy and Fanonian identity politics.¹³ As a general matter, San Juan views postcolonial theory's interest and faith in "[h]ybridity, heterogeneous and discrepant lifestyles, local knowledges, cyborgs" and "borderland scripts" as tending to "obfuscate the power of the transnational ideology and practice of consumerism and its dehumanizing effects."¹⁴ In the present essay on violence and the nation San Juan offers a provocative argument in favor of a Fanonian understanding of violence on behalf of and through the nation as the "expression of subaltern agency." In making this argument San Juan asserts the political relevance

12. See HARDT & NEGRI, *supra* note 8. Hardt and Negri develop a theory of Empire that is a sophisticated rethinking of the dilemmas facing traditional notions of the political. Hardt and Negri explain that "[a]long with the global market and global circuits of production has emerged a global order, a new logic and structure of rule—in short, a new form of sovereignty. Empire is the political subject that effectively regulates these global exchanges, the sovereign power that governs the world." *Id.* at xi. See *infra* text accompanying notes 50-57.

13. E. SAN JUAN, JR., *BEYOND POSTCOLONIAL THEORY* (1998).

14. See *id.* at 8.

of the nation in contradiction to the central thrust of postcolonial/poststructural theories of the nation.

San Juan's disagreement with postcolonial/poststructural theorists reflects the deeper ongoing dilemma of discerning the proper form and focus of anti-systemic politics. As the revolutionary politics of the 1950s and 60s recede further into the past, culturalist understandings of the political have, understandably, proliferated. Anti-systemic scholars, perhaps as a result of having been weaned on the political ennui of the Reagan-Bush and Clinton years, have turned their critical attention to the ideological functions of prominent modern institutions—the nation-state, the nuclear family, Enlightenment systems of knowledge production, etc. For two generations of progressive humanities scholars, poststructuralism has provided a convincing answer to questions regarding their field's political relevance.¹⁵ A parallel response to a similarly perceived "crisis of legitimacy" among critical legal scholars can be seen in various post-structural approaches that increasingly problematize law as discourse.¹⁶

San Juan subjects these "culturalist empiricist" trends, which he suspects of tending toward a depoliticized liberal individualism, to materialist analysis. Whereas postcolonial/poststructural theory may categorically reject such political mega-subjects as the nation, race, women, or gays/lesbians, San Juan seeks to evaluate the political meaning of such collectives within given contexts. He thus invokes the structuralism of Ernest Gellner and Benedict Anderson, whose work situated the modern nation-state squarely within the trajectory of the modern political economy of commodity exchange. San Juan does not fully dismiss the culturalist claim regarding the mythological basis of nationhood so much as he insists on a "both-and" approach that immediately positions the imagined national community within a broader structural critique of modern socioeconomic hegemony. For San Juan there is irony in post-colonialism/poststructuralism's categorical disparagement of the nation, for him a nonfoundational, socially constructed element of analysis that itself requires more contextualized analysis.

In a manner consistent with his "defense" of the nation, San Juan assesses national violence through a context-sensitive reading of the political space such violence opens. He first rejects a categorical conflation of the nation with the state, a conflation evident in the very term "nation-

15. See ROBERT C. HOLUB, *CROSSING BORDERS: RECEPTION THEORY, POSTSTRUCTURALISM, DECONSTRUCTION* 111-12 (1992) (explaining the rise of poststructuralism in the humanities as, in part, a reaction to the demise of radical student movements of the 1960s).

16. Several "law and anthropology" and "new approaches" that have arisen over the past decade indicate this trend. Law and anthropology, law and literature, and New Approaches to International Law, for example, tend to emphasize the discursive aspects of law. Yamamoto critiques the trend as it is manifested in progressive race theory. See YAMAMOTO, *supra* note 2, at 143 ("Progressive race theory's tendency toward preoccupation with discourse is problematic, however, because it comes at the overall expense of the concrete and particular.").

state.” Again building on the structural analysis of scholars such as Gellner, San Juan distinguishes *state-* from *nation-*driven violence. The state, in this sense, is a uniquely modern institution that exists by, for, and of capital, and violence that the state orchestrates directly and/or indirectly serves capital’s interests. Meanwhile, San Juan sees violence on behalf of the people or nation as potentially anti-imperial and anti-capitalist in its origins and effects.¹⁷ Thus, such violence “demands dialectical triangulation” in order to avoid the unwarranted primitivization of a forceful collective resistance to capital’s imperial structure. San Juan sees postcolonial/poststructural theory as essentializing such collective forms of violence, while failing to countenance how some of those forms may embody the emancipatory energy of counterhegemonic social collectives. Thus, San Juan insists on analyzing nationalist violence beyond a rational/primordial binarism, seeing the nation *form* instead as neither inherently destabilizing/primordial, nor stabilizing/rational. Dialectical triangulation means always adding the material/historical dimension to the discursive analysis of such conceptual binaries.

San Juan further questions whether culturalist approaches to the nation and nationalism can explain the basic paradox of modern international political economic organization. This paradox lies in the dual function of the nation-state as constrainer of cross-border flows (of goods, people, capital, etc.) and enabler of global economic organization, multi-national corporations and intergovernmental financial institutions. From a culturalist perspective, San Juan argues, this paradox remains unanalyzed since nationalist ideology implies a centripetal principle of organization that would contradict neoliberal economic organization. San Juan would instead explain the modern paradox of closed nation-states sanctioning an open global economy by foregrounding how the class dialectic works through the closed/open paradox, as the way in which the capitalist system necessarily operationalizes international boundaries.

On a more general level San Juan’s analysis of the nation and national violence stands in fundamental disagreement with postcolonial/poststructural theory regarding the nature of the political. For San Juan, the collective agency of peoples, subaltern groups, anti-colonial nations, and the non-bourgeois classes remains central to any theory of emancipatory political action. For mainstream postcolonial/poststructural theory these collectivities themselves constitute problematic forms, in the case of nations perhaps even becoming the primary engine of domestic economic and political oppression and, internationally, of colonialism. San Juan’s argument is that postcolonial/poststructural theory too quickly

17. To appreciate how San Juan understands “nation” or “people,” one might recall Gramsci’s notion of the “national popular collective will,” a term that indicated a counter-hegemonic and non-statist collective political formation. See ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS 130-31 (Quinton Hoare & Geoffrey Nowell Smith eds. and trans., 1971).

(as he says, in “quasi-Hegelian” manner) attributes oppression to the collective abstraction of the nation as form. This leads automatically to the conclusion, which San Juan rejects, that the notion of “decolonizing nations” would be oxymoronic since the nation is incapable of serving as a political vehicle for emancipation.

Violence for San Juan cannot be understood in a purely culturalist register because that limits the focus to the “violence” of unifying ideas and cultural forces that “suppress difference or negate multiple ‘others’ not subsumed within totalities such as nation, class, gender, etc.” Violence so construed leads to a truncated understanding of politics as an “epiphenomenal manifestation of discourse and language-games.” Indeed, San Juan sees culturalist “contextualism” as partly responsible for the continued salience of identity politics, since such a critical posture “reproduces the condition for refusing to attack the causes of class exploitation and racial violence.” Perhaps most disappointing for San Juan is his sense that postcolonial/poststructural critics summarily dismiss all Third World revolutionary projects, even those pursuing emancipatory goals.

San Juan turns to Fanon’s analysis of anti-colonial violence in working towards an alternative framing of the problem. In Fanon’s synthesis of historical materialism and (an early version of) critical race theory, San Juan finds a corrective to culturalist interpretations of national culture and violence. San Juan describes this Fanonian synthesis in terms of a national culture whose content comes directly from the resistance efforts of the colonized. It is not *the form* of the nation for Fanon (or San Juan) that is to be problematized, but rather the specific historical conditions of a given national formation. National culture is thus historicized, that is, understood as the “whole body of efforts made by a people” in the ideational realm to resist its subjugation and destruction. In the particular Algerian revolutionary context that Fanon studied, these “cultural” efforts are inseparable from the practices of concrete anti-colonial politics.

Fanon transcends the particular/universal dilemma of liberal philosophy (for example, as now reflected in the cultural relativism debates in the field of human rights) by theorizing anti-colonial national culture and violence as a particular “original idea propounded as an absolute.”¹⁸ The parallel notion of a “concrete universal” is important for San Juan in that it countenances a poststructural epistemological stance, while also embracing the nationalist framings of liberation struggles. On one hand, Fanon (San Juan) rejects the liberal universalism that underwrote white

18. See FRANTZ FANON, *THE WRETCHED OF THE EARTH* 41 (Constance Farrington trans.) (1963). Fanon dedicates a chapter to the question of violence in anti-colonial nationalist movements. In the passage quoted he is discussing the relationship between universalist rationality and the particular historical dialectic of de-colonization.

supremacist, Eurocentric colonial civilizing missions. On the other hand, the particular instances of nationalist anti-colonial struggle can be *categorically* endorsed contrary to postcolonial/poststructural approaches that reject both the underlying essentialization of subalterns into a revolutionary nation and the accompanying emancipatory metanarrative. The universal thus propounded—nationalist revolutionary anti-colonialism—grows from the particular historical context of colonial domination and resistance thereto, hence the term “concrete universal.”

Fanon’s historicist understanding of national culture (that is, as tied to politics and economics) underwrites San Juan’s claim that culturalist postcolonial/poststructural theory relies on an abstraction when it celebrates liminality, border ontologies, and transcultural syncretisms at the expense of collectivities such as the nation. For San Juan, the “peoples” behind such abstractions represent compromised visions of the political. San Juan wants to re-wed the more loosely conceived postmodern notions of social justice to a modernist collective goal of national self-determination. To the extent that postcolonial/poststructural theory insists on an anti-nationalist understanding of social justice, the political domain within which such a project can be pursued is similarly sub- or anti-national. San Juan feels that this parsing of the political creates an unnecessary dichotomy. Following Fanon, he asserts that national self-determination and social justice struggles can be interdependent, particularly when they involve a fundamental commitment to anti-capitalist struggle. The resulting notion of the political is thus imbued with both material and identity-based elements.

An important part of San Juan’s reworking of the political is his insistence that a critical distinction be made between, on the one hand, the notion of sovereignty as a function of the emancipatory politics of a nation or people and, on the other, the hegemonic role of state “sovereigns” as instruments of elite class interests. San Juan works this distinction through his analysis of violence. He expands the definition of violence to include the pervasive *structural* violence of the bourgeois state (and the commodifications and markets it enables) that he finds inscribed in the very rule of law of the *Rechtsstaat*. Moreover, drawing on Walter Benjamin’s distinction between the divine ends of justice and the profane means of law (as force), San Juan suggests a transvaluation of political violence to take place beyond the usual liberal rational dichotomy of means versus ends. This dichotomy insidiously precludes critical appreciation of political confrontation through the application of such enshrined clichés as “ends can never justify means.”

Thus San Juan would have us view the “legal” means of the liberal state—which collapses justice into due process without regard for social outcome—as violence, while understanding that the violent “means” used by the nation/people to achieve anti-capitalist self-determination are

“justified” because they grow from the historical dialectic of class struggle. (San Juan is quick to point out that both violent and peaceful means of struggle may be necessary and should be evaluated according to the narrative of emancipation from oppression.) For San Juan, a central shortcoming of postcolonial/poststructural theory, if it misunderstands the significance of violence and misconstrues the domain of the political, lies in the way it mirrors the ends/means rationality of liberal philosophy. In particular, just as violent struggle may sometimes be the appropriate outgrowth of the colonial dialectic, so too can totalities such as the nation, the working class and so on be appropriate political agents of change, regardless of our postmodern aversion to such essentialized “means.”

Finally, San Juan adapts Benjamin’s resolution of the ends-means dualism in buttressing his defense of the nation. Benjamin concluded that the possibility of justice (“divine ends”) was foreclosed in the realm of law (the debased means for enforcing the liberal social contract). Benjamin saw educative and communicative power as counter-forces to the state’s juridical-cum-violent, enforcement of social contract hierarchies. For San Juan, Benjamin’s notion of educative power and communication implies the collective action of the nation. San Juan’s reading of Benjamin here is ingenious since it plumbs the complexity of a thinker who was a sophisticated critic of Enlightenment rationality, historicist notions of progress, and liberal political and legal structures, but who also arguably preserved a modernist faith in the redemptive power of truly emancipatory, quasi-sovereign collective forms of agency. San Juan has us see this faith as a nuanced conceptual embrace of contestational political agency, collective or otherwise. Indeed, a normative aversion to sovereign power, as Carl Schmitt famously recognized, is a classical conceit of liberals, a label San Juan does not hesitate to affix to postcolonial/poststructural theorists.

Ratna Kapur’s work contrasts in many ways with San Juan’s, though one may certainly find some overlapping concerns as well. Kapur’s subjects are subaltern sex workers, with particular focus on sex workers in postcolonial India. Kapur argues that sex work can be an arena of politics wherein subaltern women empower themselves through acts of economic self-determination, while also resisting the patriarchal and repressive sexual mores of postcolonial society.¹⁹ The article critiques western depictions of subaltern sex workers, especially those of First World feminists. Kapur argues that such depictions have created a “victim-subject” of subaltern sex workers. These depictions stand in contrast to romanticized images of Western and white prostitutes, as exemplified by Julia

19. See also Prabha Kotiswaran, *Preparing for Civil Disobedience: Indian Sex Workers and the Law*, 21 B.C. THIRD WORLD L.J. 161 (2001) (discussing Indian sex work from a similar perspective as that of Kapur in her contribution here).

Roberts' "pretty woman" character. Kapur shows how the victim-subject pervades recent legal reform efforts that attempt to constrain the international trafficking of women for prostitution.

Kapur traces the current framing of sexual work and sexuality in India to the colonial period. British imperialists and Indian nationalists similarly manipulated representations of Indian women's sexuality for political advantage. For the British, "sexual contamination" in the colonial encounter became a common rationale behind efforts to legislate disciplinary Victorian morality. For Indian nationalists, Indian culture—as preserved in the Indian home—was an important trope of resistance to colonization. Indian cultural purity came to be equated with Indian women's chastity. There is an irony in the way both sides of the colonial equation are informed by their opposite numbers in the encounter. As Kapur points out, Indian nationalists were influenced by British Victorian morality and, as Laura Ann Stoler and others have shown, European sexuality itself was heavily influenced by the colonial experience.²⁰

Kapur argues that one type of Indian feminism, which frames itself as anti-imperial and nationalist, has conflated a traditionalist image of "authentic" Indian female subjectivity with sexual purity. From this conservative feminist perspective, sex work represents a derogation of Indian female subjecthood. Indian sex workers, in contrast to Western sex workers, are coerced by economic destitution into prostitution. This coercion represents a particularly insidious and communally significant form of violence since it deprives these women of their culturally authentic sexual chastity. Western sex workers are not subject to such violence since they operate within a market culture that brooks no exogenous moral code. The broader debate among feminists regarding the question of sex work legalization thus resolves according to a familiar (and patronizing) East-West cultural binarism, with legalization being appropriate in the nontraditional market cultures of the West but not in the more conservative and moralistic cultures of the East.

Kapur points out that this form of feminist cultural relativism serves the conservative agenda of the Hindu Right in India. Government policies that have been promulgated in the area of sex work have not protected the human rights of the women workers involved, but rather have increased the disciplinary reach of officials over the women in the name of preserving Indian cultural integrity. In particular, the handling of the AIDS crisis has shown the tendency of the state, encouraged by conservative feminists, to deal with sex work-related issues through the further criminalization and disciplining of sex workers at a time when they need enhanced government services and protections. Moreover, the notions of

20. See generally ANN LAURA STOLER, *RACE AND THE EDUCATION OF DESIRE* (1995); ROBERT J. C. YOUNG, *COLONIAL DESIRE: HYBRIDITY IN THEORY, CULTURE AND RACE* (1995).

rescue and rehabilitation, central to proactive state and conservative feminist approaches to sex work, bespeak the kind of disempowering victim-subject image Kapur finds at work behind the subjugation of subaltern sex workers.

A central point of contention in feminist debates regarding sex work is whether women can ever really engage in *consensual sex for pay*.²¹ Some feminists group prostitution with rape, maintaining that consent is contextually vitiated by the objectification and commodification of the female body inherent in any sex-for-pay transactions.²² Others have argued that consent to sex for pay is not only possible, but that such consent is crucial to understanding the social and political agency of women sex workers.²³ This notion of agency is important to a feminist conceptualization of the political as a site of resistance to the constraining morality of nationalist and patriarchal culture. Kapur points out that the consent debate actually instantiates an East-West binarism by presenting the quintessentially non-consenting prostitute as a Third World woman subject to coercive forms trafficking. Kapur argues that even those Western feminists who defend consensual sex work engage in a form of cultural imperialism by distinguishing between Third World victim prostitutes and First World consenting sex workers.

Kapur draws on the work of Kempadoo and Doezema²⁴ in positing a less ethnocentric approach to the issue of political empowerment for sex workers. From this perspective, both First World and Third World sex workers may be engaged in acts of self-determination. Thus, rather than assessing the consent question according to relative levels of economic coercion, Kapur suggests that we understand both subaltern and Western sex workers as autonomous market actors. Kapur advocates an approach that moves past the false binarisms of culture and consent towards a rights-based agenda that takes the political wherever it can be found.

21. For a recent article that proposes moving past this debate, *see generally* Beverly Balos & Mary Louise Fellows, *A Matter of Prostitution: Becoming Respectable*, 74 N.Y.U.L. REV. 1220 (1999) (arguing for decriminalization, but also a civil cause of action that prostitutes could use against those profiting from what the authors argue amounts to a violation of their civil rights).

22. *See, e.g.*, KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY* 36-38, 79-90 (1995). Barry argues that understanding prostitution as something other than rape creates a distinction without a difference. Both rape and prostitution are male-driven sexual subordinations of women. The overall male-dominated economy of sexual power renders these acts experientially equivalent. Parsing sexual subordination along the lines of individual consent misses the point as far as Barry is concerned. The patriarchal sexual order works equally well through rape or consensual prostitution. Individualized notions of the political that are inherent in the claim that women as market actors can "consent" to prostitution prevent the formation of effective feminist political consciousness necessary to combat the system of domination.

23. *See generally* GLOBAL SEX WORKERS (Kamala Kempadoo & Jo Doezema eds.) (1998) (taking this position in the international context of sex work and trafficking). For works taking a non-abolitionist stance, *see generally* those cited in Balos & Fellows, *supra* note 21, at 1291 n.323.

24. *See* GLOBAL SEX WORKERS, *supra* note 23.

Unfortunately, Kapur finds little in recent legal reform efforts to suggest a systemic move in that direction.

Kapur argues that both international law and domestic statutory schemes that target trafficking in women and children are premised upon the subject-victim image of the subaltern sex worker. In both cases, the primary legal thrust is criminalization of the act of trafficking informed by a concern that national borders are being violated. Moreover, the legal interventions are heavily moralistic in that the crime of trafficking depends upon an underlying persecution of prostitution. Trafficking for purposes of domestic labor, for example, would fall outside the purview of these reforms. The laws (of the United States in particular) favor “pure victims,” i.e., those who do not *willingly* cross borders in pursuit of their profession, who are thus “innocent” of consensual transnational sex work.

Of particular concern in the case of the United States’ law is the way in which anti-trafficking concerns have become subsumed into an anti-immigration and neo-imperial foreign policy framework. Kapur points out how anti-immigration discourse informed the drafting of anti-trafficking legislation, as well as the extent to which that law imposes sanctions on (Third World) countries that do not implement measures to curb the cross-border traffic in sex workers. Ironically, it is precisely the institutionalized policing of borders and increasingly Kafkaesque immigration regulation that make trafficking a profitable underground activity.

As a counterpoint to regressive feminist and juridical approaches to sex work, Kapur describes the efforts of Indian sex workers who exercise their agency through social movement organizations that advocate sex workers’ rights. Some of these organizations are also waging a cultural battle against the moralistic Right by challenging narrow definitions of sexuality and the suturing of such quasi-Victorian notions of sexuality to conservative political agendas. The initiative taken by Indian sex workers directly refutes the victim-subject construction by asserting transnational market actor status for the women involved. Moreover, Kapur finds in the sex workers’ political agenda a departure from feminist interpretations of sex work as derivative of patriarchal culture and economic necessity. Instead, the overt politicization of sex work is premised upon sex workers’ conscious crafting of a strategy to escape the patriarchal culture of the family and marriage, institutions tied to the conservative definition of female sexuality.

Importantly, the sex worker movement works towards legitimizing women workers’ rights to transnational mobility. Thus, the politicization of sex work, which openly challenges the construction of sex work as national moral decay, leads in turn to a reframing of the legal “problem” of trafficking. As the anti-trafficking campaign has been mainstreamed

within the law-making institutions of Western democracies, the political space that had been opened up by feminist and women-and-development activists has been closed down or corrupted. The true assertion of political agency by the sex workers would represent a re-capturing of that space. The anti-trafficking legal reforms Kapur discusses are revealed as nationalist and moralistic diversions from the rights-oriented approach of progressive activists in the field. We should note the importance of this ongoing "politicization from below" as a necessary corrective to the cycle of co-optation that occurs when the political initiative of transnational advocacy, such as the anti-trafficking campaign, becomes side-tracked by the official "human rights" law-making apparatus.

Much could be gained by reading writers like San Juan and Kapur as complementary, a move that may not seem obvious given the two writers' contrasting theoretical standpoints and apparently distinct normative commitments. On the one hand, a historicizing defense of the nation and national violence could be enriched by further specification with regard to the question of gender oppression. Many of the postcolonial and race nationalisms of the recent past do not fare well under the scrutiny of gender (or for that matter sexuality) critique. Granting San Juan's point about the need to historicize our analysis of the nation, we might still heed the "internal" critique of Third World and critical race feminists who are themselves constituent adherents of collective nationalist and race conscious politics. Progressive nationalism, as one important political project of anti-Empire, should certainly reject bourgeois culturalism, but also patriarchal (and homophobic) ideology and practice.²⁵

On the other hand, Kapur's critique of the anti-trafficking law-making and defense of the agency of sex workers in the face a concomitant victim-subjectification could be deepened by a historicization of the market for sex work. Positing sex workers as market actors is a necessary corrective to the Victorian morality play²⁶ scripted by both liberal humanitarians and conservative nationalists. However, a further critical step could be taken by problematizing the truncated agency allowed by the market within which the women exercise their "autonomy." Such a step would perhaps entail looking both to the demand side of the sex industry (subjecting the subject-consumer to race, class and sexuality analysis) and to the political economy of sex work (how surplus value is created and appropriated, how commodification and transnational circulation contribute to worker oppression, etc.). Liberalizing the movement of

25. It should be noted that San Juan's book includes an incisive life history of Maria Lorena Barros, a feminist Filipino nationalist, which occasions a serious engagement with the question of women and anti-colonial nationalist struggle. See SAN JUAN, *supra* note 13, at 43-50.

26. I examine the staging of something resembling a Victorian morality play in the anti-trafficking discourse in Gil Gott, *Caught in Traffic 5* (Aug. 2001) (unpublished manuscript on file with author).

workers—certainly a reasonable demand in the face of the distorting effect on markets of national borders—begs the question posed from the perspective of radical political economy regarding the structural violence of the market in forcing the uprooting of workers from their communities.²⁷

Looking at the structural dimension of sex workers' political empowerment can flesh out Kapur's notion of a "politics of desire," which offers important insights into how struggle over cultural meaning can empower Third World women. After all, Western sex workers, presumably less constrained by the moralistic power of conservative nationalism than their Third World counterparts, must still politically confront the structural determinants of their subjugation. "The recuperation of desire as a political strategy" should not make of necessity a virtue by failing to address the structural limits of sex worker empowerment within a transnational capitalist economy of desire. Contestation at the level of the state and in the realm of production (a la so-called "old social movements"²⁸) remains indispensable.

Interestingly, Kapur and San Juan present potentially complementary visions of the political, especially with regard to the place of law in progressive politics. San Juan is obviously skeptical of the rule of law as a means for achieving social justice, seeing it as a potent purveyor of structural class violence. Likewise, Kapur provides a concrete account of how legal reformism fails to fulfill an emancipatory political agenda. Meanwhile, San Juan's rehabilitation of "essentialized" collective political subjects such as the nation, and his defense of confrontational political action such as anti-imperialist violence on behalf of national self-determination do not gainsay the importance of "micro-level" political action by non-national collectivities such as women, especially where such groups are further defined through the segmentation of national and international labor markets as in the case of domestic and sex laborers.²⁹ And while, as San Juan suggests, the human rights establishment may indeed be complicit in neoliberal Empire, a rights-based campaign such as the one Kapur documents on behalf of sex workers may indeed be important in the type of Gramscian war of position facing progressives under current political conditions.³⁰

27. See Gil Gott, *Critical Race Globalism?: Global Political Economy, and the Intersection of Race, Nation, and Class*, 33 U.C. DAVIS L. REV. 1503, 1508 (2000) [hereinafter Gott, *Critical Race Globalism?*]; HARDT & NEGRI, *supra* note 8, at 154-55.

28. See discussion *infra* note 42.

29. See SAN JUAN, *supra* note 13, at 44-5.

30. See also Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988) (defending the pragmatic importance of rights from the perspective of Critical Race Theory).

The second pair of articles addresses the question of relations between the United States and peoples who are under U.S. imperial control. Charles R. Venator Santiago assesses the relationship between, and the relative importance of, racism and spatial ontology in the creation of second class (statutory) citizenship for Puerto Ricans. Santiago argues that there is no linear causal link between late 19th century U.S. racism and the treatment of Puerto Rico at the time of United States' overseas imperial expansion. Instead, Santiago argues that the dominant racist ideology of the day was inflected through a uniquely spatialized imperial imagination that created, in addition to an "inside" and an "outside," a kind of permanent threshold or liminal space that defined the boundary between the two. To illustrate, Santiago analogizes to Foucault's notion of the liminal in the case of the madman's journey whereby those deemed insane were sequestered in a kind of permanent voyage between the early modern city and its exterior.

Santiago's argument here resonates with the important work of Rob Walker in the field of international relations. Walker has cogently argued for the primacy of the spatial binary (inside/outside) in the constitution of the modern political imagination.³¹ Santiago's extension of this critical insight is that an ambiguous "in-between" space structures the political possibilities of marginal colonial groups such as Puerto Ricans. This argument provides a nuanced understanding of United States-style colonialism (and, I would add, racial hegemony), in that it analyzes how a racist hierarchy works even in the absence of rigidly distinct categories of racial difference, such as those inherent in biologicistic forms of white supremacy. As Hardt and Negri argue, such a shifting, amorphous understanding of difference is endemic to conditions of racial management that characterize Empire.³² In effect, liberal jurisprudence governs difference on behalf of neoliberal political economy through the deployment of ambiguity.³³

Following Santiago, we can see the roots of today's liberal race jurisprudence in the imperial law of the Spanish-American War. Santiago traces the creation of the ambiguous or liminal space of Puerto Ricans through the Treaty of Paris, the post-War military regime, the Foraker Act of 1900 and, finally, the pronouncements of the *Insular Cases*. The resulting legal regime defined the United States' relationship to Puerto Rico in a way that is at once both unique and nested within evolving forms of modern racial hegemony. Santiago discusses three features of this relationship in particular: the doctrine of Puerto Rican unincorporation (subject to U.S. sovereignty, but "foreign in a domestic sense"), the

31. See Walker, *supra* note 8, at 43-49.

32. HARDT & NEGRI, *supra* note 8, at 190-95.

33. The U.S. Supreme Court's post-Civil Rights race jurisprudence has, ironically, embraced poststructural anti-essentialism in dismantling the legal reforms that relied on clear-cut racial categorizations, group-based harms and systemic notions of discrimination.

colonial status of Puerto Rico as possession of, but not part of the United States, and the affirmation of a distinct form of Puerto Rican "citizenship."

Santiago is careful not to place the colonial regime that was created for Puerto Rico and the concomitant construction of Puerto Ricans as an "alien race" completely outside the broader flow of United States' racial formation. What is remarkable is the apparent ease with which the racial order was able to accommodate yet another category of racial otherness and subsume it under the existing "racial contract."³⁴ From Santiago's reading of the *Insular Cases* it is clear how the Justices projected the dominant racist imaginary onto the new territories and their inhabitants. However, as Santiago points out with regard to the relatively privileged "nonalien" status granted by the Court to Puerto Ricans under the otherwise racially exclusionary immigration laws, modern racial jurisprudence was infinitely flexible in applying its forms of exclusion and subjugation to some but not all racial categories. Each distinct "juridical space" is a mutually reinforcing part of an interlocking web of racial discipline and stratification. Indeed, it is important to note that the modern spatialization of racial difference highlighted by Santiago actually had a counterpart in Black-white relations of the same period, most apparent in the Court's Jim Crow ("separate but equal") jurisprudence.

The second piece dealing with this historical period, by Sylvia R. Lazos Vargas, adopts a method known in the social sciences as most similar systems design.³⁵ Lazos Vargas asks what explains the different outcomes of the otherwise mostly similar nineteenth wars of conquest—the mid-century Mexican American War and the Spanish American War of fifty years later. The discrepant variable Lazos Vargas sets out to explain regards the disparate treatment of, on the one hand, Mexican citizens in the conquered territories pursuant to the Treaty of Guadalupe Hidalgo and, on the other hand, Puerto Ricans and Guamanians under the Treaty of Paris. In the former case, Mexicans in the conquered territories were given the choice of becoming United States' citizens. In the latter, no such choice was granted Puerto Ricans and Guamanians, and instead a second-class juridical status is created.

Lazos Vargas's research hypothesis was that a racist "smoking gun" would be found to explain the treatment of the Puerto Ricans and Guamanians. Although Lazos Vargas failed to turn up such a smoking gun, she is able to conclude that a more complex, nationalist racial formation obtained, resonant perhaps with Santiago's notion of an ambiguous or

34. The "racial contract" is Charles Mills' term to describe the actually existing social contract of the United States and other European-based settler societies, self-described as open, liberal and democratic. See CHARLES W. MILLS, *THE RACIAL CONTRACT* (1997).

35. See generally ADAM PRZEWORSKI & HENRY TEUNE, *THE LOGIC OF COMPARATIVE SOCIAL INQUIRY* 31-46 (1982).

liminal racialized space.³⁶ Along the way Lazos Vargas raises some important theoretical and methodological points and, as important, challenges critical race scholars to embrace a philosophical pragmatism in their work.

One of the more provocative points Lazos Vargas makes involves rethinking the place of the Spanish American War in the trajectory of United States' racial formation and the construction of Latino identity and social status. Following Walter Mignolo, Lazos Vargas centers the Spanish American War in the modern trajectory of Latino racial identity in the United States. In agreement with Santiago, Lazos Vargas sees the late 19th century as a turning point of sorts, away from strictly biologicistic forms of white supremacy toward an increasingly cultural understanding of racial Otherness. In this new form, white supremacy cast itself in humanitarian garb and assumed the position of a civilizing force of progress out to uplift "backward" cultures.³⁷

As Hardt and Negri point out, this culturalized (postmodern) version of racial difference is more insidious than the outright biologicistic forms of racial exclusion that liberalism eschews. Race as cultural difference can be framed in the same absolute terms as biological difference (radical incommensurability), and can be defended under liberal dogma (individual freedom) as a moral basis for group-based exclusion.³⁸ Lazos Vargas argues that this shift retroactively affects interpretation of the earlier Mexican American War conquest and, thus, influences the formation of Chicano subaltern status. This argument contrasts with the work of Chicano Studies scholars who have argued that the earlier conquest had created an internal colony, an "occupied America,"³⁹ and a material, territorial, and cultural legacy of racial Otherness that has since determined Chicano social history. Lazos Vargas posits instead an "overarching structure" of Latino cultural Otherness resulting from the later imperial period. This framework would also explain the United States' culturally inflected (Anglocentric) foreign policy toward Latin American countries throughout the twentieth century.

36. Several writers have analyzed the role of racism in the Spanish-American War from a cultural studies perspective, i.e., by examining a different set of data from that examined by Lazos Vargas. See, e.g., María DeGuzmán, *Consolidating Anglo-American Imperial Identity Around the Spanish-American War (1898)*, in *RACE AND THE PRODUCTION OF MODERN AMERICAN NATIONALISM* 97-122 (Reynolds J. Scott-Childress ed., 1999) (examining literary and graphic representations of Spain in 19th century America and arguing that the imperial notion of Manifest Destiny was racially coded). See generally MICHAEL HUNT, *IDEOLOGY AND U.S. FOREIGN POLICY* 46-91 (1987) (tracing the impact of racism on U.S. foreign policy, including during the era of imperialism).

37. For a history of the contemporaneous (1890s) French notion of a civilizing mission in Africa, see ALICE L. CONKLIN, *A MISSION TO CIVILIZE* (1998).

38. See HARDT & NEGRI, *supra* note 8, at 190-95.

39. See generally RODOLFO ACUÑA, *OCCUPIED AMERICA* (1972); see also MARIO BARRERA, *RACE AND CLASS IN THE SOUTHWEST* (1979).

Lazos Vargas includes a thoughtful reflection on the benefits of pragmatist self-critique in overcoming the problem of positionality in historical analysis. This reflection takes seriously the charges leveled against critical forms of legal scholarship from conservatives such as Richard Posner and racial neoconservatives such as Dan Farber and Suzanna Sherry. These writers have attacked the objectivity of progressive scholars who use history or critical race methodology to push for legal reforms. Lazos Vargas calls for a pragmatist commitment in response to these attacks. Such an approach would force the ideological and identity positionality of critical race scholars to the fore (“field positionality”), leading ultimately toward the production of a more effective racial critical scholarship. Moreover, legal scholars would acknowledge “law’s troubled relationship with history” (“disciplinary positionality”) and commit themselves to a more studied approach to historical research that would include the use of primary and archival sources

In the critical race and LatCrit context, this call to a more self-reflective form of scholarship amounts to a re-visioning of the political to include pragmatist knowledge production. Implicit is the understanding that an avowedly activist scholarly disposition may not be the most effective way of operating on the current intellectual plane. Stating this argument in Gramscian terms, the present war of position—over ideas, values, knowledge, etc.—requires a less agonistic scholarly stance. Critical scholars cannot simply ignore the rules of the scholarly game, a game in the social sciences that is still heavily positivist in its commitment to testable hypotheses, falsification and empiricist notions of objectivity and ontology.

Interestingly, each of these four writers sheds light on the problem of the political through analysis of colonialism’s juridical legacy. In each case the structure of post-colonial legal liberalism is shown to condition late modern forms of hegemony and, importantly, the processes by which authority is constituted. Assessing the conditions of possibility for anti-systemic political contestation under post-colonial legal regimes is, of course, an important part of a theoretical reworking of the political. These articles move us closer to an understanding of how postcolonial legal liberalism as a historical system, i.e., one homologously related to colonial and imperial expansion, conditions current and future prospects for the emergence of a viable progressive political space. In the next section I will expand on this point by reading these articles through the lens of postmodern international political theory.

CRISIS AND BEYOND

I understand the “crisis of the political” to refer to a set of conditions under which we are no longer sure about where and how progressive politics can be effectively pursued. Our uncertainty probably results pri-

marily from the fact that power and, even more importantly, particular authorizations to wield power, now seem to originate and flow in ways not accounted for by traditional theories of revolutionary politics.⁴⁰ What good does it do to “topple the state,” if the state is merely the valet of more imperious forces operating across the many “scapes” that combine to form the postmodern social matrix.⁴¹ The debates on the Left about whether “old” or “new” types of social movements are better suited to the task of challenging for power (control of the processes of authorization) reflect the underlying uncertainties about where we should locate the political in order to deal with changing system(s) of domination.⁴² Should we continue the traditional revolutionary path and vie for state power, alter redistribution situationally through workers’ associations, focus on international or transnational norm construction and the institutions and regimes to enforce them, try to rebalance power in the family or the local community, struggle against the production of capitalist, racist and patriarchal subjects through the various culture industries, or target our efforts toward management of the ecosphere using public and private means to achieve our goals? The array of choices is dizzying.⁴³

40. For one of the most sophisticated articulations of a more traditional leftist politics, i.e., as informed by the writings of Marx, see RALPH MILIBAND, *MARXISM AND POLITICS* 154-190 (1977).

41. I refer here, of course, to Arjun Appadarai’s notion of scapes, a suffix he uses to capture the fluid and differentiated, yet structurally similar global networks of force. Appadarai lists ethnoscaples, mediascaples, technoscaples, financescaples, and ideoscaples as five dimensions of the new global cultural economy. See ARJUN APPADARAI, *MODERNITY AT LARGE* 27-47, 33 (1996).

42. The designations “old” and “new” distinguish the worker movements of the early to mid 20th century from the later civil rights and identity-based movements, including environmentalism. For an excellent summary of the old versus new social movement debate and a new theory of “subaltern movements” that transcends the somewhat artificial dichotomy of the old/new debate, see LAURA PULIDO, *ENVIRONMENTALISM AND ECONOMIC JUSTICE: TWO CHICANO STRUGGLES IN THE SOUTHWEST* 3-56 (1996).

More broadly, the relationship between social movement theory, which has been a predominantly backward-looking project aimed at explaining (if not preserving) a notion of 1960s radicalism, and more recent theoretical work on civil society is indicative of the underlying dilemma of the political. Social movements, once deemed a crucial vehicle for contesting power outside the confines of state institutions, spoke directly to the power of the state, maintaining a vision of contesting power over state apparatuses. Moreover, social movements were seen as operating apart from markets, if not radically opposing them. To the contrary, civil society purportedly sites action that is, theoretically at least, nonstatist in nature. In addition, civil society is viewed as fundamentally compatible with, if not directly functional within, the market. Both conservative and progressive visions of civil society have been circulated, but also critiqued from the perspective of global justice advocates, especially outside the West.

Critics of the recent faith in civil society are skeptical of the progressive political potential in a private domain of “free association” that is made possible by the very same liberal system of individual property rights that legitimates social exclusion and inequalities in wealth, power and freedom. Somewhat less credibly, criticism of “new social movements” adopts this historical materialist perspective. However, as Hardt and Negri point out, the salience of new social movements might better be understood by appreciating the “profound economic power” they embody, given the “increasing indistinguishability of economic and cultural phenomena.” HARDT & NEGRI, *supra* note 8, at 275.

43. The decidedly cynical coverage of recent anti-globalization protests from Seattle (WTO) to Genoa (G-8) has seized on the necessarily multivariate responses to globalization in discounting

In addition to the destabilizing political experiences “on the ground,” we are further unsettled by a growing awareness that our most fundamental political concepts themselves (sovereignty, freedom, the nation, representation, rights, civil society, etc.) have always been essentially paradoxical. These conceptual destabilizations are particularly evident in the problematic of globalization. Whatever globalization might entail as a new set of actual practices, it has become a discursive lighting rod for the voicing of doubts about received notions of what constitutes a legitimate and meaningful political sphere. Most notable, perhaps, has been the de-privileging of sovereignty as an unchallenged and foundational concept in Western theories of the political. In addition to the now commonplace pronouncements regarding the demise of the state as an institution, a great deal has also been written about the conceptual limits of theories of sovereignty. In the shadow of globalization, poststructuralists have exposed the discursive contingency of sovereignty, while feminists, materialists, and race critics reveal aspects of sovereignty’s social constructedness.⁴⁴ These situated assaults on the sovereignty of sovereignty, as it were, move us in the direction of new conceptions of what, where and by whom “legitimate” politics can be.

Several recent projects to rethink the political, which specifically adopt a global perspective and, thus, attempt to move beyond the modern sovereignty-bound political imaginary, warrant the attention of critical race and postcolonial scholars. As I argued at an earlier LatCrit conference, racial justice paradigm formation would benefit from *looking back* and re-engaging with the anti-imperialist, internationalist past of race-based struggle.⁴⁵ In this section I would like to consider whether, and how, we might also *look out* at critical international political theory emanating from the postmodern Left in pursuing critical race globalism. I will limit the analysis here to three such postmodern theoretical projects (Hardt and Negri,⁴⁶ Walker⁴⁷ and Agamben⁴⁸), which I take as representative of a fairly wide range of new theoretical perspectives. For the sake of road mapping (only), we might label these approaches postmodern

the entire movement as chaotic and misguided. Liberal and neoconservative columnists deploying this rhetoric correctly identify this symptom of the political crisis in the proliferating forms of resistance, but they of course use it for propagandistic ends. See, e.g., Thomas L. Friedman, *Foreign Affairs; Evolutionaries*, N.Y. TIMES, July 20, 2001, at A21 (“To be against globalization is to be against so many things -- from cell phones to trade to Big Macs -- that it connotes nothing. Which is why the anti-globalization protests have produced noise but nothing that has improved anyone’s life.”).

44. See, e.g., CYNTHIA WEBER, *SIMULATING SOVEREIGNTY: INTERVENTION, THE STATE AND SYMBOLIC EXCHANGE* (1995) (deconstructing sovereignty); JENS BARTELSON, *A GENEALOGY OF SOVEREIGNTY* (1995) (arguing that sovereignty is historically constructed through a contingent discourse of “insides” and “outsides”).

45. See Gott, *Critical Race Globalism?*, *supra* note 27.

46. HARDT & NEGRI, *supra* note 8.

47. Walker, *supra* note 8.

48. See works by AGAMBEN, *supra* note 8.

materialist (Hardt and Negri), poststructural IR⁴⁹ (Walker), and deconstructive (Agamben). Through the lens of this body of international political theory, I will suggest some more expansive readings of the four articles analyzed above.

Hardt and Negri's concept of Empire is a very workable starting point for understanding the changing conditions of power and authority. Opposing Empire to the modernist system of imperialism, Hardt and Negri suggest that a new form of power, a "postmodern sovereignty," has replaced modernist forms that had been exported from Europe through colonialism and imperialism.⁵⁰ Applicable across a range of social formations and concepts, the theory of Empire captures the shifts in political and economic order accompanying globalization. Of primary importance are the new ways in which power now operates as if there were a globalized "universal republic."⁵¹ Analogous to the United States' revolutionary break with monarchic and absolutist forms of sovereignty, postmodern sovereignty utilizes an "open" and expansive version of network power, whereby "[s]overeignty can be exercised within a vast horizon of activities that subdivide it without negating its unity and that subordinate it continually to the creative movement of the multitude."⁵² Modern transcendent forms of power and authority (transcendent sovereignty) are replaced by this postmodern form, which approximates the deterritorialized, flexible and mobile workings of markets.⁵³ Capitalism's "plane of immanence," characterized by effective management of social difference (race, religion, sexuality, gender) and a lack of any single transcendent, territorialized locus of power and authority replaces modernist, unitary and territorialized forms.⁵⁴

49. IR is commonly used as an acronym for the field of study known as international relations.

50. HARDT AND NEGRI, *supra* note 8, at 138.

51. *Id.* at 166.

52. *Id.* at 162.

53. *Id.* at 160-203.

54. *Id.* at 325-350. Theorists have often sought to resolve the dilemma (seemingly always at the heart of bourgeois liberal political order) by championing one or the other of the two versions of authority as more authentic or more utilitarian, perhaps even more ethically defensible than the other. Most recently, under neoliberalism's "Washington consensus," authorization in the form of the market mechanism and capitalism's imperatives has been winning the day, at least rhetorically. Conversely, Carl Schmitt began a conservative tradition that valorizes the transcendent approach to sovereignty when he lamented the loss of the political, defined in absolutist terms as the authority to decide exceptions to the rule of law. Schmitt thought that liberal democracy submerged the essential political experience, which he conceived as an untethered binary process rigidly distinguishing friends from enemies, and law from that which is excepted from law's "universalist" operation. Schmitt reviled what he saw as the basic hypocrisy of liberal democracy, which indulged a radical promise of equality while maintaining an essentially nonpolitical (nonbinary) process of decision-making (compromise) and commitment to unconstrained individual liberty. For Schmitt this combination meant that private interest and private power would become the real bearers of authority at the expense of the political. Of course, Schmitt, a Nazi supporter, did not aim to bring about the realization of substantive social equality in Western democracies, although his work has resonated with both left-progressive and authoritarian-conservative theorists. See Tracy B. Strong,

Thomas Frank's recent cultural critique of "market democracy" can be taken as an elucidation of the "plane of immanence" concept in the ways it surfaces (and ridicules) the now pervasive faith that the market can serve as a functional equivalent of a democratic political institution.⁵⁵ Frank sees this faith, which is shared across the political and social spectrum, as confusing the economic notion of exchange with the political notion of consent. Markets as "democratic" and populist institutions are increasingly seen as being capable of bestowing political legitimacy in the same way that popular democracy does.⁵⁶ The problem of Empire, as Hardt and Negri view it, is precisely that the new power networks pluralistically incorporate in their expansiveness all peoples, cultures and societies without subjecting them to modern, territorialized forms of domination and discrimination, but at the same time without democratically empowering the multitudes⁵⁷ it incorporates. Empire's plane of immanence may exude a certain populist cultural aura, as neoliberal markets do, but it frustrates democratic forms of social and political action.

The shift that Hardt and Negri identify, from transcendent (modern) to Empire-based (postmodern) forms of power and authority, corresponds to, and even gives the appearance of suspending a set of conceptual paradoxes at the heart of liberal political theory. Rob Walker describes these basic paradoxes as they operate on two levels, one internal and one external to the territorialized political unit of the nation-state.⁵⁸ Internally, the paradox involves squaring liberal background normativities regarding individual freedom and equality (and the implicit theory of the subject) with the sovereign imperative of submission to the single authority of the state. Externally, the paradox pits the particularist primacy of the nation-state as sole legitimate political unit against the great liberal authorizing myth of a single human community and the possibility of universal peace and prosperity.⁵⁹ Walker identifies the tension between these founding aspirations (individual freedom and equality, human community and universal peace) and the virtually unquestioned legiti-

Foreword: Dimensions of the New Debate Around Carl Schmitt, in CARL SCHMITT ix-xxvii, xxiv-xxvii *supra* note 8 (discussing Schmitt's revival among scholars from both ends of the political spectrum).

55. See THOMAS FRANK, *ONE MARKET UNDER GOD: EXTREME CAPITALISM, MARKET POPULISM AND THE END OF ECONOMIC DEMOCRACY* 53-68 (2000).

56. Of course, this recent conflation of the market with the political must overcome a longstanding trend in American social philosophy to view such privatization of the political with skepticism. Dewey referred to such reduced notions of the political as merely "the shadow cast on society by big business." See ROBERT B. WESTBROOK, *JOHN DEWEY AND AMERICAN DEMOCRACY* 440 (1991).

57. Hardt and Negri use the term "multitude" to refer to the "new proletariat" that is both the productive force that Empire harnesses to its productive and accumulatory needs, and the potential subject of an anti-imperial (anti-Empire) political future. See HARDT & NEGRI, *supra* note 8, at 393-413.

58. See Walker, *supra* note 8, at 36-49.

59. *Id.*

macy of the sovereign nation-state, as the enabling paradox of liberal political theory. The territorially contingent modern political imagination, evidenced in the boundedness of the nation-state, is closely tied to the constraints of this liberal paradox.

Liberal theories of territorialized political authorization thus take shape as a dual narrative: populist, democratic, humanist, on the one hand, but sovereign, dominating and command/control-oriented on the other. In other words, there are equal and opposite commitments to liberal freedom and sovereign order in the original liberal framing of political authority. Giorgio Agamben has described this duality in terms of a philosophical dilemma at the heart of the modern theory of sovereignty (and thus politics), whereby a pre-social state of nature, or "bare life," is posited as the foundational condition behind the formation of the modern political order. Sovereignty, à la Hobbes, is the political philosophical settlement that brings together the subject of this bare life with its conceptual counterpart, political order. That which is sovereign, as Carl Schmitt famously declared, decides upon the state of exception⁶⁰; that is, sovereignty is the power to decide upon the application of general rules and the particular instances when those rules will not apply. Importantly, Agamben equates the sovereign's declaration of the exception with a re-imposition of bare life. When sovereigns declare exceptions, and thus reimpose conditions of bare life, the human lives thus affected cease to enjoy the modern liberal political trappings of individual rights, freedom, voice, etc., but nevertheless are still subject to the awesome power of the state and its monopoly over organized violence.

Agamben's understanding of the current political crisis is that we are experiencing a shift from the state of exception (and banishment to the realm of bare life) as a temporal, and temporary category to a topological and permanent one.⁶¹ In Agamben's view, therefore, modern liberal political concepts such as sovereignty, nation, people, democracy, and Rousseau's general will have nothing to do with the original meanings ascribed them.⁶² The break is catastrophic for those relegated to the conditions of bare life under sovereign powers. "Contemporary politics is this devastating experiment that disarticulates and empties institutions and beliefs, ideologies and religions, identities and communities all

60. See CARL SCHMITT, *POLITICAL THEOLOGY* (George Schwab trans., 1985) (1934).

61. Agamben writes: "The state of exception is thus not so much a spatiotemporal suspension as a complex topological figure in which not only the exception and the rule but also the state of nature and law, outside and inside, pass through one another. It is precisely this topological zone of indistinction, which had to remain hidden from the eyes of justice, that we must try to fix under our gaze." AGAMBEN, *HOMO SACER*, *supra* note 8, at 37. In this sense, Agamben defines the *nomos* of modernity to be the (concentration, or refugee) camp. *See id.* at 166-180.

62. See AGAMBEN, *MEANS WITHOUT END*, *supra* note 8, at 110.

throughout the planet, so as then to rehash and reinstate their definitively nullified form."⁶³

Both Agamben and Hardt and Negri analyze postmodern forms of power in terms of Foucault's notion of biopolitics. Foucault identified a modern political shift toward what he termed governmentality, a form of authority and power that relied on so-called apparatuses of security and "biopolitics" (biopower). Both concepts convey a dispersed, non-Machiavellian, nonterritorial understanding of authority and power.⁶⁴ Whereas early modern sovereign forms of power targeted territory and sought direct means to control it while exercising the power of death over subjects, postmodern biopolitics takes as its primary object, the population and life itself, which are both non-territorialized constructs. Politics is no longer about the ostensibly central categories that derive from the founding modern story of sovereignty and citizens but rather about life itself. To the extent that we are still focusing on the categories of sovereignty and the political rights and capacities of citizens, we are not even in a realm of the political that matters.⁶⁵

Importantly, the great originators of liberal political theory (Hobbes, Locke, Kant, Rousseau) all relied on now increasingly dubious accounts of unified and autonomous individual subjects as the natural "building blocks" of the political sphere.⁶⁶ These highly problematic individual subjects, in a supposedly natural state of perpetual freedom and violence, find a more efficacious liberty under sovereign law and order.⁶⁷ As Walker shows, the modern theory of sovereignty and the territorialized political dimension, which that theory prescribes, is irreducibly linked to the positing of imaginary individual subjects. Together, the territorial and subjectified premises of political life set the outer limits on what legiti-

63. *Id.*

64. See Michel Foucault, *Governmentality*, in *THE FOUCAULT EFFECT* 87-104 (Graham Burchell et al. eds., 1991).

65. The creation of the category "citizen" is only possible through the original separation of bare life from a political realm appurtenant to the erection of the sovereign. This splitting of human life from political life was described by Karl Marx as the distinction between human and political emancipation. See Karl Marx, *On the Jewish Question*, in *THE MARX-ENGELS READER* 26, 35 (Robert Tucker ed., 2d ed. 1978) (1972).

66. To the extent that poststructural, critical race and feminist theories have displaced this modern notion of subjects congealing in homogeneous communities, along with the ways in which such subjects may be effectively "represented" in the organs of democratic government and thus in the nation-state, the founding moment of legitimate liberal politics is destabilized.

67. See Thomas Hobbes, *Leviathan* 147 (Francis B. Randall ed., Wash. Square Press 1964) (1651).

68. However, Will Kymlicka argues that liberalism has, until recently, viewed national minority (group-based) political demands with ambivalence, although he does not extend this analysis to subnational (racial, gender, sexual) minorities. In the U.S. context his analysis would apply to Puerto Ricans, Native Americans, Native Hawaiians and Native Alaskans. See Will Kymlicka, *Ethnicity in the USA*, in *The Ethnicity Reader* 229-247 (Montserrat Guibernau & John Rex eds., 1997).

mate politics can look like. Transnational and/or group-based politics, for example, are illegitimate forms *ab initio*.⁶⁸ External to the nation-state, Walker identifies a limit concept in the humanist cosmopolis, which is paradoxically both universalist and modern. This imaginary universal community, which is integral to liberal framings of a utopian international sphere, also prefigures legitimate and illegitimate political subjects and projects. Here, a range of “tribalist,” premodern fundamentalist, and anti-developmental political projects would be categorically illegitimate.⁶⁹

Having read these postmodern accounts of the crisis, one comes away with a sense that the conceptual veneer of Western liberal accounts of the political are about to crack. Factoring in the changing material capacities of communication technologies, and what these mean for the cross-border transferability of capital, goods and know-how, the highly territorialized story of authority becomes even harder to comprehend. Also, as international lawyers are well aware, the various national legal systems have long since become “transnational,” with institutions from the highly structured WTO to the more informal ISO, globalizing the letter and practice of trade, property, and products law.⁷⁰ Nevertheless, the obstacles presented by the old conceptual frameworks remain with us in important ways. Indeed, it is the political deployment of these frameworks that is most noticeable from a critical race perspective.

Responses to so-called politics of difference present a case in point. In the form of a majority/minority problematic, the questions posed to liberal political theory about how to handle “surplus” people excluded from the category of “we the People”⁷¹ have been finessed in various ways.⁷² In the United States and other settler societies, the problems were handled by declaring that segments of the population fell outside “civilization” and, therefore, outside the political framework. They were either

69. In addition to the spatial dimension discussed here, Walker identifies a constraining temporality in liberal political theory, through which all future alternatives have already been mapped along developmental trajectories emanating from a modern present. See Walker, *supra* note 8, at 36-42.

70. ISO is the commonly used name for the International Organization for Standardization, the “private” international organization responsible promulgating over 13,000 industrial standards applicable in over 140 countries.

71. Agamben identifies this key ambiguity embedded in the term “people” as it is used in liberal political theory: “It is as if what we call ‘people’ were in reality not a unitary subject but a dialectical oscillation between two opposite poles: on the one hand, the set of the People as a whole political body, and on the other, the subset of the people as a fragmentary multiplicity of needy and excluded bodies . . . of the wretched, the oppressed, and the defeated.” AGAMBEN, *HOMO SACER*, *supra* note 8, at 177.

72. See generally ROGERS M. SMITH, *CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY* (1997) (discussing the recent treatment of the problem of exclusionary definitions of citizenship, interestingly, written by the co-author of a monograph arguing against standard birthright citizenship).

treated as de jure noncitizens (slaves, “savages,” “[nonwhite] aliens ineligible for citizenship”), or they were relegated to a de facto second-class citizenship status. Pursuing race-based politics in the post-Civil Rights period has meant, however, responding to a different strategy of exclusion, perhaps best captured in the charge of “balkanization” that has been leveled at those who dare play the “race card” in American politics. Here, the politics of difference is delegitimized through the old modern political theoretical framework that does not view subnational (racial, religious, sexuality-based, gender-based) communities as legitimate political units of obligation and action.⁷³ Recently revised theories of pluralism (multiculturalism), designed to combat this deployment of liberal theory, remain contained by the nation-state discourse, as liberal writers from Taylor to Walzer illustrate.⁷⁴ The traditional stories thus remain powerful in their gate-keeping function. They continue to authorize authorization.

Furthermore, the mutually reinforcing quality of the reciprocal originary moments of liberal political philosophy identified by Agamben (bare life, order under law) is most clear in the ways the constitutional, constrained version of sovereignty, which in its liberal form is subject to the types of universalist democratic commitments Schmitt distrusted, has coexisted with an almost fascistic, “permanent state of exception” applied to racial minorities and other outsider groups. This basic tension, manifest at liberal democracy’s core, betrays the virtually constitutive particularism behind these putatively universalist commitments. Given liberalism’s notable inability to eradicate race-based social disparities, and indeed, its reliance on social and economic hierarchy in general, its legitimacy hinges on a fundamentally compromised universalism. Cultural difference and “social pathology” (read together as racial difference) serve as boundaries delimiting the universal.⁷⁵ As Charles Mills has argued, rather than a social contract at the heart of Western liberal notions of the political, we might, here, more accurately refer to it as a racial contract.⁷⁶ The notion of a racial contract captures the operation of

73. A particularly distasteful mutation of this nationalist elision of race has occurred in the conservative response to the movement claiming reparations for slavery. Polemicists like David Horowitz argue that slavery benefited “Americans,” including Blacks. Horowitz’s infamous “10 reasons” advertisement states that “[t]he claim for reparations is premised on the false assumption that only whites have benefited from slavery. If slave labor created wealth for Americans, then obviously it has created wealth for black Americans as well, including the descendants of slaves.” David Horowitz, *Ten Reasons Why Reparations for Blacks is a Bad Idea for Blacks - and Racism Too*, David Horowitz’s Notepad, at <http://www.frontpagemag.com/horowitznotepad/2001/hn01-03-01.htm> (last visited Sept. 10, 2001). The inverse of this argument is that the harm of slavery was to “America,” since Blacks are a constituent part of that collective.

74. *But see* Kymlicka, *supra* note 68.

75. *See* Peter Fitzpatrick, *Racism and the Innocence of Law*, in *CRITICAL LEGAL STUDIES* 119, 120 (Peter Fitzpatrick & Alan Hunt eds., 1987).

76. *See* MILLS, *supra* note 34.

the fundamental inclusion/exclusion dynamic always at work, historically the most socially relevant along racial lines, in the “egalitarian” project of western liberal democracy.⁷⁷ Whether this conception of authority is based on more absolutist notions of the “national will” or is constitutionally divided and limited seems almost beside the point from an outsider perspective.

These highly theoretical framings of the political crisis, dense though they may be, help shed greater light on the creative approaches to politics contained in the work of engaged anti-colonial and critical race scholars such as those discussed here. Working through different paths, each of the theorists outlined above ends up in a similar prescriptive place. Each insists that progressive politics must respond to the current crisis by dispensing with the familiar conceptual and institutional apparatuses of subjectivity and sovereignty. The critical implications of this body of theory involve potentially every aspect of our political imaginary, from divorcing ourselves from the modernist commitment to territorially bounded thinking, to giving up our postmodern fascination with hybrid or border subjectivities.⁷⁸ Let us now consider what may be gained from reading the four articles analyzed above through the theory of postmodern political crisis.

San Juan’s defense of robust nationalist political struggle, together with his refutation of postcolonial/poststructural theory, presents the problem as one of identifying the proper anti-imperial political subject. Properly defined collective subjectivities, though their positing may risk gliding over important underlying social divisions, appear to San Juan as indispensable means for combating the depoliticization of social hierarchization. The liberal fragmentation of political agency, aided in San Juan’s opinion by postcolonial/poststructural theory, presents a primary barrier to progressive political mobilization. San Juan’s defense of subaltern nationalism appears at first glance to champion a traditional sovereign form of power and contestation, and thus, to be out of step with the theoretical reworkings of the political we have considered. However, crucially, San Juan is at pains to divorce his defense of subaltern nationalism from the sovereign state form. This effective rejection of a politics

77. Agamben, following Jean Luc Nancy, refers to this contradictory logical operation at the heart of liberal political theory as the “ban.” The ban, which more accurately captures the originary logic than does social contract, signifies the fact that the exception is the basic structure of sovereignty, that sovereignty, and thus law, refer back to bare life and simultaneously exclude and suspend it. The notion of a movement from bare life toward order under law (and occasionally back to bare life under the state of exception), which social contract theory monumentalizes, “condemned democracy to impotence every time it had to confront the problem of sovereign power and has also rendered modern democracy constitutionally incapable of thinking a politics freed from the form of state.” AGAMBEN, *HOMO SACER*, *supra* note 8, at 28-29, 58-59, 109.

78. HARDT & NEGRI, *supra* note 8, at 138. “[W]hat if a new paradigm of power, a postmodern sovereignty, has come to replace the modern paradigm and rule through differential hierarchies of the hybrid and fragmentary subjectivities that [postmodern] theorists celebrate?” *Id.*

of sovereignty is the primary distinction between a conception of the nation as a political mechanism for protection against subordination, Westernization, and global Empire, and that of the nation as an ideological tool for internal repression of difference.⁷⁹ San Juan's objection to the separation of society from nation establishes a proximity between his apparently modern conception of the subaltern nation and Hardt and Negri's postmodern multitude,⁸⁰ or the bare life of Agamben's "people."⁸¹ While San Juan's nation partakes of a familiar modern politics of militant resistance, it evinces a Fanonian refusal to re-inscribe a sovereign (bio)politics of exclusion, or national totalitarianism.

San Juan's choice of national violence is important in that it implicitly targets a deep binary tension in liberal political theory, the bright-line distinction between violence and law. For Agamben, sovereign power's authority to decide between violence (the exception, bare life) and law (the rule) masks a fundamental indifference between the two: "the sovereign is the point of indistinction between violence and the law, the threshold on which violence passes over into law and law over into violence."⁸² The sovereign's theoretical privileging follows from its having been imbued with nature's permanent state of violence (the war of everyone against everyone, according to Hobbes⁸³), from which it can project order, law, social solidarity and the like. The hypocrisy of liberalism is that it delegitimizes all forms of "violence" that threaten the constituted social order, and yet preserves as legitimate in its core political essence the threat of an arbitrary constituting power over life and death.

San Juan and Agamben intersect in their recourse to Benjamin, who exposed the link between violence and law.⁸⁴ However, it appears that San Juan and Agamben interpret Benjamin differently with regard to his notion of "divine violence," which for San Juan grounds his defense of a nationalist, political third-way beyond the dialectic of state violence and law.⁸⁵ San Juan's work, which is supported in various ways by that of Arif Dirlik, Benita Perry, Aijaz Ahmad, R. Kothari and Alex de Waal, uses a postmodern appreciation of the shortfalls of modern liberalism to

79. Hardt and Negri argue that the "ambiguous progressive functions of the concept of [subaltern] nation exist primarily when nation is not effectively linked to sovereignty, that is, when the imagined nation does not (yet) exist As soon as the nation begins to form as a sovereign state, its progressive functions all but vanish." HARDT & NEGRI, *supra* note 8, at

80. *See supra* note 8.

81. *See supra* note 8.

82. AGAMBEN, *HOMO SACER*, *supra* note 8, at 32.

83. HOBBS, *supra* note 67, at 87.

84. *See* AGAMBEN, *HOMO SACER*, *supra* note 8, at 63-67.

85. Agamben instead develops Benjamin's concept of "bare life"—for Agamben the link Benjamin drew between sovereign violence and law. In Agamben's theory, therefore, bare life, perhaps best understood as the anti-systemic subject of biopolitics, emerges in the emancipatory role that San Juan ascribes to the nation as bearer of subaltern agency. *See id.* at 63-67, 187-88.

redeem a modernist narrative of political authority as popular sovereignty. Violence tied to the nation, in this sense, should be understood as a metaphor for a broader argument about the possibility of confrontational politics, a robust return to public forms of the political and a renewal of support for revolutionary struggle.

Kapur's work differs from San Juan's in positing the subaltern sex worker as the proper progressive political subject. Neither the nation, nor a similarly collective feminist subject (women) would represent superior forms of agency for enacting Kapur's notion of a politics of desire. However, Kapur's analysis of Indian sex work suggests even a further elaboration of the political space of desire. By emphasizing the heightened autonomy sex workers acquire both as market actors and through their related efforts to claim labor rights (including health and safety protections) and other civil rights such as the right of free movement, Kapur moves toward a notion of the political that operationalizes the relative openness of markets.⁸⁶ Echoing critical international legal scholar David Kennedy's provocative call to activate the potential inherent in the ways political power is deployed through the private actions and "regimes" of the market,⁸⁷ Kapur provides concrete evidence that such efforts may provide a useful vehicle for progressive politics. In this sense, Kapur's argument is compatible with the call by Hardt and Negri to forge an anti-imperial politics from Empire's own economic, social and cultural productive matrix and the openings in its capitalist plane of immanence.⁸⁸

This possibility is inherent in Empire's new structuring of production to include all aspects of life, the very social and cultural relations of the multitude.⁸⁹ As Hardt and Negri argue: "In the postmodernization of the global economy, the creation of wealth tends ever more toward what we will call biopolitical production, the production of social life itself, in which the economic, the political, and the cultural increasingly overlap and invest one another."⁹⁰ One aspect of biopolitical production is the rise in prominence of "affective labor." Affective labor refers to production which occurs through corporeal means, but which results in immaterial

86. It is important to note that markets are *relatively* open, that is, especially in comparison to more traditional social systems that blocked most forms of social or economic mobility. I would certainly not make the argument for markets as the new populist hope, as made by many neoliberal apologists. See generally, FRANK, *supra* note 55.

87. See Kennedy, *supra* note 9, at 25 (arguing for a progressive rethinking of the political that goes beyond an international institutional regime to countenance "all the forms of power and sites of choice accompanying the international market.").

88. See *supra* text accompanying notes 54-57.

89. To grasp this concept, one might recall the hermit from Twain's *Connecticut Yankee*, whose act of praying the Yankee modernizer, Hank Morgan, turns to the ends of production by attaching ropes and pulleys to him in such a way as to harness the energy created as the hermit performs his perpetual bowing motion. See MARK TWAIN, *A CONNECTICUT YANKEE IN KING ARTHUR'S COURT* 280-81 (Webster 1890)(1889). See HARDT & NEGRI, *supra* note 8, at 208-18 (discussing new forms of production).

90. HARDT & NEGRI, *supra* note 8, at xiii.

“products.” “What affective labor produces are social networks, forms of community, biopower.”⁹¹ Kapur’s research reveals the extent to which subaltern sex workers indeed constitute alternative social networks and forms of community, and her work raises the interesting possibility of what Hardt and Negri refer to as “a kind of spontaneous and elementary communism.”⁹² Immaterial forms of production (informational, communicational, affective) are radically decentralized,⁹³ as opposed to the paradigmatically centralized forms of factory production. In this decentralization lies a great capacity for resistance to the control of productive processes. Kapur’s work maps this inherently political capacity of subalterns in the sex work industry, whose mobility is the expression of disruptive potential.⁹⁴

The non-victim subject position of sex workers that Kapur seeks to inscribe through her work bespeaks the type of postmodern political identity that Agamben calls “whatever singularities.”⁹⁵ Kapur asserts that the emergence of the postcolonial sexual subaltern pursuing a politics of desire not only exposes the limitations of the victim-subject, but also combats the idea of the Indian woman as tied to the (conservative) figuration of the national culture and community. Agamben argues that sovereign political domination can easily abide the assertion of any claim for identity, so long as it is tied to a “representable condition of belonging.”⁹⁶ “Whatever singularities” that form communities without a coherent sense of social identity are, for Agamben, the true bearers of post-sovereign politics. Kapur shows how the social and political subjectivities readied for postcolonial sexual subalterns by reformist anti-trafficking legal interventions, which Agamben’s work would classify as state-sanctioned and emptied of real content, cannot underwrite the politics of desire she favors.

Santiago’s analysis of the determinants of Puerto Rican juridical marginalization captures the nuanced workings of the political constitution of Empire as it relates to management of difference. This connection becomes clear when one notes that the colonial encounter is constitutive of Western political identity.⁹⁷ The Othering of putatively non-politically evolved peoples helped set the outer limits of the properly political world of Europe and its offshoots. The second important constitutive alterity of

91. *Id.* at 293.

92. *Id.* at 294. “Today productivity, wealth, and the creation of social surpluses take the form of cooperative interactivity In the expression of its own creative energies, immaterial labor thus seems to provide the potential for a kind of spontaneous and elementary communism.” *Id.*

93. *See id.* at 294.

94. Hardt and Negri place heavy emphasis on “nomadism” or the voluntary mobility of the multitude as a fundamental political activity under postmodern conditions of labor. *See id.* at 362-64.

95. AGAMBEN, *MEANS WITHOUT END*, *supra* note 8, at 86-7.

96. *Id.* at 87.

97. *See* HARDT & NEGRI, *supra* note 8, at 103.

political modernism, as discussed above, has involved internal Others who were also denied political subjecthood. The case of Puerto Rico presents an important bridge between these two types of identity-creating constructions of difference. As Hardt and Negri observe, a new logic governing difference and identity obtains under conditions of Empire. Rather than a hierarchical relationship of dialectical opposition between rigidly (biologically-defined) notions of identity and difference, as typical of strictly modern forms of dominance and exclusion, Empire instead acknowledges the hybridity of identity and manages it.⁹⁸

Although Santiago does not specifically invoke the question of national self-determination for Puerto Rico, the concept is implicated in his work. The juridical space that imperial lawmakers opened up for Puerto Rico, which is a space literally neither here (imperial center) nor there (colony), in effect frustrates the application of self-determination discourse, a modern international legal doctrine that extended the liberal political settlement (sovereignty and statehood) to colonial peoples. Practically every other peripheral space, i.e., throughout the colonies of Asia, Africa and Oceania, warranted application of the "right" of self-determination. In this regard, however, Puerto Rico has remained truly liminal to the international juridical order of the 20th century, being neither fully absorbed by, nor definitively liberated from, the imperial bond.

Santiago's (and Lazos Vargas's⁹⁹) work provides an important perspective for understanding the problem of self-determination as it applies to Puerto Rico. If, as Santiago argues, the modern dialectic of (biologistic) racism did not determine the juridical status of Puerto Rico, this might help shed light on the complexity behind debates about the "status question," and why both sovereign and non-sovereign (or perhaps quasi-sovereign) forms of resistance have been an important part of anti-imperial political agency there.¹⁰⁰ In order to understand this connection, the link must be drawn between modernist forms of racism and sovereignty. There are several ways of conceiving this link. Antony Anghie's work has established a constitutive historical link between colonial racism and the evolution of modern sovereignty as an international legal

98. See *Id.* at 190-203. Hardt & Negri write:

Colonial racism, the racism of modern sovereignty, first pushes difference to the extreme and then recuperates the Other as negative foundation of the Self . . . [Empire-based] order, in contrast, has nothing to do with this dialectic. Imperial racism, or differential racism, integrates others with its order and then orchestrates those differences in a system of control.

Id. at 194-95.

99. Much of this particular analysis of Santiago's work could apply, *mutatis mutandis*, to Lazos Vargas's. For the sake of brevity and breath of coverage, I will focus my comments regarding Lazos Vargas's work on the epistemological questions it raises and the significance of those for political theory. See *infra* text accompanying notes 114-131.

100. For a strong argument that the U.S. should grant Puerto Rico self-determination rights (in the form of free elections) see Ediberto Roman, *Empire Forgotten: The United States' Colonization of Puerto Rico*, 42 VILL. L. REV. 1119 (1997).

concept.¹⁰¹ Anghie persuasively argues that sovereignty doctrine is irreducibly racialized in the colonial encounter. With regard to the ontology of sovereignty, one might consider the ways that Hobbes himself constructed his notion of Leviathan against what Fitzpatrick calls the “specular repository” of America’s “savages.”¹⁰² The concepts of both the modern political subject and his (sic) sovereigns, beginning with Hobbes and continuing up through Hegel, have been constructed through a racialized logic of projection and negation. First, an archetypal (albeit counterfactual) disorder is projected onto the savage and primitive racial Other and then that disorder is transcended in positing the politically modern Western subject and his corollary, the sovereign.¹⁰³

The turn to later modern and postmodern forms of culturalist racial differentiation¹⁰⁴ coincides with a turn away from modern political paradigms that were closely tied to biologicistic forms of racism. As Santiago suggests, Puerto Rico, in being subjected to this new form of racial differentiation, slips into a kind of differently territorialized political status, characterized as a juridically constructed ambiguous “space.” Given this relatively deterritorialized form of neocolonial subjugation, and the commensurately altered form of racialization it implies, the case of Puerto Rico must be stretched to fit into modern, nation-based political categories. Without presuming to assess the highly charged status debate,¹⁰⁵ I would like to sketch a few consequences for understanding Puerto Rican political struggle from the theoretical perspective suggested by Santiago.

One of the problems with applying the principle of self-determination in the case of Puerto Rico has been defining the relevant “self” who should be politically enfranchised. The question is complicated by at least two factors. First, it is estimated that seventy-five percent of all Puerto Ricans live in the United States.¹⁰⁶ Second, residents of Puerto Rico include non-Puerto Ricans, many of whom are economically powerful due to the tax incentives Congress has provided for U.S. busi-

101. See Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 HARV. INT'L L.J. 1 (1999)

102. See PETER FITZPATRICK, *THE MYTHOLOGY OF MODERN LAW* 76 (1992).

103. See *Id.* at 63-91.

104. See *supra* text accompanying note 38.

105. For different perspectives on the status debate, all of which suggest the complexity of the questions raised, see generally Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 MICH. J. RACE & L. 1 (2000) (arguing that Puerto Rican cultural nationhood be recognized by the United States, perhaps as a prelude to nonassimilationist statehood, or association); Lisa Napoli, *The Legal Recognition of the National Identity of a Colonized People: The Case of Puerto Rico*, 18 B.C. THIRD WORLD L.J. 159 (1998) (arguing that a plebiscite be held regarding status and that Puerto Ricans living in the United States be allowed to participate); for a book length treatment by one of the architects of the current Commonwealth status, see generally JOSE TRIAS MONGE, *PUERTO RICO: THE TRIALS OF THE OLDEST COLONY IN THE WORLD* (1997).

106. See TRIAS MONGE, *supra* note 105, at 2.

nesses which locate there.¹⁰⁷ In a strictly territorialized application of self-determination, the result would be an unacceptable (and neo-colonial) under- and over-inclusiveness that would inscribe within the definition of the politically relevant “self” the very conditions of colonial dependence (economic diaspora and corporate imperialism). Expanding on the perspective derived from Santiago’s work, we can draw different lines around the concept of self-determination.

Redrawing the lines around the modern principle of self-determination can also prove supportive of the types of coalitional struggle that have arisen recently around the question of sovereignty in Vieques.¹⁰⁸ Paradoxically, the protests over territorial control of Vieques by U.S.-based Puerto Ricans and prominent African Americans suggest a non-territorialized conception of the political. The Vieques protests have increasingly taken on transnational significance as they site not only the local political agency of Vieques Islanders who seek control of their immediate environment, but also the aspirations of Puerto Ricans in New York City who seek to elect the first Puerto Rican mayor in coalition with African Americans.¹⁰⁹

Indeed, Santiago’s point about expanding race-critical paradigms with an appreciation of Puerto Rico’s ambiguous juridical space might also be useful in understanding how race itself in Puerto Rico underwent a significant transformation from the period of Spanish rule to that of U.S. colonialism.¹¹⁰ As Angel Oquendo has argued, the White-over-Black racial dualism of the United States has been displaced in Puerto Rico by a “single Afro-Antillean ethos.”¹¹¹ This apparently homogeneous (modern) construct is, importantly, articulated as an ethos and not a nation. It is a notion that resonates with the non-identitarian “identities” called for by Hardt and Negri, and Agamben.¹¹² Santiago’s expansion of the race framework may go a long way toward explaining the highly racialized status of Puerto Ricans living in the United States,¹¹³ and the differently structured “ethos” on the island. Ultimately, by building on Santiago’s work, we may be able to develop a political model that would work both

107. See Roman, *supra* note 100, at 1192-93 & n.354 (1997).

108. For one columnist’s assessment of the coalitional aspect of the Vieques protests, see Salim Muwakkil, *The Division Potential: Blacks need to Form Political Coalition with Hispanics*, CHI. TRIB., July 2, 2001, at 13.

109. See Adam Nagourney, *Group Seeks Black-Latino Joint Effort For Mayor*, N.Y. TIMES, Aug. 11, 2001, at B1.

110. See Angel R. Oquendo, *Re-Imagining The Latino/A Race*, 12 HARV. BLACKLETTER J. 93, 100-02 (1995).

111. *Id.* at 101.

112. See also ARLENE M. DAVILA, SPONSORED IDENTITIES: CULTURAL POLITICS IN PUERTO RICO 21 (1997) (arguing for a postnational analysis of cultural politics).

113. See Kevin Johnson, *Puerto Rico, Puerto Ricans, and LatCrit Theory: Commonalities and Differences Between Latina/o Experiences*, 6 MICH. J. RACE & L. 107, 121-23 (2000) (discussing the racialized status of Black Puerto Ricans in the United States).

the juridical liminality and racial hierarchy negatively affecting Puerto Ricans into a vision of political contestation in a reconstructed (transnational? post-sovereign? race-global?) political space.

Finally, I would argue that Lazos Vargas's reflection on the need for a pragmatist commitment in outsider legal scholarship works through some of the epistemological aspects of the political crisis by problematizing the specific antinomies inherent in pursuing anti-foundationalist, critical scholarly agendas. The theoretical link between epistemology and sovereignty that explicates this dimension of Lazos Vargas's work can be understood through Walker's discussion of the parallels between sovereignty-based stories of authorization and current (IR) disciplinary practices that constrain knowledge production. Pointing out a bitter irony for critical IR theorists, Walker writes:

The primary difficulty posed by [mainstream IR] rhetorics of structural/natural necessity and empirical knowledge is that they are claims to authority of precisely the same kind as the claims to authority that constitute modern forms of politics. Hobbes, for example, not only worked out a paradigmatic account of what is involved in constructing a modern politics out of determinately free and equal individuals; he also did so on the basis of the kinds of philosophical categories involving dualisms of language and world, man and nature, perceiver and perceived and the rest that still find their more elaborate parallels in various debates about the epistemology of scientific inquiry. Much of contemporary scholarly debate about how one should study politics resembles nothing so much as a parody of Schmittian sovereigns struggling to decide the limits of what is scholarly, scientific, rational, or professional and what is exceptional or even pathological.¹¹⁴

Not only can one point to these formal similarities between sovereign political authorizations and the border policing function of disciplinary epistemology, but, again, one may note the conceptual link between Hobbes' positing of a particular kind of rational subject and his political theory of sovereignty.

Hardt and Negri, in a book that predates the working out of their theory of Empire, show how the liberal communitarian subject implicitly reinscribes the state form. The key to their argument, paralleling that of Walker, lies in seeing how the communitarian logic fails to dispense with the notion of rational, though reflective/situated subject.¹¹⁵ The community of these subjectivities that matters, i.e., the community that most coherently comprises these rational-situated subjectivities, must be embodied in the state form. Other groupings will remain only partial com-

114. Walker, *supra* note 8, at 13.

115. ANTONIO NEGRI & MICHAEL HARDT, LABOR OF DIONYSUS 256-57 (1994) (discussed in SAN JUAN, *supra* note 13, at 138).

munities since they cannot claim the state form. "In the final instance, the communitarian preoccupation with the theory of the subject leads to the proposition of the State as the only fully realized and autonomous subject."¹¹⁶

To the extent that pragmatism forces a critical engagement with the Hobbesian (and communitarian) subject, it may also serve to destabilize the conceptual paradigms of political modernity.¹¹⁷ In this sense, for example, the pragmatist method¹¹⁸ offers a process for moving toward resolution of a central political antinomy of modernity—identified by Agamben as the split between "the People" and the people¹¹⁹—by offering dissident and outsider voices a place in the communal conversation about truth and knowledge, if not a guarantee that their justice concerns will be met through such coming to voice. Under pragmatist rules of the game, the participants must avow the partial, particular and situated nature of their truth and justice claims,¹²⁰ i.e., are foreclosed from propounding their "particular idea as an absolute." They may not claim their positions as representative of either the People as sovereign Self, or of the authentic national-popular "concrete universal" of an oppressed group. Rather, the participants would agree in advance to an openness, a resistance to premature closures and suturings of knowledge and truth claims. In this way pragmatism potentially disarms the potent public-private split of traditional liberalism—put in crisis by the recent multicultural, pluralist turn—which has tended to elevate particular and situated (private) notions of the good to (public) universals.¹²¹

Some caveats would apply, of course. In one sense, calling for scholarly self-reflection (acknowledgment of the critical scholar's own positionality) does not automatically provide conceptual purchase on an

116. See *Id.* at 257.

117. Mari Matsuda sees value in pragmatism as a method (not per se as a normative commitment unto itself) because it "recognizes multiple consciousness, experimentation and flexibility as tools of inquiry." Mari J. Matsuda, *Pragmatism Modified and the False Consciousness Problem*, 63 S. CAL. L. REV. 1763, 1764 (1990) [hereinafter Matsuda, *Pragmatism Modified*]. "Multiple consciousness" is the term Matsuda uses to refer to her re-thinking of the unitary modern political subject from the perspective of the various axes of identity and subjugation—especially race, gender and class. See Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7-10 (1989).

118. Following Matsuda, I want to insist that we understand pragmatism's strengths (as a method), but also see the necessity of augmenting it with some normative first principles. See *infra* notes 127-131 and accompanying text.

119. See *supra* note 71.

120. See DAVID THEO GOLDBERG, *RACIST CULTURE: PHILOSOPHY AND THE POLITICS OF MEANING* 221 (1993). Goldberg develops a pragmatic approach to race in the last chapter of the book that provides helpful distinctions between a liberal and anti-racist pragmatism. See *id.* at 206-37.

121. See Stuart Hall, *Conclusion: The Multicultural Question, in UNSETTLED MULTICULTURALISMS: DIASPORAS, ENTANGLEMENTS, TRANSRUPTIONS* 230 (Barnor Hesse ed., 2000) (discussing the ways the multicultural question has revealed the incoherence of the public-private distinction).

emerging, post-sovereign political space. Indeed, such a call could even be seen as reinforcing the venerable liberal firewall erected between politics and knowledge, even as it insists on the socially positioned quality of all knowledge creation.¹²² Certain (conservative) appropriations of pragmatism may even offer a way around the anti-disciplinary consequences of the positionality thesis, originally a critical ethnographic concept¹²³ that, as it “traveled” across disciplines, destabilized hegemonic claims to disinterested and transparent knowledge production.¹²⁴ As Richard Rorty’s neopragmatist manifesto itself illustrates, pragmatism can further a naive individualism nearly devoid of structural analysis.¹²⁵ The pragmatist can recognize other perspectives, relativize her own, but in the last instance retain a troubling coherence or foundation in the form of an inertial acceptance of the status quo order.¹²⁶

I would argue that a strong normative commitment—something like Mari Matsuda’s notion of a “weighted pragmatism,”¹²⁷ Cornel West’s “prophetic pragmatism,”¹²⁸ David Theo Goldberg’s “anti-racist pragmatism,”¹²⁹ or Daria Roithmayr’s “radical pragmatism”¹³⁰—is necessary to avoid the liberal trap-door in pragmatism’s non-foundation. It certainly seems appropriate from the perspective of postmodern progressive political theory to simply declare that we (Critical Race Theorists, LatCritters, etc.) are part of different epistemological tribes from the Posners, and Farber/Sherry’s of the world who challenge crits’ deployments of history

122. Farber and Sherry’s quasi-pragmatist polemic against “radical multiculturalism” is a case in point. For example, Farber and Sherry ask rhetorically, “[w]hat should we seek and what should we speak if not the truth? The unhappy answers are politics, and political power.” DANIEL FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* 102 (1997).

123. Social anthropologists sometimes use the term “positioned subject.” See RENATO ROSALDO, *CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS* 7 (1989). See generally CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* 3-30 (1974).

124. For a discussion of Farber and Sherry’s “conservative pragmatism,” juxtaposed to a proposed “radical pragmatism,” see Daria Roithmayr, *Guerrillas in Our Midst: The Assault on Radicals in American Law*, 96 MICH. L. REV. 1658 (1998) (reviewing Farber and Sherry).

125. See RORTY, *supra* note 7, at xv (1989) (tracing a pragmatist project through the individualized figure of the “liberal ironist”). But see Allan Hutchinson, *The Three ‘Rs’: Reading/Rorty/Radically*, 103 HARV. L. REV. 555 (1989) (“Rorty’s passionate account of cruelty and humiliation as ‘the worst thing we do’ places too much emphasis on individuals and too little on structural arrangements.”) *Id.* at 564.

126. San Juan critiques this tendency of pragmatism toward status quo maintenance in his book. See SAN JUAN *supra* note 13, at 70.

127. See Matsuda, *Pragmatism Modified* *supra* note 117, at 1764-69 (1990) (arguing for a pragmatism that gives special consideration to the perspectives of subordinated groups and that is committed to anti-subordination).

128. See generally MARK DAVID WOOD, *CORNEL WEST AND THE POLITICS OF PROPHETIC PRAGMATISM* (2000).

129. See GOLDBERG, *supra* note 120, at 214-237 (arguing for a racial pragmatism that proactively resists racism).

130. See Roithmayr, *supra* note 124, at 1678-84 (arguing for a pragmatism that is purposive and politically instrumental to outsider interests).

and narrative.¹³¹ My argument is that a commitment to pragmatist anti-absolutism works differently for outsiders than it does for the mainstream. Whether they reflect a simple bad faith will to power (possible), or the workings of more complex structural and systemic racism and elitism (likely), I do not experience the mainstream attacks on critical race projects as invitations to a pragmatist talking circle. They are designed to disqualify outsider voices, and indeed, to roll back policies that have only recently brought outsiders into the academy.

CONCLUSION

The question the critical race project might ask of post-sovereignty politics is: how does one do your politics. As someone who is intellectually disposed to post-sovereignty theory, I always find myself flipping through the texts to gather the fragments of evidence about what that politics looks like. I'm aware that critical race advocates, many of whom hold praxis dear, will want to know what they should be doing politically to avoid the dangers of sovereign ontology. The answer to the question is, unfortunately, not so straightforward as far as I can tell. Indeed, to someone who commits time and energy to political struggle, in the conventional meaning of the term, the politics of de-subjectification, de-territorialization and de-sovereignization probably do not feel like real politics at all. They do not feel like truth being spoken to power, and they do not feel like power being checked or wealth redistributed. I agree with San Juan's point about the false premise of means-ends logic as it is applied by post-isms of various kinds,¹³² but I also think that those involved in anti-systemic political struggle might easily apply their own basic means-ends analysis in concluding that the celebrated transgressions of postmodernity (hybridity, mobility, diasporas, indeterminacy, etc.) are not emancipatory. Indeed, these "transgressions" may even appear as means toward continued subordinations.¹³³

For progressive postmodern political theory to speak to movement actors, it obviously must remain engaged with them. To an extent, this analytical essay has attempted to model a dialogical method for letting postmodern theory inform engaged research. The LatCrit and Critical Race project to which the four articles discussed here contribute is pre-

131. I take the term "epistemological tribes" from S. Sayyid. *Beyond Westphalia: Nations and Diasporas—the Case of the Muslim Umma*, in *UNSETTLED MULTICULTURALISMS: DIASPORAS, ENTANGLEMENTS, TRANSDISRUPTIONS* 50 n.8 (Barnor Hesse ed., 2000). Lazos Vargas, too, suggests that these epistemological differences are on the order of an "irresolvable paradigm gap," but would counsel "engagement" between the different perspectives.

132. See *supra* note 18 and accompanying text.

133. See HARDT AND NEGRI, *supra* note 8, at 150. "Simplifying a great deal, one could argue that postmodernist discourses appeal primarily to the winners in the processes of globalization In other words, the current global tendencies toward increased mobility, indeterminacy, and hybridity are experienced by some as a kind of liberation but by others as an exacerbation of their suffering." *Id.*

cisely the kind of “local” political project (albeit in the realm of research and scholarship) that postmodern political theory should address. An instructive example of how to understand post-sovereignty (post-national) politics under conditions of globalization is S. Sayyid’s elaboration of the postmodern notion of diaspora in the context of *Umma*—the Muslim community of believers that may well constitute an actual post-sovereign political presence. Sayyid writes:

The idea of the Muslim *Umma* is an attempt to come to terms with the limits and the crisis of the nation-state. As forces and developments associated with globalization have weakened the institutional rigidity of the Westphalian state, cracks and gaps begin to appear in the international state system that provided the terrain for politics. Given the mobile and constructed nature of social identities, these fissures within dominant institutional forms of the nation-state have allowed different kinds of collectives to be articulated, taking advantages of these gaps. These formations seep through the Westphalian edifice, creating political formations that are neither in nor out of the nation-state, but that have an undecidable relationship to it. In this sense, diaspora is the name of this undecidable political formation.¹³⁴

In this quote we see Sayyid effectively navigating the choppy analytical waters between identity and anti-essentialism, culture and politics, the local and the global, and importantly, the modern and the postmodern. Diaspora, in Sayyid’s hands, is neither an empirical claim (communities are living outside their national homes), nor a normative commitment (celebration of hybrid identity forms), but rather a political theoretical device for understanding the relationship between and among the actual and potential transnational Muslim “movement,” exploitative systems of globalization, and the existing political containers of nations and states. Sayyid’s postmodern political framework for understanding the *Umma* is superior because it avoids the “pathos” in notions of diaspora that fail to problematize the “unevenness by which nations are transformed into diasporas”¹³⁵—there are winners and losers in the process and a political theory of diaspora must speak to the political consequences of those outcomes.

Is progressive postmodern political theory correct in assessing the current crisis of the political and concluding that we are living in a post-sovereign world? The answer is undoubtedly to be sought by studying the real political formations, successes, and failures of globalization’s multitudes.

134. Sayyid, *supra* note 131, at 49.

135. *Id.* at 43.