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Geography and International Law: Towards a Postcolonial Mapping

Tayyab Mahmud*

"The primordial scene of the *nomos* opens with a drawing of a line in the soil. This very act initiates a specific concept of law, which derives order from the notion of space. The plough draws lines – furrows in the field – to mark the space of one's own. As such, as ownership, the demarcating plough touches the juridical sphere. . . .The primordial act as described here brings together land and law, cultivation and order, space and *nomos*."[1]

"[M]aps *make* reality as much as they represent it."[2]

"Geography legitimates, excuses, rationalizes, in its very act of origination."[3]

"The Third World was not a place. It was a project."[4]

"Just as none of us is outside or beyond geography, none of us is completely free from the struggle over geography. That struggle is complex and interesting because it is not only about soldiers and cannons but also about ideas, about form, about images and imaginings."[5]

* Professor of Law, Seattle University School of Law. Earlier versions of this paper were presented at the International Law Weekend -West at Santa Clara University School of Law and Association of Law, Culture & Humanities Annual Meeting at Georgetown Law Center. I want to thank Raquel Aldana, Keith Aoki, Peter Fitzpatrick, Hari Osofsky, and Russell Powell for their very helpful comments and suggestions. Any remaining shortcomings are, of course, my own.

1. Cornelia Vishman, *Starting from Scratch: Concepts of Order in No Man's Land, in* WAR, VIOLENCE AND THE MODERN CONDITION 46-7 (Bernd Hüppauf ed., 1997).
2. Jeremy W. Crampton & John Krygier, *An Introduction to Critical Cartography*, 4 (1) ACME: AN INTERNATIONAL E-JOURNAL FOR CRITICAL GEOGRAPHIES 11, 15 (2006).
3. RICHARD PEET, MODERN GEOGRAPHIC THOUGHT 12 (Blackwell Publishing 1998).
4. VIJAY PRASHAD, THE DARKER NATIONS: A PEOPLE'S HISTORY OF THE THIRD WORLD (Howard Zinn ed., New Press 2007).
5. EDWARD SAID, CULTURE AND IMPERIALISM 7 (First Vintage Books) (1993).

I. Introduction

The inaugural gesture of the twenty-first century is Empire's coming out of the closet. For postcolonials, those who exist "after being worked over by colonialism,"[6] this presents particular challenges. While resisting immediate violence unleashed by ubiquitous regimes of Empire, postcolonials have to forge tools and design strategies to accelerate the global struggle for liberation. On the intellectual plane this would involve a critical interrogation of legitimizing knowledge claims put forward by proponents of the resurgent Empire. This article undertakes such an interrogation at the intersection of geography and international law. It aims to demonstrate that both modern geography and modern international law were constituted in, by, and through imperatives of Empire and unavoidably bear traces of their formative origin. Making use of pioneering work of others, this article aims to contribute to the on-going efforts of "rediscovery and rewriting of the imperial past and postcolonial present . . . in explicit connection with a sense of the lived geographies of empire."[7] Or to put it more broadly, to theorize the spatiality of global relations of domination and resistance under the shadow of international law.

The first part of the Article identifies the vantage point of this critical engagement, namely postcolonial approach to inquiry. The second part traces the emergence of modern geography as scaffolding for the construction of modern nation-state, modern construction of race, and modern international law. The third part examines the intersection of geography and international law at the current global conjuncture; and the last part suggests a frame of reference to map resistance of global subalterns.

II. Postcolonial Critique

Edward Said's *Orientalism*[8] inaugurated a whole field of re-evaluations of colonialism and Empire. Since then postcolonial studies, subaltern studies, along with explorations of exiles and diasporas have emerged as critical frameworks to interrogate Empire.[9] Postcolonial approaches to inquiry aim to critique, counter

6. Gyan Prakash, *Postcolonial Criticism and Indian Historiography*, 31 SOCIAL TEXT 8, 8 (1992).
7. Neil Smith, *Geography, Empire and Social Theory*, 18(4) PROGRESS IN HUMAN GEOGRAPHY 550, 550 (1994).
8. *See* EDWARD SAID, ORIENTALISM (Vintage Books 1979).
9. *See generally*, EDWARD SAID, CULTURE AND IMPERIALISM (1992); SELECTED SUBALTERN STUDIES (Ranajit Guha and G.C. Spival eds., Oxford University Press 1988); NATION AND NARRATION (Homi Bhabha ed., 1990); TIMOTHY MITCHELL, COLONIZING EGYPT (1988);

and transcend the cultural and ideological frames of reference produced and sustained by colonialism and imperialism. The postcolonial project is to "invert, expose, transcend or deconstruct knowledges and practices associated with colonialism, of which objectification, classification and the impulse to chart or map have been prominent."[10] Postcolonial critique interrogates binaries of colonial and imperial discourses in order to preserve and celebrate heterogeneity. It positions itself with those "consistently exiled from episteme,"[11] and to participate in their "struggle for the historical and ethical *right to signify*."[12] Stuart Hall summarizes it well:

> It is the retrospective re-phrasing of Modernity within the framework of 'globalization' in all its various forms and moments . . . which is the really distinctive element in a 'post-colonial' periodisation. In this way, the 'post-colonial' marks a critical interruption into that whole grand historiographical narrative which . . . gave this global dimension a subordinate presence in a story which could essentially be told from within its European parameters.[13]

The postcolonial critique, then, aims to lay bare the parochial nature of knowledge claims masquerading as being universal. In order to destabilize the Euro-Americanism of social and political theory, it demonstrates how "Europe works as a silent referent,"[14] for knowledge production around the world; how concepts, categories and prescription born in particularities become universal limit-horizons foreclosing conceptual and practice alternatives.[15] It is in this vein that Chatterjee fashioned his question in relation to nationalism, i.e., if nations are thought to be imagined uniformly by mirroring the experience of Europe, what is left for the people in the postcolonial settings to imagine by way of shaping their political identities?[16] Or as Tagore eloquently observed, nearly a century ago, that

AFTER COLONIALISM: IMPERIAL HISTORIES AND POSTCOLONIAL DISPLACEMENTS (Gyan Prakash ed. 1995); *and* DIPESH CHAKRABARTY, PROVINCIALIZING EUROPE: POSTCOLONIAL THOUGHT AND HISTORICAL DIFFERENCE (Princeton University Press 2000)

10. James D. Sidaway, *Postcolonial Geographies: an Exploratory Essay*, 24 (4) PROGRESS IN HUMAN GEOGRAPHY 591, 592 (2000).
11. GAYATRI C. SPIVAK, THE POST-COLONIAL CRITIC 102-103 (Sarah Harasym ed., Routledge Press 1990).
12. H. K. Bhabha, *Freedom's basis in the indeterminate; and Discussion, in* THE IDENTITY IN QUESTION 51 (John Rajchman ed., 1995).
13. Stuart Hall, *When Was 'the Post-Colonial'? Thinking at the Limit, in* THE POST-COLONIAL QUESTION 250 (Iain Chambers & Lidia Curti eds., 1996).
14. Chakrabarty, *supra* note 9, at 28.
15. *See* Tayyab Mahmud, *Limit Horizons & Critique: Seductions and Perils of the Nation*, 50 VILL. L. REV. 939 (2005) (discussing limit horizons of Euro-centricity modernity).
16. *See* Partha Chatterjee, THE NATION AND ITS FRAGMENTS: COLONIAL AND POSTCOLONIAL HISTORIES (Princeton University Press 1993). *See also* Achille Mbembe, ON THE

the entire East was "attempting to take unto itself a history which is not the outcome of its own living."[17] Postcolonial critique aims to interrogate Western theory and practice that construct and represent the colonized "Other," to show that these constructs are laden with a will "to control, manipulate, even to incorporate, what is a manifestly different . . . world."[18] A useful example of this project is the pioneering work of geographers like David Slater who have indicated how postcolonial perspectives can bring into sharp relief struggles of those subordinated by the repeated returns of the rhetoric and practices of manifest destiny.[19]

In the context of interrogating intersections of geography and international law, it is significant that Edward Said described his pioneering work as "a kind of geographical inquiry into historical experience."[20] The agenda of critical human geography is in tune with this as it explores the social construction of geographical space: how specific social formations produce specific geographies and how these geographies shape social change.[21] Modern colonialism involved the geographical expansion of European states into other territories.[22] Postcolonial critique of geography, then, "instead of focusing on how we can map the subject . . . focus[es] on the ways in which mapping and the cartographic gaze have coded subjects and produced identities."[23] The aim is to uncover geometries of inclusion and exclusion in the genealogies and structures of Western disciplines of knowledge production. As one engages in this endeavor, it is imperative to recognize "writing history as a site of contest."[24] It is also critical that emphasis be placed upon the historical conditions that make particular knowledge claims and representational practices possible. As a result, any postcolonial approach to geography must

POSTCOLONY (University of California Press 2001).

17. RABINDERNATH TAGORE, NATIONALISM 128 (Greemwood Press, Inc. 1973) (1917).
18. SAID, *supra* note 8, at 12 (Vintage Books 1979).
19. David Slater, *Locating the American Century: Themes for a Post-colonial Perspective, in* THE AMERICAN CENTURY: CONSENSUS AND COERCION IN THE PROJECTION OF AMERICAN POWER (David Slater and Peter J. Taylor eds., Blackwell Publishers 1999).
20. SAID, *supra* note 5.
21. *See* EDWARD J. SOJA, POSTMODERN GEOGRAPHIES: THE REASSERTION OF SPACE IN CRITICAL SOCIAL THEORY (Verso Books 1989), and DEREK GREGORY, GEOGRAPHICAL IMAGINATIONS (Blackwell Publishers 1994).
22. In recognition of the symbiosis of empire and geography, Conrad divides the history of European colonial expansion into three geographical phases: "Geography Fabulous," "Geography Militant," and "Geography Triumphant." *See* Joseph Conrad, *Geography and Some Explorers*," in LAST ESSAYS 1-31(1926).
23. John Pickles, A HISTORY OF SPACES: CARTOGRAPHIC REASON, MAPPING AND THE GEO-CODED WORLD 12 (Routledge Press 2004).
24. Gyan Prakash, *Writing Post-Orientalist Histories of the Third World: Perspectives from Indian Historiography*, 32 (2) COMPARATIVE STUDIES IN SOCIETY AND HISTORY 383, 407 (1990).

remain mindful that "any exclusive recourse to space, place, or position becomes utterly abstract and universalizing without historical specificity."[25] This means that modern geography should be located within the broader context of modern regimes of knowledge production.

III. Modern Geography & The Power/Knowledge Matrix of Empire

There is an increasing recognition that "in method and in concept geography as we know it today is overwhelmingly a European discipline."[26] In locating emergence of modern geography within the matrix of modern regimes of knowledge production, one has to deal with the fact that while privileging time, western social theory has tended to treat space as "dead, the fixed, the undialectical, the immobile."[27] This article adopts the point of departure that the spatial and the social are dialectically interrelated, "in that each shapes and is simultaneously shaped by the other in a complex interrelationship which may vary in different social formations and at different historical conjunctures."[28] While unfolding outward from its nerve centers in Europe, modernity itself had to contend with and reproduce geographical dispersals and diversities.[29] As a result, both modernity and geography could not but leave lasting traces upon each other; traces that are being identified by the relatively new focus on geography's role in the very construction of modernity.[30]

Modern geography, from its very inceptions, formed part of the knowledge and practices attendant to colonialism that aimed to objectify and classify the colonized territories and bodies by deploying an impulse to chart, count, and map.[31] Geography was a critical component of the Enlightenment project of knowledge production; it helped produce improved cartography, regional descriptions,

25. Caren Kaplan, *The Politics of Location as Transnational Feminist Practice*, *in* SCATTERED HEGEMONIES: POSTMODERNITY AND TRANSNATIONAL FEMINIST PRACTICES 138 (Inderpal Grewal and Caren Kaplan eds., 1994).
26. DAVID STODDART, ON GEOGRAPHY AND ITS HISTORY 39 (Basil Blackwell Press 1986).
27. Michel Foucault, *The Question of Geography*, *in* POWER/KNOWLEDGE 70 (Colin Gordon ed., 1980).
28. Edward Soja, *The Socio-Spatial Dialectic*, 70 ANNALS OF THE ASS'N OF AM. GEOGRAPHERS 207, 225 (1980).
29. *See generally* GEOMODERNISMS: RACE, MODERNISM, MODERNITY (Laura Doyle and Laura Winkiel eds., 2005).
30. *See* Felix Driver, *Geography's Empire: Histories of Geographical Knowledge*, 10(1) ENVIRONMENT & PLANNING D.: SOCIETY AND SPACE 23-40 (1992).
31. *See* FELIX DRIVER, GEOGRAPHY MILITANT: CULTURES OF EXPLORATION AND EMPIRE (Blackwell Publishers 2001).

geographical data, and analyses of natural environment and political economy.[32] The Enlightenment, as the animating motor of modernity, deployed geography, among other disciplines, to constitute the "Other" against which modernity itself would be interpolated.[33] In this regard, the regime of reason inaugurated by the Enlightenment was nothing if not confident; it confronted the distant and the unknown with the posture that "there can be nothing so remote that we cannot reach to it, nor so recondite that we cannot discover it."[34] And in the discoveries of the unknown remoteness, geography proved to be a vital tool. What was "discovered" was unavoidably constituted by the "discovery," such that "[g]eography was not merely engaged in *discovering* the world; it was *making* it."[35] It is from this perspective that modern geography should be seen as "amongst the advance-guard of a wider 'western' epistemology, deeply implicated in colonial-imperial power."[36] As a result, "geography is inescapably marked (both philosophically and institutionally) by its location and development as a western-colonial science."[37] It should be noted here that the inaugural critical engagement with geography's imperial heritage is that of Hudson's in 1977.[38] He explored the rise and institutionalization of national schools of geography in Europe following the Franco-Prussian War of 1870-71. He listed the connections between geographical explorations and political, economic and strategic interests of European powers and brought into relief ideological scaffoldings of the emerging discipline. Since the early 1980s, the research agenda charted by Hudson has been pursued by others to further examine the relationship between geography and empire and to locate the role of geographical knowledge in the

32. *See generally* GEOGRAPHY AND ENLIGHTENMENT (David N. Livingstone & Charles W. J. Withers eds., University of Chicago Press 1999).
33. As Fitzpatrick enunciates:

> Enlightenment creates the very monsters against which it so assiduously sets itself. These monsters of race and nature mark the outer limits, the intractable 'other' against which Enlightenment pits the vacuity of the universal and in this opposition gives its own project a palatable content. Enlightened being is what the other is not. Modern law is created in this disjunction.

PETER FITZPATRICK, THE MYTHOLOGY OF MODERN LAW 45 (1993).

34. RENE DESCARTES, THE PHILOSOPHICAL WORKS OF DESCARTES 92 (Elizabeth Haldane and G.R.T. Ross trans., Cambridge University Press 1967).
35. DAVID N. LIVINGSTONE, THE GEOGRAPHICAL TRADITION: EPISODES IN THE HISTORY OF A CONTESTED ENTERPRISE 168 (Blackwell Publishers 1992).
36. Sidaway, *supra* note 10, at 593.
37. *Id.*
38. *See* Brian Hudson, *The New Geography and the New Imperialism: 1870-1918*, 9(2) ANTIPODE 12 (1977).

construction of modernity itself.[39]

Modern geography emerged and was promoted "largely, if not mainly, to serve the interests of imperialism in its various aspects including territorial acquisition, economic exploitation, militarism and the practice of class and race domination."[40] From a postcolonial perspective, "the history of geography clearly reflects the evolution of empire. The very formation and institutionalization of the discipline was intricately bound up with imperialism"[41] It has been noted that "geographers have always been among the front ranks of explorers, surveyors, technologists, and ideologues of empire,"[42] and often "became the most vociferous imperialists."[43] Europe's "planetary consciousness"[44] would not have been possible without development of geographical knowledge. As a vanguard colonial discipline, geography played a founding role in the modern construction race by helping to suture bodies and consciousness with space; a construction indispensable to formative stages of modern colonialism and international law.

A. Geography & Modern Constructions of Race

Modernity triggered death of God, noted by Nietzsche, and the disenchantment of life, noted by Weber. This created a crisis of identity and meaning, one that Enlightenment set out to resolve by discovering new moorings for collective life. This is the context within which Europe's "Others" were constituted to furnish grounds for Europe's identity as the "other of the Other." Nascent modern geography was to play a critical role in this process. Construction of the "Other" had to contend with corporeality of the body; its existence in space. Given the mutually constitutive relation between the spatial and the social, geography, as a discipline of discovery and cartography, discovered and demarcated both spaces and bodies of interest, making them available for Europe's projects. Modern Europe's approach to the otherness of the "Other" issued from a will to produce

39. *See* Driver, *supra* note 30, at 23; Richard Peet, *The Social Origins of Environmental Determinism*, 75 ANNALS OF THE ASSOC. OF AM. GEOGRAPHERS 3, 309 (1985) and Mark Bassin, *Imperialism and the Nation State in Fredrich Ratzel's Political Geography*, 11 PROGRESS IN HUMAN GEOGRAPHY 473 (1987).
40. Hudson, *supra* note 38, at 12 (1977). *See also*, D.R. Stoddart, *Geography and War: the 'New Geography' and the 'New Army' in England, 1899-1914*, 11(1) POLITICAL GEOGRAPHY 1, 87 (1992).
41. Neil Smith and Anne Godlewska, *Introduction: Critical Histories of Geography*, *in* GEOGRAPHY AND EMPIRE 92, 94 (Anne Godlewska & Neil Smith eds., 1994).
42. Smith, *supra* note 7, at 493.
43. Smith and Godlewska, *supra* note 41, at 13.
44. MARY LOUISE PRATT, IMPERIAL EYES: TRAVEL WRITING AND TRANSCULTURATION 15 (Routledge Press 1992).

"the colonized as a fixed reality which is at once an 'other' and yet entirely knowable and visible."[45] Geography played a critical role in the production both of this visibility and otherness. While cartography and physical mappings made the colonized a visible and fixed reality, comparative cultural geography rendered her as irredeemably "Other." In the process, geography helped put down many a marker of modern constructions of race.

My position is that it was to reconcile colonial domination with ideals of liberty and equality that a modern discourse of racial difference and hierarchy gained hegemony.[46] In this discourse, capacity and eligibility to freedom and subjecthood were deemed biologically determined, and colonialism stood legitimated as the natural subordination of lesser races to higher ones.[47] Modern geography played a central role in this process and helped fashion emerging theories of racial difference. It should be noted that consolidation of geography as a modern discipline coincided with the zenith of racial thinking in Europe. This was a terrain where in vogue were assertions like "[r]ace is everything: literature, science, art – in a word, civilization, depends upon it."[48] Or even more emphatically, "[a]ll is race; there is no other truth."[49]

In the nineteenth century, geographical thought shifted its conceptual underpinning from naturalistic theology to evolutionary biology. Darwin's theory of evolution based on natural selection, Spencer's theory that societies are social organisms that evolve within environmental determinants and intrinsic structures, and Lamarck's theory of inheritance of acquired characteristics left formative imprints on geographical thought of the period.[50] These ideas furnished the scaffolding of geopolitics, exemplified by Friedrich Ratzel's notion of *lebensraum*

45. Homi K. Bhabha, *Difference, Discrimination and the Discourse of Colonialism, in* THE POLITICS OF THEORY 199 (Francis Barker et. al., eds. 1983).
46. *See* Tayyab Mahmud, *Colonialism and Modern Constructions of Race: A Preliminary Inquiry*, 53 U. MIAMI L. REV. 1219 (1999).
47. *See* UDAY SINGH MEHTA, LIBERATION AND EMPIRE: A STUDY IN NINETEENTH-CENTURY BRITISH LIBERAL THOUGHT (University of Chicago Press 1999) and Tayyab Mahmud, *Race, Reason, Representation*, 33 U.C. DAVIS L. REV. 1581 (2000).
48. ROBERT KNOX, M.D., THE RACES OF MEN: A FRAGMENT (First Mnemosyne Publishing Co. 1969) (1850).
49. BENJAMIN DISRAELI, TANCRED, OR THE NEW CRUSADE 149 (Longman's, Green, and Co. 1970) (1847).
50. *See* David N. Livingstone, *Natural Theology and Neo-Lamarckism: The Changing Context of Nineteenth-Century Geography in the United States and Great Britain*, 74 ANNALS OF THE ASS'N OF AM. GEOGRAPHERS 9 (1984); *see also* David N. Livingstone, *Climate's Moral Economy: Science, Race and Place in Post-Darwinian British and American Geography, in* GEOGRAPHY AND EMPIRE, *supra* note 41, at 132-154; LIVINGSTONE, *supra* note 35.

or living space that rests on the proposition that every living organism requires a territory to draw essential sustenance from.[51] The notion quickly became part of the legitimating arsenal of imperialist expansion of European powers. For example, Halford Mackinder combined natural and cultural geography to forward naturalistic grounds for British foreign expansion and policy.[52]

Environmental determinism also contributed to the modern construction of race. For example, Mackinder theorized that natural regions have differentiated flows of sap and blood running through their populations giving them different characteristics of physique and character.[53] Ellen Churchill Semple theorized how the sturdy energy of the Anglo-Saxon race was reinvigorated by settlement of North America and formulated scientific justifications for the ideology of manifest destiny.[54] Different regions of the world were shown to produce people with different "temperaments" with "negroes of the equatorial belt degenerate[d] into grave racial faults."[55] Environmental determinism, with its:

> organismic analogy, and the conception of a natural humanity, allowed geography entry into modern science not only because they enabled logical synthesis of the natural and the human . . ., but more importantly because this synthesis could be employed in the service of power, specially to legitimate as natural the expansion of Europe into world dominance.[56]

Geography combined with notions of biological and social evolution to predict decline and even the demise of "inferior" races.[57]

In summary, emerging as a pioneering discipline within the matrix of the construction of modern Europe's identity as the "other of the Other," modern geography played a foundational role in constituting the racialized "Other." In the process it substantiated the observation that "[k]knowledge . . . is a convention rooted in the practical judgments of a community of fallible inquirers who struggle

51. *See* Bassin, *supra* note 39.
52. Halford John Mackinder, *The Teaching of Geography From an Imperial Point of View*, 6 GEOGRAPHICAL TCHR. 79 (1911).
53. Halford John Mackinder, *The Human Habitat*, 47 SCOT. GEOGRAPHICAL M. 321 (1931).
54. ELLEN CHURCHILL SEMPLE, AMERICAN HISTORY AND ITS GEOGRAPHIC CONDITIONS (1903); *see also* THOMAS R. HIETALA, MANIFEST DESIGN: AMERICAN EXCEPTIONALISM AND EMPIRE (rev. ed. 2003).
55. ELLEN CHURCHILL SEMPLE, INFLUENCES OF GEOGRAPHIC ENVIRONMENT ON THE BASIS OF RATZEL'S SYSTEM OF ANTHROPO-GEOGRAPHY 620 (1911).
56. PEET, *supra* note 3, at 13.
57. *See for example* WALKER FITZGERALD, AFRICA: A SOCIAL, ECONOMIC AND POLITICAL GEOGRAPHY OF ITS MAJOR REGIONS 137 (3rd ed. 1940) ("It is agreed that Negro and European civilizations cannot remain mutually exclusive while existing side by side in the same continent. . . . It seems inevitable that the infinitely weaker civilization of the Negro should ultimately pass away.").

to resolve theory-dependent problems under specific historical conditions."[58]

B. Geography & The Construction of the Modern Nation-State

This section will briefly recount the role of modern geography in the establishment of modern nation-states in Europe. Because the consolidation of the modern nation-state in Europe unfolded concurrently with Europe's colonial expansion, construction of the modern nation and the modern state were braided with discourses and institutionalizations of Empire. As a result, "Europe was made by its imperial projects, as much as colonial encounters were shaped by conflicts within Europe itself."[59] The formative role of geography within the intertwining of Empire, and construction and consolidation of the nation and the state is a remarkable story of emergence and consolidation of modernity.

Even before Europe set out to colonize territories beyond the seas, its political configuration was itself a product of intra-Europe colonizations. Even a brief survey of this process and its attendant legal regimes demonstrate that "occidental law is imperial 'in itself' and not only in some remote or passing application of it in the colonies, 'out there.'"[60] Useful in this context are recent examinations of English colonialism in the Celtic world, the movement of Germans into Eastern Europe, the Spanish Reconquest and the activities of colonists in the eastern Mediterranean. This prompted Robert Barlett to conclude that "Europe, the initiator of one of the world's major processes of conquest, colonization and cultural transformation, was also the product of one."[61] Once over-seas colonialism commenced, processes within Europe could not remain immune to imperatives of Empire. Conceptualizations of the "nation," the grounds of modern law, institutions of modern governance and the very identity of Europe and Europeans cannot be adequately understood without paying attention to the motivations, processes and impacts of colonialism. As discussed above, modern geography had played a pivotal role in modern constructions of race; constructions that were to undergird both the modern nation and modern colonialism. Arendt perceptively recognized this connection and observed that while there may be "an

58. Mary E. Hawkesworth, *Knowers, Knowing, Known: Feminist Theory and Claims of Truth*, 14 SIGNS: J. OF WOMEN IN CULTURE AND SOC'Y 533, 549 (1989).
59. Ann Laura Stoler & Frederick Cooper, *Between Metropole and Colony: Rethinking a Research Agenda, in* TENSIONS OF EMPIRE: COLONIAL CULTURES IN A BOURGEOIS WORLD 1, 1 (Frederick Cooper and Ann Laura Stoler eds., 1997).
60. PETER FITZPATRICK, MODERNISM AND THE GROUNDS OF LAW 146 (2001).
61. ROBERT BARTLETT, THE MAKING OF EUROPE: CONQUEST, COLONIZATION AND CULTURAL CHANGE 950-1350, at 313-14 (1994).

abyss between nationalism and imperialism" in theory, "in practice, it can be and has been bridged by tribal nationalism and outright racism."[62]

The nation remains a "capital paradox of universality."[63] The question "what is a nation?" posed by Ernest Renan in 1882,[64] still searches for an adequate answer. The modern nation arises within the mapping order of modern History; the linear, progressive and Eurocentric history that became the hegemonic mode of experiencing time and of being.[65] History, while designating the nation-state as the agency that will realize the promise of modernity, remained mindful of the racial and colonial divide that fractured humanity. It is only "civilized" nations, those within History, that were to realize freedom; those outside History, the "uncivilized" "non-nations" had no recognizable claims or rights.[66] As a corollary then, "civilized" nations had the right to subjugate "non-nations" and bring Enlightenment to them. Never was the racialized colonial script more coherent than when inscribed in the grammar of History and nation. From Vico to Herder, the nation was conceptualized as grounded in and reflecting manifest and irreducible differences between people.[67] Justification for nationhood was whether a race could be shown to fit within the scheme of historical progress.[68] Resting on emerging "race sciences" and Social Darwinism, the nation was conceptualized as a natural species of being.[69] While universality imagines the nation as unbound, its actualization situates it in particularities of belonging. Consequently, nation-building is unavoidably a process of exclusion. Coherence of the nation rests on exclusion of the "Other," and/or destruction of the alterity of the "Other." It is not

62. HANNAH ARENDT, IMPERIALISM: PART TWO OF THE ORIGINS OF TOTALITARIANISM: 32 (1968).
63. JACQUES DERRIDA, THE OTHER HEADING: REFLECTIONS ON TODAY'S EUROPE 71 (Pascale-Anne Brault & Michael B. Naas trans., 1992).
64. Ernest Renan, *What is a Nation?*, *in* Bhabha, *supra* note 9, at 8.
65. *See generally* GEORGE WILHELM FRIEDRICH HEGEL, THE PHILOSOPHY OF HISTORY (J. Sibree trans., 1956); *see also* ROBERT YOUNG, WHITE MYTHOLOGIES: WRITING HISTORY AND THE WEST (2nd ed. 1990).
66. *See generally* ERIC R. WOLF, EUROPE AND THE PEOPLE WITHOUT HISTORY (1982).
67. *See generally*, ISIAH BERLIN, VICO AND HERDER: TWO STUDIES IN HISTORY OF IDEAS (1976); *see also* Anthony Pagden, *The Effacement of Difference: Colonialism and the Origins of Nationalism in Diderot and Herder*, *in* AFTER COLONIALISM 124 (Gyan Prakash ed., 1994).
68. See Peter Fitzpatrick, *'We Know What It Is When You Do Not Ask Us': Nationalism as Racism*, *in* NATIONALISM, RACISM AND THE RULE OF LAW 3 (Peter Fitzpatrick ed. 1995), E. J. HOBSBAUM, NATIONS AND NATIONALISM SINCE 1780 108 (1990), *and* GEORGE STOCKING, VICTORIAN ANTHROPOLOGY 32, 66, 235 (1987)
69. *See* John S. Dryzek & David Schlosberg, *Disciplining Darwin: Biology in the History of Political Science*, *in* POLITICAL SCIENCE IN HISTORY: RESEARCH PROGRAMS AND POLITICAL TRADITIONS 123 (James Farr et. al. eds., 1995).

surprising then that "the discourse of race and nation are never very far apart."[70] The emerging discipline of modern geography, with its preoccupation with discovering and demarcating distinctions between groups and populations, played a critical role in this racialized conceptualization of the modern nation.

As Neil Smith reminds us," nation-states are, by definition, geographical solutions to political problems."[71] Geography, as a description and mapping of space, has always been associated with territoriality and domination of the environment. Not surprisingly, it has always been closely controlled by the state. [72] Critical geography has put to productive use J. R. Hale's axiom that "[w]ithout maps a man could not visualize the country to which he belonged."[73] The work of critical geographers helps us uncover the connections between cartography and the consolidation of modern European nation-states.[74] They document the reciprocal and constitutive relationship between maps and nation-states, and have detailed, for example, how historically "the national atlas has been a symbol of national unity, scientific achievement, and political independence."[75] After all, "outside the world of maps, states carry on a precarious existence; little of nature, they are much of maps, for to map a state is to assert its territorial expression, to leave it off to deny its existence."[76]

The inaugural and formative connection between nation-building and empire-building and the role of geography in this ensemble is best exemplified by the emergence of England as a modern state. [77] Following separation of the English Church from that of Rome, England began to develop an identity separate from that of the European Continent. The new self-identity of England as politically self-sufficient and autonomous went hand in hand with expressions of right to

70. Etienne Balibar, *Racism and Nationalism*, *in* RACE, NATION, CLASS: AMBIGUOUS IDENTITIES 37, 37 (Etienne Balibar & Immanuel Wallerstein eds., Chris Turner trans., 1991).
71. Smith, *supra* note 7, at 492.
72. *See* MATTHEW SPARKE, IN THE SPACE OF THEORY: POSTFOUNDATIONAL GEOGRAPHIES OF THE NATION-STATE (2005).
73. Quoted in John Brian Harley, *Silences and Secrecy: The Hidden Agenda of Cartography in Early Modern Europe*, 40 IMAGO MUNDI 57, 61 (1988).
74. *See, e.g.*, J.B. Harley, *Silences and Secrecy: The Hidden Agenda of Cartography in Early Modern Europe*, 40 IMAGO MUNDI 57 (1988); *see also* J. B. Harley, *Maps , Knowledge and Power, in* THE ICONOGRAPHY OF LANDSCAPE (Denis Cosgrove and Stephen Daniels eds., 1988).
75. Mark Monmonier, *The Rise of the National Atlas*, 31:1 CARTOGRAPHICA 1, 1 (1994).
76. Denis Wood and John Fels, *Designs on Signs: Myth and Meaning in Maps*, 23(3) CARTOGRAPHICA 54, 64 (1986).
77. *See* Lesley B. Cormack, *The Fashioning of an Empire: Geography and the State in Elizbethan England, in* GEOGRAPHY AND EMPIRE, *supra* note 41, at 16-30.

govern other sections of the globe. The very inaugural declaration of plenary powers of the English crown in 1533 asserted that "this realm of England is an empire."[78] Soon the expression "empire" came to mean not only a right to self-governance but also a claim upon external lands which England would control. Geography and geographers proved essential to this development. It is in this formative phase of England as an autonomous polity that geography gained popularity. Of particular importance in this context was descriptive geography that aimed at the description of other lands. It is here that the construction of the "Other," and emergence of a self-identity as "the other of the Other," unfolded. Descriptive geography was comparative geography: other lands were described as different than and inferior to England. The canonical geographical work of the period enumerated voyages and discoveries of Englishmen in the New World and the East.[79] It encouraged the English to take the lead in exploration of and trade with the world. While stressing the primacy of English discoveries, it focused on distinctions between the English and other peoples to assert superiority of the English. Other geographers wrote tracts aimed at convincing the English Crown of the possibility and desirability of explorations and colonization.[80] Means and benefits of colonization of the Americas was a particular focus, and in the process racist characterizations of the colonized natives and the idea of *terra nullius* available for possession by the English was born. These were some of the modalities whereby early modern geography "encouraged the English to see the world as theirs by right of conquest."[81]

Geography also played a formative role in the rise and consolidation of the modern state apparatuses and technologies of governance. Consolidation of the modern nation-state of France exemplifies this process. Modernity engendered technologies, regimes and processes that facilitated ascendancy of the modern centralized, rational and controlling state.[82] Nowhere did this process unfold as rapidly as in the late revolutionary and Napoleonic period in France. Militarization of the entire society and elaboration of a virulent imperialist ideology engendered, and was facilitated by, a particularly imperialist geography.[83] Cartography and

78. GEOFFREY R. ELTON, THE TUDOR CONSTITUTION 353 (1982).
79. *See* RICHARD HAKLUYT, THE PRINCIPAL NAVIGATIONS, VOYAGES, TRAFFIQUES AND DISCOVERIES OF THE ENGLISH NATION (3 Vols. 1598-1600) *quoted in* Cormack, *supra* note 77, at 21-30.
80. Cormack, *supra* note 77, at 23.
81. .*Id.* at 30.
82. *See, e.g.*, MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977).
83. *See* Anne Godlewska, *Napoleon's Geographers (1797-1815): Imperialists and Soldiers of*

engineering facilitated "annihilation of space and local culture in France," and replaced diversities of existence with "a universal measurement-based culture."[84] In the late nineteenth and early twentieth centuries, geography came of age as a state-sponsored distinct discipline of inquiry in France, and the production of geographical knowledge proved indispensable in consolidation of the French colonial empire.[85] In Spain, new geography and geographers facilitated acquisition and justifications of empire.[86] New geography and geographers formed the advance-guard in moves towards unification of Italy and its subsequent quest for colonial expansion.[87] Consolidation of geography in Germany moved in concert with the unification of Germany and its subsequent search for *Lebensraum*.[88] As regions outside Europe confronted the task of building modern state apparatuses, they found geographical knowledge an important tool. For example, following the Meiji restoration, Japan moved quickly to institutionalize the study of geography, which, in turn, facilitated consolidation of the state and colonial expansion.[89] Geographers were also among the pioneers of comparative studies of colonial regimes; studies that helped European powers calibrate their respective colonial policies and operations in the light of the experiences of others.[90]

The discipline of geography and geographers played a critical role in the self-professed "empire of liberty" of the United States. [91] The very foundational imagining of this new polity had to be constituted in distinction to "the merciless

Modernity, *in* GEOGRAPHY AND EMPIRE, *supra* note 41, at 32-53

84. *Id.* at 33; *see also* MICHAEL ADAS, MACHINES AS THE MEASURE OF MEN: SCIENCE, TECHNOLOGY AND IDEOLOGIES OF WESTERN DOMINANCE (1989) *and* EUGEN WEBER, PEASANTS INTO FRENCHMEN: THE MODERNIZATION OF RURAL FRANCE 1870-1914 (Stanford University Press 1976).
85. Michael J. Heffernan, *The Science of Empire: The French Geographical Movement and the Form of French Imperialism*, *in* GEOGRAPHY AND EMPIRE, *supra* note 41, at 93-114
86. *See* Horacio Capel, *The Imperial Dream: Geography and the Spanish Empire in the Nineteenth Century in* GEOGRAPHY AND EMPIRE, *surpa* note 41, at 58-73.
87. Lucio Gambi, *Geography and Imperialism in Italy: From the Unity of the Nation to the 'New' Roman Empire, in* GEOGRAPHY AND EMPIRE, *surpa* note 41, at 74-91.
88. Gerhard Sandner and Mechtild Rossler, *Geography and Empire in Germany, 1871-1945*, *in* GEOGRAPHY AND EMPIRE, *supra* note 41, at 115-127; David T. Murphy, *Space, Race and Geopolitical Necessity: Geographical Rhetoric in German Colonial Revanchism, 1919-1933*, *in* GEOGRAPHY AND EMPIRE, at 173-187. *See also* JOHN K. NOYES, COLONIAL SPACE: SPATIALITY IN THE DISCOURSE OF GERMAN SOUTH WEST AFRICA 1884-1915 (1992).
89. Keiichi Takeuchi, *The Japanese Imperial Tradition, Western Imperialism and Modern Japanese Geography*, *in* GEOGRAPHY AND EMPIRE, *supra* note 41, at 188- 206.
90. *See, e.g.*, Paul Claval, *Playing with Mirrors: The British Empire According to Albert Demangeon*, *in* GEOGRAPHY AND EMPIRE, *supra* note 41, at 228-243.
91. *See generally* JAMES WILSON, THE IMPERIAL REPUBLIC: A STRUCTURAL HISTORY OF AMERICAN CONSTITUTIONALISM FROM THE COLONIAL (2002).

Indian savages,"[92] presented in the Declaration of Independence as yet another grounds for appropriation of lands long settled by them. Carr captures the founding contradiction well: "[t]hese new Americans have defined their nation in terms of opposition to injustice, and of belief in inalienable rights; but they found that only by injustice and alienation of rights could they bring their nation into being."[93] This founding of the polity in colonial appropriation of land was given an express legitimation by Justice Marshall in *Johnson v. McIntosh*.[94] Based on "the history of America, from its discovery to the present day," and the consistency of claims by various colonizers, and from the law of nations resting on "usage" of imperial powers, Marshall derived that "discovery" had conferred upon the discoverers an "absolute" and "exclusive" title, one that "gave to the nation making the discovery the sole right of acquiring the soil from natives and establishing settlements upon it."[95] In his canonical portrayal of colonial discovery as the *ubernorm* of state-formation, Marshall declared that "if a country has been acquired and held under it; if the property of the great mass of the community originates in it, it becomes the law of the land and cannot be questioned."[96]

Neil Smith has perceptively traced the role of geographer Isaias Bowman in the design of ascendant American hegemony in the twentieth century.[97] Acquisition of over-seas colonies following the Spanish-American War notwithstanding, in the American imagination the United States was to pursue an empire without colonies; one based on free trade. In place of a zero-sum game based on conceptions of absolute space, it sought markets and investment opportunities beyond limits of territorial sovereignties. Smith shows how American decision-makers imagined their imperium as "a quintessentially liberal victory *over* geography."[98] This "deracination of geography in the liberal globalist vision," argues Smith, "abetted a broad ideological self justification for the American Empire."[99] Similarly, during the early 1940s, Isaias Bowman spearheaded the project to draw up American

92. THE DECLARATION OF INDEPENDENCE para. 29 (U.S. 1776).
93. HELEN CARR, INVENTING THE AMERICAN PRIMITIVE: POLITICS, GENDER AND THE REPRESENTATION OF NATIVE AMERICAN LITERARY TRADITIONS 1789-1936 at 9 (1996); *see also* Helen Carr, *Woman/Indian: "The American" and His Other*, *in* 2 EUROPE AND ITS OTHERS (Francis Barker ed., 1984).
94. *See* Johnson v. McIntosh, 21 U.S. 543 (1823).
95. *Id.* at 573, 586, 590-91.
96. *Id.* at 591.
97. *See generally* NEIL SMITH, AMERICAN EMPIRE: ROOSEVELT'S GEOGRAPHER AND THE PRELUDE TO GLOBALIZATION (2003).
98. *Id.* at xviii.
99. *Id.*

policies and plans for the prospective dissolution of Europe's colonial empires.[100] All this unfolded in a context that produced the (in)famous declaration by a leading advocate of an expanded American empire, Henry Luce, namely that "[t]yrannies may require a large amount of living space, . . . But Freedom requires and will require far greater living space than Tyranny."[101] Professed triumph of liberalism over territory, however, quickly gave way to geo-political imperative. Imperial supremacy resting on trading prowess could not be assumed; it had to be secured both territorially and geographically. Alliances for geographical containment of adversaries, forward positionings of military forces and cultivation of territorial client states quickly formed vital components of the new hegemony.

The brief survey above shows that modern geography is deeply implicated in the modern constructions of race, nation and the state. Furthermore, it demonstrates that these constructions unfolded within the context of the emergence and consolidation of European colonial empires. In helping to constitute Europe's identity as the "other of the Other," modern geography consolidated its own European pedigree as well as its position as a vanguard colonial discipline.

C. Geography & Modern International Law

Like mainstream geography, "[t]he discourse of international law is a powerful element in its own right, creating conceptual structures which become entrenched and which are used to exclude and undermine alternative ways of looking at the world."[102] This section recounts the entanglement of modern international law with colonialism and Empire. This entanglement both drew upon and contributed to the development of modern geography. Acquisition and management of the colonies entailed particular attention to describing and mapping territories, and management of boundaries.[103] Geography and cartography were indispensable to this enterprise.

Any inquiry into the relationship between international law and Empire has to take stock of the fact that "international law consistently attempts to obscure its

100. Neil Smith, *Shaking Loose the Colonies: Isaiah Bowman and the 'De-colonization' of British Empire*, *in* GEOGRAPHY AND EMPIRE, *supra* note 41, at 270-299.

101. Henry Luce, *The American Century (1941), quoted in* GEOGRAPHY AND EMPIRE, *supra* note 41, at 271.

102. Maria Aristodemou, *Choice and Evasion in Judicial Recognition of Governments: Lessons from Somalia*, 5(4) EUR. J. INT'L L. 532, 551 (1994).

103. *See* IAN J. BARROW, MAKING HISTORY, DRAWING TERRITORY: BRITISH MAPPING IN INDIA, c. 1756-1905 (2003); Garth Myers, *From 'Stinkibar' to 'The Island Metropolis': The Geography of British Hegemony in Zanzibar*, *in* GEOGRAPHY AND EMPIRE, *supra* note 41, at 212-27; *and* ROY MOXHAM, THE GREAT HEDGE OF INDIA (Constable Publishers 2001).

colonial origins, [and] its connections with the inequalities and exploitation inherent in the colonial encounter."[104] Bringing the complicity of international law with Empire into the open remains critical because "the violence of imperialism was legitimated in its being exercised through law."[105] What Antony Anghie has highlighted about positivist international law can also be said of modern geography, namely that:

> The violence of positivist language in relation to non-European peoples is hard to overlook. Positivists developed an elaborate vocabulary for denigrating these peoples, presenting them as suitable objects for conquest, and legitimizing the most extreme violence against them, all in the furtherance of the civilizing mission – the discharge of the white man's burden.[106]

Impulses of modernity engendered a power/knowledge complex whereby "in the course of the nineteenth century dominant conceptions of space installed within the political imaginary of the West a presumptive identity between 'rationality' and 'space.'"[107] From early on, modern law focused on the quality of the relationship between a population and its territory to assess eligibility to autonomous political society. In this reading, territory has to be held effectively by acknowledged authority and exploited in a sustained manner. "Savages" inhabiting territories "discovered" by Europeans were deemed to be occupying the land inadequately and having social networks out of tune with "Western pattern[s] of political organization."[108] As a result, the potential universality of the canonical "natural rights" articulated by Locke was circumscribed as these rights were made applicable only to the "Civiz'd part of Mankind."[109] This distinction between "civilized" and "uncivilized," "discovered" and publicized in no small measure by modern geography, furnished the grounds for the enduring distinction between

104. ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW 117 (Cambridge University Press 2004).
105. FITZPATRICK, *supra* note 60, at 178.
106. Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 HARV. INT'L L.J. 1, 7 (1999).
107. GREGORY, *supra* note 21, at 137. *See also* PRATT, *supra* note 44, at 34-35 ("[T]he systematizing of nature, [in the eighteenth and nineteenth centuries] represents not only a European discourse about non-European worlds ... but an urban discourse about non-urban worlds, and a lettered, bourgeois discourse about non-lettered, peasant worlds.").
108. GERRIT W. GONG, THE STANDARD OF 'CIVILIZATION' IN INTERNATIONAL SOCIETY 88 (1984). *See also* Peter Hulme, *The Spontaneous Hand of Nature: Savagery, Colonialism, and the Enlightenment, in* THE ENLIGHTENMENT AND ITS SHADOWS 16 (Peter Hulme & Ludmilla Jordanova eds., 1990).
109. JOHN LOCKE, TWO TREATISES OF GOVERNMENT, THE SECOND TREATISE §87 (1965). For a perceptive reading of Locke's theory of property, see PETER T. MANICAS, THE DEATH OF THE STATE 104-09 (1974).

Europe and its "Others."[110] Upon this distinction have rested both the modern construction of race and the very identity and justification of modern law.[111] Modern international law deployed this distinction to fashion doctrines of "discovery" and *terra nullius*, and the very rules of eligibility to recognition and membership in the society of nations.[112] Vattel, one of the widely acknowledged founding fathers of modern international law, expressly made the quality of occupation and use of territory as the primary criteria of membership in the natural society of nations.[113] In Vattel's formulation, the "uncertain occupancy" of the "wandering tribes whose small numbers cannot populate the whole country," is not "a real and lawful taking of possession;" hence it is entirely lawful for European powers to occupy such territories.[114] Similarly, in the eyes of modern international law, "the Indians of North America had never inhabited any territory to an extent sufficient to preclude newcomers," and hence "their lands [were] unoccupied and amenable to the acquisition of sovereignty."[115] Hegel's canonical articulation makes explicit the link between use of land and eligibility to legal subjecthood and entry into evolutionary History:

> The same consideration justifies civilized nations in regarding and treating as barbarians those who lag behind them in institutions which are the essential moments of the state. Thus a pastoral people may treat hunters as barbarians, and both of these are barbarians from the point of view of agriculturists, etc. The civilized nation is conscious that the rights of barbarians are unequal to its own and treats their autonomy as only a formality.[116]

As Anghie demonstrates convincingly, the very origins of modern international law and the development of modern conceptions of sovereignty have little to do with the professed foundational concern of international law, i.e., management of

110. *See* ANTHONY PAGDEN, EUROPEAN ENCOUNTERS WITH THE NEW WORLD: FROM RENAISSANCE TO ROMANTICISM (1993); J.M. BLAUT, THE COLONIZER'S MODEL OF THE WORLD: GEOGRAPHICAL DIFFUSIONISM AND EUROCENTRIC HISTORY (1993); Colin Perrin, *Approaching Anxiety: The Insistence of the Postcolonial in the Declaration of the Rights of Indigenous Peoples, in* LAWS OF THE POSTCOLONIAL 19 (Eve Darian-Smith & Peter Fitzpatrick eds., 1999).
111. *See generally* FITZPATRICK, *supra* note 33.
112. *See* ROBERT A. WILLIAMS, JR., THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST (1990); Emer de Vattel, *Emer de Vattel on the Occupation of Territory, in* IMPERIALISM 42 (Philip D. Curtin ed., Charles E. Fenwick trans., 1971).
113. 3 E. DE VATTEL, THE LAW OF NATIONS OR THE PRINCIPLES OF NATURAL LAW APPLIED TO THE CONDUCT AND TO THE AFFAIRS OF NATIONS AND OF SOVEREIGNS 84-86 (Charles G. Fenwick trans., 1916).
114. *Id.*
115. L. C. Green & Olive P. Dickason, *Claims to Territory in Colonial America, in* THE LAW OF NATIONS AND THE NEW WORLD 75 (1989).
116. G. W. F. HEGEL, PHILOSOPHY OF RIGHT 219 (T.M. Knox trans., 1952).

relations between sovereign (read European) states; it was rather the facilitation of colonial domination of the racialized "others" that animated the enduring constructs.[117] For example, in Westlake's reading, "of uncivilised natives international law takes no account."[118] As a result, then, "[t]o characterize any conduct whatever towards a barbarous people as a violation of the laws of nations, only shows that he who so speaks has never considered the subject."[119] This leads to a particular posture towards colonial acquisition of territory, namely, confluence of territory and people in the category "backward" and legitimation of colonialism as acquisition of "backward territory."[120]

Beyond occupation, grounds for the tutelage of the "uncivilized" were laid down expressly by modern international law. For Mill, the "barbarians have no rights as a *nation*, except a right to such treatment as may, at the earliest possible period, fit them for becoming one."[121] Westlake, similarly, denies that the colonized have no rights, but insists that:

> the appreciation of their rights is left to the conscience of the state within whose recognised territorial sovereignty they are comprised. . .. Becoming subjects of the power which possesses the international title to the country in which they live, natives have on their governors more than the common claim of the governed, they have the claim of the ignorant and helpless on the enlightened and strong. . ..[122]

This construction of difference along the scale of civilization was again famously deployed to manage the question of colonialism under the Mandate

117. *See* ANGHIE, *supra* note 104. *See also* U. O. UMOZURIKE, INTERNATIONAL LAW AND COLONIALISM IN AFRICA (1979) *and* Notes, *Aspiration and Control: International Legal Rhetoric and the Essentialization of Culture*, 106 HARV. L. REV. 723 (1993).
118. John Westlake, *John Westlake on the Title to Sovereignty*, *in* IMPERIALISM 45, 47 (Philip D. Curtin ed., 1971).
119. J.S. MILL, ESSAYS ON POLITICS AD CULTURE 406 (1962).
120. M.F. LINDLEY, THE ACQUISITION AND GOVERNMENT OF BACKWARD TERRITORY IN INTERNATIONAL LAW: BEING A TREATISE ON THE LAW AND PRACTICE RELATING TO COLONIAL EXPANSION v (Negro Universities Press 1969) (1926) (explaining that "Backwardness" of territory is plotted along an evolutionary scale).

> At the one extreme, it may perhaps be said to be marked by territory which is entirely uninhabited; and it clearly includes territory inhabited by natives as low in the scale of civilization as those of Central Africa. On the other hand, all that can be said as to its upper limits probably is that it is obviously intended to exclude territory which has reached the level of what is sometimes known as European or Western civilization.
>
> Id. See also Robert A. Williams, Jr., Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World, 1990 Duke L.J. 660.

121. MILL, *supra* note 119, at 406.
122. Westlake, *supra* note 118, at 47, 50-51.

System of the League of Nations.[123] As international law's turn to institutions accelerated in the twentieth century, the Mandate system was the first institutionalized attempt by international law to deal with the colonial question; in this case colonies of the powers defeated in the First World War. Combining knowledge claims about place of origin, bodies and consciousness, the quintessential scaffolding of modern construction of race, new terms of tutelage were laid out:

> To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are *inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world*, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant. The best method of giving practical effect to this principle is that the *tutelage of such peoples should be entrusted to advanced nations* who by reason of their resources, their experience or their geographical position can best undertake this responsibility . . . .[124]

The "tutelage" of "advanced nations" often entailed disposition of the mandated territories and people inhabiting these territories in tune with geo-strategic interests of the "advanced nations." Arbitrary cartography of the Middle East creating new "homelands" and "nation-states," the resulting enduring and intractable territorial disputes, and competing political aspirations are a bitter fruit of this tutelage.[125] In legal terms, the Mandate System was succeeded by the Trusteeship System of the United Nations. But, as Anghie has argued, in terms of technologies of management, it is the Bretton Woods institutions, i.e., the IMF and the World Bank, that are the true successors of the logic and design of the Mandate System.[126] Furthermore, as Ruth Gordon has convincingly demonstrated, the

123. For details see QUINCY WRIGHT, MANDATES UNDER THE LEAGUE OF NATIONS (1968); Antony Anghie, *Colonialism and the Birth of International Institutions: Sovereignty, Economy and the Mandate System of the League of Nations*, 34(3) N.Y.U. J. INT'L L. & POL. 513 (2002); *and* SIBA N'ZATIOULA GROVOGUI, SOVEREIGNS, QUASI SOVEREIGNS, AND AFRICANS: RACE AND SELF-DETERMINATION IN INTERNATIONAL LAW (1996).

124. League of Nations Covenant, art. 22, paras. 1-2 (emphasis added). For good analyses of the Mandate System, see Ruth Gordon, *Saving Failed States: Sometimes a Neocolonialist Notion*, 12 AM. U. J. INT'L L. & POL'Y 903 (1997); WRIGHT, *supra* note 123; R.N. CHOWDHURI, INTERNATIONAL MANDATES AND TRUSTEESHIP SYSTEMS (1955).

125. *See* MAXIME RODINSON, ISRAEL: A COLONIAL-SETTLER STATE? (1973); DAVID FROMKIN, A PEACE TO END ALL PEACE: THE FALL OF THE OTTOMAN EMPIRE AND THE CREATION OF THE MODERN MIDDLE EAST (2001) and RASHID KHALIDI, RESURRECTING EMPIRE: WESTERN FOOTPRINTS AND AMERICA'S PERILOUS PATH IN THE MIDDLE EAST (2004).

126. *See* Antony Anghie, *Time Present and Time Past: Globalization, International Financial Institutions, and the Third World*, 32 N.Y.U. J. INT'L L. & POL. 243 (2000).

shadow of discourses and regimes of the Mandate and Trusteeship systems is very much with us, exemplified by the in vogue discourse of "failed states" in tune with the racialized discourse of civilized/uncivilized that animated doctrines and institutions of international law.[127] In yet another deployment of the civilized/uncivilized binary, the constituent statute of the International Court of Justice (ICJ) mandates that judges are to be selected having regard to "the main forms of civilization . . . of the world," and the Court is required to apply "the general principles of law recognized by civilized nations."[128] This civilized/uncivilized divide remains implicitly alive in the ICJ's deployment of "geographical Hegelianism" to resolve international territorial disputes to this day.[129]

Colonial geographies survived the demise of formal colonialism. As decolonization was set in motion starting in the mid-twentieth century, colonial possessions were turned into distinct states. Often this involved territorial cartographies without regard to cultural, linguistic, historical, or topographical coherence of the new political units.[130] The resulting postcolonial "contrived state"[131] is often a mockery of the right of self-determination because territory rather than a distinct people become the primary frame of reference of the right.[132] The result is internal colonialism in postcolonial formations, leading an astute observer to characterize it as "virtually a characteristic of state formation."[133] Colonial lineage and the process of territorial demarcation of postcolonial states ensured that internal colonialism became the rule rather than the exception. As a result post-colonial states have more often than not failed to develop into cohesive political units having legitimacy, and have been plagued by separatist movements,

127. Gordon, *supra* note 124, at 903.
128. Statue of the International Court of Justice arts. 9, 38-1c.
129. *See* James Thuo Gathii, *Geographical Hegelianism in Territorial Disputes Involving Non-European Land Relations: An Analysis of the Case Concerning Kasikili/Sedudu Island (Botswana/ Namibia), in* THE THIRD WORLD AND INTERNATIONAL ORDER: LAW, POLITICS AND GLOBALIZATION 75 (Antony Anghie et al. eds., 2003).
130. Dianne Otto argues that the legal principle of *uti possidetis juris* was invoked to ensure inalterability of colonial frontiers. Dianne Otto, *Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference, in* LAWS OF THE POSTCOLONIAL, *supra* note 110, at 145, 150.
131. Makau Wa Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 16 MICH. J. INT'L L. 1113, 1134 (1995).
132. Robert H. Jackson, *Juridical Statehood in Sub-Saharan Africa*, 46 COLUM. J. INT'L AFF. 1, 4-5 (1992). *See also* M. G. Kaladharan Nayar, *Self-Determination beyond the Colonial Context: Biafra in Retrospect*, 10 TEX. INT'L L.J. 321 (1975).
133. Sidaway, *supra* note 10, at 598.

civil wars, and successions.[134] When it comes to the postcolonial state-nation, "the hyphen that links them is now less an icon of conjuncture than an index of disjuncture."[135] Sanctity of territorial boundaries of existing states, however, remains a foundational rule of international law.[136] This furnishes external legitimacy to postcolonial state-nations in the face of internal legitimacy deficits. The result is captured well by a perceptive observer:

> Within the artificial frontiers inherited from imperialism, many Third World states practice a 'poor people's colonialism.' It is directed against often sizable minorities, and is both more ferocious and more harmful than the classical type. The effects of economic exploitation are aggravated by an almost total absence of local development and by a level of national oppression fueled by chauvinism and unrestrained by the democratic traditions . . . .[137]

Another lasting geographical legacy of colonialism is the phenomenon of territorial partitioning of colonial holdings. This was done both as a governing technique during colonial rule and on the eve of decolonization to reconcile cultural or religious claims of nationhood with territorial expression of statehood. The partition of Bengal in 1905 within colonial India is the infamous example of the first model; it is an event that is often cited as a text-book example of the colonial governance strategy of *divide et impera*.[138] The partition of colonial India into Pakistan and India, and that of Palestine under Mandate into Israel and Palestine, are examples of the second model.[139] England's earliest colony, Ireland, was also the earliest to suffer this fate. The aftermath of such partitions has invariably been sustained and intractable conflict. The singular and indivisible sovereignty exercised by colonial powers over their possessions, and sanctioned by international law, precluded accommodations of diversities. Once the moment of

134. Abdullahi Ahmed An-Na'im, *The National Question, Succession and Constitutionalism: The Mediation of Competing Claims to Self-Determination, in* STATE AND CONSTITUTIONALISM: AN AFRICAN DEBATE ON DEMOCRACY (Issa G. Shivji ed., 1991).

135. ARJUN APPADURAI, MODERNITY AT LARGE: CULTURAL DIMENSIONS OF GLOBALIZATION 39 (1996).

136. *See, e.g.*, U.N. Charter, art. 2, para. 4 and G.A. Res. 2625 (XXV), ¶ 1, U.N. Doc. A/8082 (Oct. 24, 1970). *See also* Walker Connor, *Nation-Building or Nation-Destroying?*, 24 WORLD POL. 319 (1972).

137. Ismet Sheriff Vanly, *Kurdistan in Iraq, in* A PEOPLE WITHOUT A COUNTRY: THE KURDS AND KURDISTAN 139, 189 (Gerard Chaliand ed., 1993).

138. Colonizers were quite explicit that they would "uphold in full force the (for us fortunate) separation which exists between the different religions and races, not to endeavor to amalgamate them. *Divide et impera* should be the principle of Indian government." R. PALME DUTT, INDIA TO-DAY 423 (1949) (quoting Lieutenant-Colonel Coke, British Commandant of Moradabad, India).

139. *See* B. B. MISRA, THE UNIFICATION AND DIVISION OF INDIA (1990); H. V. HODSON, THE GREAT DIVIDE: BRITAIN-INDIA-PAKISTAN (1985); RODINSON, *supra* note 125.

decolonization arrived, the modern notions of indivisible sovereignty had to contend with multiple imagined communities overlapping within a single territorial unit that was the colony. Geographical partition resulting in multiple states within demarcated territorial boundaries was seen as the quick solution. But the territorial divides could not track the more diffuse cultural or religious divides, and endemic conflicts have been the result.

Racists' discourses forged on the anvil of colonial expansion, adopted and consolidated by modern geography and modern international law in their formative phases, are now recycled in the service of a resurgent Empire. Here one needs to focus on the myriad ways colonial categories and discourses seep into the internal political practices of imperial powers. An example is the deployment of discourses of race, unruliness, darkness and incivility in descriptions and prescriptions about the "inner city" and "urban blight." On the other hand, canonical geography textbooks continue to represent post-colonial states as lacking the putative presence and self-identity of western statehood.[140] Doty sees the perpetuation of this discourse as:

> . . .a sort of cultural unconscious that always comes back to the presumption, generally unstated, especially in more recent texts, of different kinds of human beings with different capacities and perhaps different inherent worth and value. 'We' of the West are not inefficient, corrupt, or dependent on a benevolent international society for our existence. 'We' are the unquestioned upholders of human rights. 'We' attained positions of privilege and authority as a result of our capacities. 'We' of the West are different from 'them.' 'Their' fate could not befall 'us.' 'They' can succeed only if 'they' become more like 'us.' These intertexts begin with the presupposition of a clear and unambiguous boundary between 'us' and 'them,' between the North and the South, between 'real states' and 'quasi states.' They thus disallow the possibility that rather than being independent and autonomous entities, these oppositions are mutually constitutive of each other.[141]

Europe's imperative to define itself as the "other of the Other" has proved to be an enduring one, as have the attending processes to classify and map the "Other." Identity-bestowing binaries forged in the classic age of Empire are proving useful in the age of resurgent Empire. This brings into sharp relief the intersections of geography and international law that helped produce and sustain such binaries.

140. Don Mitchell & Neil Smith, *Comment – The Courtesy of Political Geography: Introductory Textbooks and the War Against Iraq*, 10 POL. GEOGRAPHY Q. 338, 338-41 (1991).

141. ROXANNE LYNN DOTY, IMPERIAL ENCOUNTERS: THE POLITICS OF REPRESENTATION IN NORTH-SOUTH RELATIONS 162 (1996).

IV. Geography of Today: Globalization or Empire?

Different positions about global geographies of power engender two competing visions of the international system today. One vision claims that accelerated processes of globalization have rendered territorial boundaries meaningless. That the Westphalian state system has yielded to a post-Westphalian global community where capital, commodities, and information circulate without much regard for political borders. That the on-going neo-liberal restructuring of global, regional and national economies is rendering regimes of state regulation of markets and trans-national flows passé. That this process, supervised by international agencies like the WTO and IMF whereby private corporations and the logic of capital accumulation are furnished unbridled opportunity, is the recipe for productive incorporation of all regions and peoples into capitalism's historic march towards satisfaction of all human needs. Attendant to this posture is a claim of "end of history," which posits that the progressive march of history envisaged by Hegel has come to an end in that liberalism and capitalism are now the unchallenged planetary agenda. [142]

This vision has a particular reading of the geography of global political-economy that can be summarized by the assertion "the world is flat."[143] The proposition is that economic, political and cultural divisions of the world are withering away in the face of expanding circuits of global flows generated by globalization. Here we are offered an imagined geography of a decentered global space that underpins many analyses of globalization and its deterritorializing imperative.[144] Within this discourse, language of space is deployed to portray evocative images of global processes, but the analysis of these processes is unencumbered by any imperatives of spatiality. For example, Appadurai invokes ethnoscapes, mediascapes, technoscapes, financescapes and ideoscapes to describe operations of globalization, but his analysis of these processes is immune from any grounded consideration of spatiality.[145] Remarkably, some claiming radical anti-

142. FRANCIS FUKUYAMA, THE END OF HISTORY AND THE LAST MAN, xi (1992).
143. *See* THOMAS L. FRIEDMAN, THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY (2006). *See also* KENICHI OHMAE, THE BORDERLESS WORLD: POWER AND STRATEGY IN THE INTERLINKED ECONOMY (1990); KENICHI OHMAE, THE END OF THE NATION STATE: THE RISE OF REGIONAL ECONOMIES (1995); RICHARD O'BRIEN, GLOBAL FINANCIAL INTEGRATION: THE END OF GEOGRAPHY (1992).
144. *See, e.g.*, O'BRIEN, *supra* note 143, and Peter Bratsis, *Over, Under, Sideways, Down: Globalization, Spatial Metaphors, and the Question of State Power*, *in* IMPLICATING EMPIRE: GLOBALIZATION AND RESISTANCE IN THE 21ST CENTURY WORLD ORDER 123 (Stanley Aronowitz & Heather Gautney eds., 2003).
145. *See* APPADURAI, *supra* note 135.

systemic pedigree and agenda have joined the chorus of deterritorialization and irrelevance of spatiality. For example, Hardt and Negri in their widely-circulated analysis of Empire claim that, "[i]n this smooth space of Empire, there is no *place* of power – it is both everywhere and nowhere. Empire is an *ou-topia*, or really a *non-place*."[146] They further claim that "[i]n contrast to [classical] imperialism, Empire establishes no territorial center of power and does not rely on fixed boundaries or barriers. It is a *decentered* and *deterritorializing* apparatus of rule that progressively incorporates the entire global realm within its open, expanding frontiers."[147] This trope of the borderless world ignores the "reworked imperial geographies"[148] unfolding before our very eyes. The trope of "the space of imperial sovereignty . . . [is] smooth"[149] obscures three forms of geographical unevenness: economic hegemony of the United States, military dominance of the United States, and counter-hegemonic geographies imagined by those seeking alternatives to neoliberal globalization. No sooner than these tropes were fashioned in the early 1990s, were they quickly belied by the financial crises of the late 1990s. Confronted with collapse of financial markets in Southeast Asia and the specter of the so-called "contagion," leading proponents of globalization quickly retracted their rhetoric of a borderless global economy to ensure that "no epidemic . . . would be allowed to escape from the shores of the Pearl River Basin."[150] The accompanying proposition that the "special divisions of the three worlds . . . have been scrambled so that we continually find the First World in the Third, [and] the Third in the First"[151] should not be seen as describing a new phenomenon. This was true also of the formative phases of colonialism. As a result of settler colonialism and enforced diasporas of slavery, indentured labor and the like, diasporic Geographies have been an indispensable product of accumulation of capital at the global scale, i.e., of capitalism from its very inception.[152]

An alternative vision of global political-economy suggests that the celebrations of the supposed demise of spatiality may be premature. The emphasis on the

146. MICHAEL HARDT & ANTONIO NEGRI, EMPIRE 190 (2000).
147. *Id.* at xii-xiii.
148. James D. Sidaway, *Empire's Geographies*, 3(2) ACME: AN INTERNATIONAL E-JOURNAL FOR CRITICAL GEOGRAPHIES 63, 73 (2004), *at* http://www.acme-journal.org/vol3/Sidaway.pdf.
149. EMPIRE, *supra* note 146, at 209.
150. Neil Smith, *El Nino Capitalism*, 22(2) PROGRESS IN HUM. GEOGRAPHY 159, 160 (1998).
151. HARDT, *supra* note 146, at xiii.
152. *See* Robin Cohen, *Rethinking 'Babylon': Iconoclastic Conceptions of the Diasporic Experience*, 21 NEW COMMUNITY 5 (1995).

spatial equalization imperative of time-space compression engendered by globalization neglects the critical point about "the limits to capital that are imposed by the necessity of production and reproduction at fixed sites."[153] The process of capital accumulation has by necessity, to deal with "stubbornly material geography."[154] Even Hardt and Negri acknowledge that, "[o]ne has to be a geographer today to map the topography of exploitation."[155] Any clear-eyed analysis of the operations of global accumulation of capital and geo-political operations of resurgent empire signals the continuing and unavoidable relevance of spatiality for operations of power.

Taking forward classical portrayals of global accumulation of capital, Ernest Mandel was perhaps the first to argue that the unequal development of regions is just as fundamental to capitalism as the direct exploitation of labor power.[156] The work of dependency theory[157] and world-systems theory[158] substantiated this thesis and demonstrated how this spatial divide in capitalism as a global system entails flows of value from "the periphery" to "the center," and thus creates and accentuates the developed/underdeveloped divide. The proposition is that both historical consolidation and current growth of capitalism rest upon the differentiation of space into over and underdeveloped regions, with the primary role of underdevelopment being to furnish reserves of labor. Geographers like Neil Smith took a leaf from these theories of global political-economy and demonstrated how uneven development itself results from the impact of the development of production upon natural space.[159] Rejecting any absolute conception of space, Smith insisted that "human practice and space are integrated at the level of the conception of space 'itself'."[160] He demonstrated how natural space is transformed into relative social space by developments of forces of

153. Stuart Corbridge, *Countering Empire*, 35 ANTIPODE 184, 188 (2003).
154. GREGORY, *supra* note 21, at 67.
155. MICHAEL HARDT & ANTONIO NEGRI, MULTITUDE: WAR AND DEMOCRACY IN THE AGE OF EMPIRE 164 (2004).
156. ERNEST MANDEL, LATE CAPITALISM 44-74 (1976).
157. *See* ANDRE GUNTER FRANK, CAPITALISM AND UNDERDEVELOPMENT IN LATIN AMERICA: HISTORICAL STUDIES OF CHILE AND BRAZIL (1967); SAMIR AMIN, ACCUMULATION ON A WORLD SCALE: A CRITIQUE OF THE THEORY OF UNDERDEVELOPMENT (Brian Pearce trans., 1974).
158. *See* IMMANUEL WALLERSTEIN, THE CAPITALIST WORLD-ECONOMY (1979); ARGHIRI EMMANUEL, UNEQUAL EXCHANGE: A STUDY OF THE IMPERIALISM OF TRADE (Brian Pearce trans., 1972).
159. *See* NEIL SMITH, UNEVEN DEVELOPMENT: NATURE, CAPITAL AND THE PRODUCTION OF SPACE (1984).
160. *Id.* at 77.

production. These developments, while leading towards "equalization" by eliminating constraints of natural space, also produce "differentiation" by differential special distribution of investments. Thus, through these contradictory tendencies, "[s]pace is neither levelled out of existence nor infinitely differentiated. Rather the pattern which results is one of *uneven development*. . . ."[161] Economic geographer David Harvey sees the current phase of capital accumulation as entailing "another fierce round in that process of annihilation of space through time that has always lain at the center of capitalism's dynamic."[162] He demonstrated, however, that imperialist practices prompted by the logic of capital accumulation "are typically about exploiting the uneven geographical conditions under which capital accumulation occurs and also taking advantage of . . . the 'asymmetries' that inevitably arise out of spatial exchange relations."[163] The result is not any diminution in the significance of space. Rather, accelerated competition forces capital to pay ever closer attention to relative locational advantages, especially in conditions of labor control.

Discourses that accompany the on-going resurgence of American-led Empire also belie benign portrayals of globalization and claims of irrelevance of spatiality. In the era of resurgent Empire, we are witnessing a transition from hegemony of consensus to hegemony of force.[164] Observers have noted that today "America and empire are joined at the hip in political discourse. . . .Commentators and ideologues no longer shy away from the E word and, indeed, openly embrace it – as well as the phenomenon it describes."[165] In this context, one has to be skeptical of claims that the resurgence of Empire was triggered by the events of September 11, 2001. As early as 1992, the "Defense Planning Guidance" document recommended that the United States should "prevent any hostile power from dominating a region whose resources would, under consolidated control, be sufficient to generate global power."[166] Using remarkable candor, this document also urged that "the United States should be postured to act independently when

161. *Id.* at 90.
162. DAVID HARVEY, THE CONDITION OF POSTMODERNITY: AN ENQUIRY INTO THE ORIGINS OF CULTURAL CHANGE 293 (1989).
163. DAVID HARVEY, THE NEW IMPERIALISM 31 (2003). *See also* DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERLISM (2005); DAVID HARVEY, SPACES OF GLOBAL CAPITALISM: TOWARDS A THEORY OF UNEQUAL GEOGRAPHICAL DEVELOPMENT (2006).
164. Perry Anderson, *Force and Consent*, 17 NEW LEFT REV. 5, 5-30 (2002), *available at* http://newleftreview.org.
165. Vivek Chibber, *The Good Empire: Should we pick up where the British left off?* BOSTON REVIEW 30, 30 February/March 2005.
166. Paul Wolfowitz, *Excerpts from 1992 Draft 'Defense Planning Guidance'*, §1, *at* http://www/pbs.org/wgbh/pages/frontline/shows/iraq/etc/wolf.html.

collective action cannot be orchestrated."[167] This prescription is expressly adopted by the National Security Strategy of the United States of America, which enunciates doctrines of "preeminence" and "preemption," as the means of protecting and enhancing free trade and global economic growth seen as vital to America's national security.[168]

Representative of the contemporary discussions of military geography of the war on terror is a new intervention evocatively titled "The Pentagon's New Map."[169] This book renders the world in a binary cartography of danger and safety. Specifically, the world is pictured as being divided between a "functioning core" and a "non-integrating gap" with a clear boundary between the two.[170] This map is also coded to show that all major military operations of the United States between 1990 and 2003 have taken place in the "non-integrating core." In the divided planet, a majority is seen becoming integrated while a recalcitrant minority remains nonintegrated, is prone to violence, and is a force that is to be subdued, pacified, and integrated into the global system. Arguing that this "disconnectedness itself is the ultimate enemy,"[171] the American military is the agency to accomplish the historical mission of destroying resistant regimes and bringing these populations within the operations of the globalized world economy.[172] All this is coupled with vehement denials of the United States being an empire. Barnett, for example, insists that:

167. *Id.* at §3. *See also* Michael Shapiro, *Wanted, Dead or Alive* 5(4) THEORY AND EVENT 1 (2002).

168. NATIONAL SECURITY COUNCIL, THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA (2006), *available at* http://www.whitehouse.gov/nsc/nss.html. *See also* Peter Fitzpatrick, *"Gods would be needed ...": American Empire and the Rule of (International) Law*, 16 LEIDEN J. INT'L L. 429 (2003).

169. THOMAS P. M. BARNETT, THE PENTAGON'S NEW MAP: WAR AND PEACE IN THE TWENTY-FIRST CENTURY (2004).

170. *Id.* at inside the front and back cover. Another recent and influential foray into "geopolitical realities" is ZBIGNIEW BRZEZINSKI, THE GRAND CHESSBOARD: AMERICAN PRIMACY AND ITS GEOSTRATEGIC IMPERATIVES (1997). Using various geographical representations of the world, including an inverted map of the world (*Id.* at 32), Brzezinski lays out prescriptions "to prevent collusion and maintain security dependence among the vassals, to keep tributaries pliant and protected, and to keep the barbarians from coming together." (*Id.* at 40). This would ensure "[g]eostrategic success" of the United States as "the first, only, and last truly global superpower." (*Id.* at 215). A geopolitical framework continues to inform his subsequent work. *See* ZBIGNIEW BRZEZINSKI, THE CHOICE: GLOBAL DOMINATION OR GLOBAL LEADERSHIP (2004).

171. BARNETT, *supra* note 169, at 124.

172. *See* Simon Dalby, *The Pentagon's New Imperial Cartography*, *in* VIOLENT GEOGRAPHIES: FEAR, TERROR, AND POLITICAL VIOLENCE 295-308 (Derek Gregory & Allan Pred eds., 2007).

> America does not shrink the Gap to conquer the Gap, but to invite two billion people to join something better and safer in the Core. Empires involve enforcing maximum rule sets, where the leader tells the led not just what they cannot do but what they must do. This has never been the American way of war or peace, and does not reflect our system of governance. We enforce minimum rule sets, carefully ruling out only the most obviously destructive behavior. We push connectivity above all else, letting people choose what to do with those ties, that communication, and all those possibilities.[173]

Other, more candid apologists of Empire tell us emphatically "American Empire; Get Used to It."[174] Those who do not tire of trumpeting a borderless flat world now issue an ominous call to "give war a chance."[175] They are quite clear that:

> Today's international system is built not around a balance of power but around American hegemony. The international financial institutions were fashioned by Americans and serve American interests. The international security structures are chiefly a collection of American-led alliances. What Americans like to call international 'norms' are really reflections of American and West European principles. Since today's relatively benevolent international circumstances are the product of our hegemonic influence, any lessening of that influence will allow others to play a larger part in shaping the world to suit *their* needs. . . . American hegemony, then, must be actively maintained, just as it was actively obtained.[176]

Others deploy classical constructions of race by suturing place, body and consciousness to portray planetary geo-politics:

> We are entering a bifurcated world. Part of the globe is inhabited by Hegel's and Fukuyama's Last Man, healthy, well fed, and pampered by technology. The other, larger, part is inhabited by Hobbes' First Man, condemned to a life that is 'poor, nasty, brutish, and short.' Although both parts will be threatened by environmental stress, the Last Man will be able to master it; the First Man will not. The Last Man will adjust to the loss of underground water tables in the western United States. He will build dikes to save Cape Hatteras and the Chesapeake beaches from rising sea levels, even as the Maldive Islands, off the coast of India, sink into oblivion, and the shorelines of Egypt, Bangladesh, and Southeast Asia recede, driving tens of millions of people inland where there is no room for them, and thus sharpening ethnic divisions.[177]

Deployment of racialized binaries cannot be dismissed as benign academic

173. BARNETT, *supra* note 169, at 355.
174. Michael Ignatieff, *The American Empire: The Burden*, N.Y. TIMES MAG., January 5, 2003, at cover.
175. THOMAS L. FRIEDMAN, LONGITUDES AND ATTITUDES: EXPLORING THE WORLD AFTER SEPTEMBER 11 91 (2002).
176. Robert Kagan & William Kristol, *The Present Danger*, NAT'L INT. (Spring 2000), at 57, 61.
177. ROBERT D. KAPLAN, THE COMING ANARCHY: SHATTERING THE DREAMS OF THE POST COLD WAR 24 (2000). *See also* Robert D. Kaplan, *The Coming Anarchy*, THE ATLANTIC MONTHLY, February 1994, at 44.

exercises. History of colonialism has proved time and time again that construction of the "Other" as less than human has always paved the way for its subjugation and even obliteration.[178] The threat of violence and obliteration is never far behind such deployments. Propagandists of globalization now openly acknowledge that "[t]he hidden hand of the market will never work without a hidden fist."[179] In this they offer, perhaps unwittingly, an evocative summary of a comparative historical analysis that concludes that:

[t]he free market is not – as today's economic philosophy supposes – a natural state of affairs which comes about when political interference with market exchange has been removed. In any long and broad historical perspective the free market is a rare, short-lived aberration. Regulated markets are the norm, arising spontaneously in the life of every society. The free market is a construction of state power.[180]

In summary, then, Globalization is better seen as "a hegemonic ideology supporting the necessity and inevitability of the free movement of capital and goods, helped to create the institutional conditions which then contributed to making the free movement of capital and goods a reality."[181] In the final analysis, globalization is best seen as a "barely reworked variant" of imperialism.[182]

V. Third Space/Third World: From Bandung to Porto Alegre

Our discussion of the intersections of geography and international law thus far has focused on bringing into sharp relief the foundational and continuing importance of the spatial in global structures and operations of power. In this section, we turn to explore spatiality of global resistance and transformatory politics. [183]

Foucault's well-known dictum, "[w]here there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power,"[184] need not be treated as a death knell to any project of

178. *See* DEREK GREGORY, THE COLONIAL PRESENT: AFGHANISTAN, PALESTINE, IRAQ (2004).
179. THOMAS L. FRIEDMAN, THE LEXUS AND THE OLIVE TREE 373 (1999).
180. JOHN GRAY, FALSE DAWN: THE DELUSIONS OF GLOBAL CAPITALISM 211 (1998).
181. Francis Fox Piven, *Is it Global Economics or Neo-Laissez Faire?* 213 NEW LEFT REVIEW 112 (1995); Paul Hirst, *The global economy – myths and realities*, 73(3) INT'L AFF.409, 424 (1997). *See also* WARWICK E. MURRAY, GEOGRAPHIES OF GLOBALIZATION (2006).
182. Etienne Balibar, *Is There a 'Neo-Racism'?, in* RACE, NATION, CLASS, *supra* note 70, at 25.
183. For pioneering work on spatiality of resistance, *see, e.g.*, GEOGRAPHIES OF RESISTANCE (Steve Pile & Michael Keith eds., 1997), *and* ENTANGLEMENTS OF POWER: GEOGRAPHIES OF DOMINATION/RESISTANCE (Joanne P. Sharp et al. eds., 2000).
184. MICHEL FOUCAULT, THE HISTORY OF SEXUALITY: VOLUME ONE: AN INTRODUCTION 95

resistance. Foucault himself acknowledged that "there must always be points of insubordination at which it is possible not to escape power *per se*, but to escape the particular strategy of power relation that directs one's conduct."[185] Here we are guided by the agenda of critique of late modernity, i.e., to facilitate an "insurrection of knowledges,"[186] particularly of the subjugated variety. The suggested method of accomplishing this is "the union of erudite knowledge and local memories which allows us to establish a historical knowledge of struggles and to make use of this knowledge tactically today."[187] We proceed from the position that critique has to be "an attitude, an ethos, a philosophical life in which the critique of what we are is at one and the same time the historical analysis of the limits that are imposed on us and an experiment with the possibility of going beyond them."[188]

In exploring spatiality of resistance and transformatory politics, a productive point of departure is furnished by the concept of "third space."[189] Bhabha initially coined the term to designate the zone of resistance of the colonial subaltern.[190] He deploys the concept of colonial and postcolonial hybridity, born at intersections of ambivalence of colonizers' discourse and the mimicry of the colonized, to suggest a link between resistance and the concept of "third space."[191] Bhabha indicates that "colonial discourse [and power] does not merely represent the other, . . . so much as simultaneously project and disavow [the others'] difference . . . [the colonizer's] mastery is always asserted, but is also always slipping, ceaselessly displaced, never complete."[192] The space opened by this slippage furnishes the grounds for the emergence of hybridized subjectivities, through which "other 'denied' knowledges enter the dominant discourse and estrange the basis of its authority."[193] The "epistemic violence" of imperialism has to contend with instability of colonial discourse, and in the process becomes an "enabling

(Robert Hurley trans., 1978).

185. JON SIMONS, FOUCAULT & THE POLITICAL 84-85 (1995).
186. MICHEL FOUCAULT, SOCIETY MUST BE DEFENDED: LECTURES AT THE COLLEGE DE FRANCE, 1975-76, 9 (Mauro Bertani et al. eds., David Macey trans., 2003).
187. FOUCAULT, *Two Lectures, in* POWER/KNOWLEDGE, *supra* note 27, at 83.
188. MICHEL FOUCAULT, *What is Enlightenment?, in* THE POLITICS OF TRUTH 101, 132 (Sylvere Lotringer ed., 1997).
189. HOMI K. BHABHA, THE LOCATION OF CULTURE 37 (1994).
190. *Id.*
191. *Id.*
192. YOUNG, *supra* note 65, at 143.
193. Homi K. Bhabha, *Signs Taken for Wonders: Questions of Ambivalence and Authority under a Tree Outside Delhi, May 1817*, 12 CRITICAL INQUIRY 156 (1985).

violation;"[194] one that furnishes grounds for subaltern agency and helps forge tools of transformation of "conditions of impossibility into possibility."[195] As Bhabha puts it: "[t]he ambivalence at the source of traditional discourses on authority enables a form of subversion, founded on the undecidability that turns the discursive conditions of dominance into the grounds of intervention."[196]

Demarcation of a "third space" should not be seen as a search for some "authentic" identity or "nostalgia for lost origins."[197] Bhabha posits that "[t]he process of cultural hybridity gives rise to something different, something new and unrecognizable, a new area of negotiation of meaning and representation."[198] Third space is "that productive space of the construction of culture as difference, in the spirit of alterity or otherness."[199] Other theorists have posited "third space" as an epistemological terrain; as a site of interrogation of foundational dualisms that undergird the construction and policing of bounded identities, for example, white/non-white, rational/irrational, civilized/uncivilized, man/woman.[200] In this rendering, third space is "continually fragmented, fractured, incomplete, uncertain, and the site of struggles for meaning and representation."[201] It may be best to conceptualize "third space" as an in-between, an incommensurable location in which counter-hegemonic discourses and practices unfold.

Critical geographers have found the concept of "third space" to be very productive. Soja deploys the construct to suture modern and postmodern perspectives on geography. Eschewing binary either/or choices, he posits the possibility of "both/and also," seen as the possibility to enter "a space of extraordinary openness."[202] Steve Pile sees "third space" as a process "simultaneously structured by intersecting geometries of power, identity, and

194. G.C. SPIVAK, THE SPIVAK READER 219 (Donna Landry and Gerald MacLean eds., Routledge 1996).
195. G. C. Spivak, IN OTHER WORLDS: ESSAYS IN CULTURAL POLITICS 201(1988).
196. BHABHA, *supra* note 189, at 112.
197. G.C. Spivak, *Can the Subaltern Speak?*, *in* MARXISM AND THE INTERPRETATION OF CULTURE 291 (Cary Nelson and Lawrence Grossberg, eds., University of Illinois Press 1988).
198. Jonathon Rutherford, *The Third Space: Interview with Homi Bhabha*, in IDENTITY: COMMUNITY, CULTURE, DIFFERENCE 207, 211 (Jounathan Rutherford ed., Lawrence and Wishart 1990).
199. *Id.* at 209.
200. *See* Steve Pile, *Masculinism : the Use of Dualistic Epistemologies and Third Spaces*, 26(3) ANTIPODE 255 (1994).
201. *Id.* at 273.
202. EDWARD W. SOJA, THIRDSPACE: JOURNEYS TO LOS ANGELES AND OTHER REAL-AND-IMAGINED PLACES 5 (Blackwell Publishers 1996).

meaning."[203] Soja and Hooper advocate "alternative geographies" while calling for "cultural politics . . . located and understood in [a] third space of political choice."[204] And Radhakrishnan advocates the "critical search for a third space that is complicitous neither with the deracinating imperatives of westernization nor with theories of a static, natural and single-minded autochthony."[205]

The work of social movement theorists also hints at such a "third space" when they posit possibilities of fluid collective agency, while acknowledging its interpellation by and within broader networks.[206] As Garcia Canclini puts it, "[a] decentered view of power and politics . . . should not divert our attention from how social movements interact with political society and the state," and "must not lead us to ignore how power sediments itself and concentrates itself in social institutions and agents."[207] Interactions and sedimentations notwithstanding, transformatory social movements have to be located on grounds not captured by ether the state or by the international. Locating "third space" is an effort to map "the role of the native as historical subject and combatant, [as the] possessor of another knowledge and producer of alternative traditions."[208] One essential focus here has to be on the subalterns' lines of access to extra-colonial knowledges from which "a native contest initially enunciated in the invader's language, culminates in a rejection of imperialism's signifying system."[209] Others have shown that hybridity of the colonial subaltern may also "draw upon indigenous traditions . . .[and is thus] not entirely dependent upon the contradictions of colonial authority."[210] We need, in the final analysis, to theorize a subaltern subject that, while constituted in and through colonial domination, has access to knowledges

203. Pile, *supra* note 200, at 273.
204. Edward W. Soja and Barbara Hooper, *The Spaces that Difference makes: Some Notes on the Geographical Margins of the New Cultural Politics*, *in* PLACE AND THE POLITICS OF IDENTITY 183, 199 (Michael Keith and Steve Pile eds., Routledge 1993).
205. R. Radhakrishnan, *Postcoloniality and the Boundaries of Identity*, 16(4) CALLALOO 750, 755 (1993).
206. *See generally* TRANSNATIONAL SOCIAL MOVEMENTS AND GLOBAL POLITICS: SOLIDARITY BEYOND THE STATE (Jackie Smith, Charles Chatfield, and Ron Pugnucco eds., Syracuse University Press 1997); CULTURE OF POLITICS, POLITICS OF CULTURE: REVISIONING LATIN AMERICAN SOCIAL MOVEMENTS 118 (S. Sonia Alvares, Evelina Dagnino, & Arturo Escobar eds., Westview Press 1998); *and* Samir Amin et al., TRANSFORMING THE REVOLUTION: SOCIAL MOVEMENTS AND THE WORLD-SYSTEM (1990).
207. Néstor. Garcia Cancilini, *Culture and Power: the State of Research* (Philip Schlesinge trans), 10 MEDIA, CULTURE, AND SOCIETY 467,475 (1988).
208. Anita Loomba, *Overworlding the 'Third World,'* 13 THE OXFORD LITERARY REVIEW 164, 170 (1991).
209. Benita Perry, Problems in Current Theories of Colonial Discourse, 9 THE OXFORD LITERARY REVIEW 27, 45 (1987).
210. Loomba, *supra* note 64, at 172.

that do not emerge from that field of domination, although they may be experienced through it; a composite subject that is constituted as an "inventory of traces" of multiple and fragmented hegemonies.[211]

A good point of departure towards incorporation the idea of a "third space" into theorizing global resistance to neo-liberal globalization and unilateralist imperial surge would be to engage with the anti-colonial and anti-imperial agenda first articulated at the First Afro-Asian Conference at Bandung, Indonesia in 1955.[212] The demand of turning the principle of self-determination of subordinated people into the foundational principle of the international order was articulated here. Furthermore, the non-alignment in the then raging bi-polar Cold War was conceptualized and the "Third World" emerged as a distinct actor in the international system.[213] Because at that time the primary agenda was decolonization of colonial empires of Europe, leaders of postcolonial states like India's Jawaharlal Nehru, Indonesia's Sukarno, Egypt's Gamal Abdel Nasser and Ghana's Kwame Nkrumah assumed the leading role in articulation of the agenda and fashioning of strategies of resistance. While many advances were made, often interests of the state apparatuses in postcolonial formations stood in for interests of the people inhabiting those formations. However, at this stage of world history, when the primary struggle is against neo-liberal globalization and resurgence of Empire, interests of the global subalterns rather than those of state apparatuses will have to be placed center stage. Instructive in this context is reformulation of the project of Bandung by the World Social Forum at Porto Alegre.[214]

A perceptive analyst of the international systems reminds us that even in the

211. ANTONIO GRAMSCI, SELECTIONS FROM PRISON NOTEBOOKS OF ANTONIO GRAMSCI,324 (Quintin Hoare and Geoffrey Nowell Smith eds., International Publishers 1971).

212. *See* JAMIE MACKIE, BANDUNG 1955: NON-ALIGNMENT AND AFRO-ASIAN SOLIDARITY (2005); VIJAY PRASHAD, *supra* note 4; Sunil S. Amrith, *Asian Internationalism: Bandung's Echo in a Colonial Metropolis*, 6 (4) INTER-ASIA CULTURAL STUDIES 557 (2005); Rémy Herrera, *50 Years after the Bandung Conference: Towards a Revival of the Solidarity between the Peoples of the South? Interview of Samir Amin* 6 (4) INTER-ASIA CULTURAL STUDIES 546 (2005); *and* Mark T. Berger, *After the Third World? History, destiny and the fate of Third Worldism*, 25(1) THIRD WORLD QUARTERLY 9 (2004).

213. *See* Peter Willetts, THE NON-ALIGNED MOVEMENT: THE ORIGINS OF A THIRD WORLD ALLIANCE (Nichols Publishing Company 1978) *and* Akhil Gupta, *The Song of the Nonaligned World: Transnational Identities and the Reinscription of Space in Late Capitalism*, 7(1) CULTURAL ANTHROPOLOGY 63 (1992).

214. *See* World Social Forum, Porto Alegra Call for Mobilization (2001), *reprinted in* THE GLOBALIZATION READER (Frank J. Lechner & John Boli eds. 2nd ed. 2003). *See also* BOAVENTURA DE SOUSA SANTOS, RISE OF THE GOLBAL LEFT: THE WORLD SOCIAL FORUM AND BEYOND (Zed Books Ltd., 2006).

Bandung phase, "[t]he Third World was not a place. It was a project."[215] Today the very act of invoking the "Third World" signals "[i]ncommensurable histories and diverse visions of international futures."[216] The project as articulated in Porto Alegre is one of breaking out of binaries of modernity as enshrined in both international law and geography. Emerging through the practices of resistance by colonially constituted subject people, it is a project of resistance to imperialism that explores alternative histories based on an insistence of the recognition of radical cultural and civilizational plurality.

Deployment of the category "Third World" and invoking the agenda articulated at Porto Alegre constitutes global subalterns as subjects of history, giving the lie to the Hegelian myth of racist Eurocentric History. Locating agency in global subalterns, it ousts the right to Empire and inscribes the right of self-determination of all peoples as a foundational principle of international law. It reactivates and reenergizes struggles for "the common heritage of mankind," "sovereignty over resources," "peaceful and friendly relations between states," "the New International Economic Order," " the New International Information Order," "the Right to Development," " rights of the indigenous peoples," and "social, economic and cultural rights" of all peoples. Beyond completing these struggles of the Bandung era, the Porto Alegre project is encapsulated in the foundational premise of the World Social Forum, i.e., "Other Worlds are Possible." It represents a challenge to the hegemony of the so-called "Great Powers" in relation to their "Others." Affirming the possibility of "other world" is to position us to challenge the repackaged discourses and strategies of development that are "uniquely efficient colonizers on behalf of central strategies of power."[217] It positions us to see development discourse as yet another language of domination; deployment of new types of power and knowledge aiming at conformity of the Third World to economic and cultural behavior conducive to accelerated accumulation of capital.[218] It equips us to move towards poststructural development geography,[219]

215. PRASHAD, *supra* note 4, at 1.
216. Upendra Baxi, *What May the 'Third World' Expect from International Law?* 27 (5) THIRD WORLD QUARTERLY 713 (2006).
217. Marc DuBois, *The Governance of the Third World: A Foucauldian Perspective on Power Relations in Development*, 16(1) ALTERNATIVES 1,19 (1991). *See also* LIBERATION ECOLOGIES: ENVIRONMENT, DEVELOPMENT AND SOCIAL MOVEMENTS (Richard Peet and Michael Watts eds. 1996); M. Watts, *Development I: Power, Knowledge, Discursive Practice*, 17 PROBLEMS IN HUMAN GEOGRAPHY 257 (1993) *and* David Slater, *Theories of Development and Politics of the Post-modern: Exploring a Border Zone*, 23(3) DEVELOPMENT AND CHANGE 283 (1992).
218. *See* Arturo Escobar, ENCOUNTERING DEVELOPMENT: THE MAKING AND UNMAKING OF THE THIRD WORLD (Sherry B. Ortner, Nicholas B. Dirks, Geoff Eley eds., Princeton

and alternatives to development rather than alternative development. Robust critiques of discourses and practices of development can help clear the ground for imaginings of alternative futures and such imaginings will have to draw upon the practices of social movements in the peripheral social formations.[220] Affirmation of "other worlds are possible" puts into question attempts to constitutionalise neoliberalism, through "interstate treaties designed to legally enforce upon future governments general adherence to the discipline of the capital market."[221] It is heartening that many geographers have adopted an agenda in tune with that of Porto Alegre. For example, the Communiqué of the Fourth International Conference of Critical geographers committed themselves to "elaborating alternative geographies designed to counter the binary visions of both neoliberalism and the 'War on Terror,'" celebrated "the diverse social movements and networks of transnational resistance that have emerged to challenge . . . various processes of exploitation and domination," and issued a call to "renounce neoliberalism, militarism and all forms of exploitation. . .."[222]

As discussed above, Bhabha had located "third space" in the hybridity and mimicry born of the ambivalences of colonial discourses. Instability and ambivalences that accompany discourses of international law should be explored further to locate grounds for intervention by the reformulated Third World agenda. In this context, relatively recent departures in international law scholarship, particularly David Kennedy's work identifying slippage between "hard" and "soft" law,[223] Martti Koskenniemi's work highlighting tension between "apology" and "utopia"[224] and Peter Fitzpatrick's work focusing on irresolution between law's contained or determinate dimension and its uncontainable responsiveness,[225] bring into sharp relief the tensions and openings in international law discourse that may be used productively. The agenda has to be to cultivate these openings to help turn

University Press 1995).

219. *See* L. Yapa, *What Causes Poverty? A Postmodern View*, 86(4) ANNALS OF THE ASSOCIATION OF AMERICAN GEOGRAPHERS 707 (1996).
220. Arturo Escobar, *Imagining a Post-development Era? Critical Thought, Development and Social Movements* 31/32 SOCIAL TEXT 20 (1992); *See also generally* PEET, *supra* note 217.
221. Leo Panitch, *Rethinking the Role of the State*, in GLOBALIZATION: CRITICAL REFLECTIONS 96 (J. Mittelman ed. 1996).
222. International Critical Geography Group, *Communiqué from the Fourth International Conference of Critical Geographers*, 3(2) ACME: AN INTERNATIONAL E-JOURNAL FOR CRITICAL GEOGRAPHERS 121-123 (2004).
223. *See generally* DAVID KENNEDY, INTERNATIONAL LEGAL STRUCTURE (1987).
224. MARTTI KOSKENNIEMI, FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT (2005).
225. FITZPATRICK, *supra* note 60.

international law from being the law between nation-states into the law between peoples. This may entail a rehabilitation of Vitoria's understanding of *ius inter gentes* as rules governing relations between different people.[226]

Edward Said, who demonstrated effective interrogation of discourses and operations of power, also taught us that "in human history there is always something beyond the reach of dominating systems, no matter how deeply they saturate society, and this is what makes change possible."[227] Even as Empire reasserts its right to dominate, critical scholars must identify and expand spaces for resistance in fidelity to the foundational premise: Other Worlds are Possible.

226. As Peter Stein puts it:

> Vitoria argued that the *ius gentium* of the Roman texts, in which it meant the law shared by all peoples, should be understoof also as *ius inter gentes*, that is, a set of rules governing the relations between one people and another. This law was based not on a sharing of religious belief but on the nature of mankind. For *ius gentium* is defined, in Institutes 1.21, as what natural reason has laid down among all people.
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> PETER STEIN, ROMAN LAW IN EUROPEAN HISTORY 229-30 (1999). *See also* B.S. Chimni, *Third World Approaches to International Law: A Manifesto*, *in* THE THIRD WORLD AND INTERNATIONAL ORDER: LAW, POLITICS AND GLOBALIZATION (Antony Anghie et. al., eds 2003).

227. EDWARD W. SAID, THE WORLD, THE TEXT, AND THE CRITIC 246-7 (Harvard University Press 1983).