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Foreword

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Foreword: Citizenship and its Discontents:† Centering the Immigrant in the Inter/National Imagination (Part II)‡

What is involved in the project of rescinding borders is a critical awareness of how borders have been (and continue to be) systematically policed and for whose ideological benefit and material profit. The way to rescind borders is of course to cross them and, in doing so, blur them, confuse them, make

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† The Symposium's title is a variation of the title of SIGMUND FREUD, *CIVILIZATION AND ITS DISCONTENTS* (James Strachey ed., 1962), wherein Freud, at page 33, contended that there was much hostility towards the idea of "civilization" because it was "largely responsible for our misery." In a different but clearly related way, the papers in this Symposium seek to examine how the concept of "citizenship" often possesses a suppressed negative dimension. We would like to thank Ryan Wilson, Dan Gunter, and Mike Reed for their invaluable editorial input.

‡ This foreword is meant to be a companion piece to Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. (forthcoming 1997). In both this foreword and its companion, we focus our analysis on the metaphor of centering the immigrant. An early version of the other article was sent to the participants of the Oregon Law Review Symposium to provide an organizing theme for their contributions.

them permeable, open for traffic from all directions, and, as a result, realize that they have in fact been open all along, crossed by illegal traffic of all kinds—in short, that differences of the kind that do not settle down into binaries have already proliferated in our own backyards.

—Vera Kutzinski¹

A couple of years ago, the Immigration and Naturalization Service (INS) swept through several southern states to round up and deport undocumented workers.² The sweep was called Operation SouthPAW, PAW standing for “Protecting America’s Workers.”³ The roundup occurred in two phases, which curiously took place mostly before and after the harvest. The operation was celebrated by the INS and mainstream media as hugely successful in protecting America’s workers (and thus America) from encroachment by “unauthorized” workers.⁴ But who gains ideologically and materially from such policing actions? Who loses? These questions of material profit and ideological benefit lie at the heart of this Symposium.⁵

¹ Vera M. Kutzinski, *American Literary History as Spatial Practice*, 4 AM. LITERARY HIST. 550, 555 (1992). This quote is one of the opening epigrams in MICHAEL AWKWARD, *NEGOTIATING DIFFERENCE: RACE, GENDER, AND THE POLITICS OF POSITIONALITY* (1995).

² The operation swept through Mississippi, Tennessee, Georgia, Alabama, Arkansas, and northern Florida. See *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies: Hearings on H.R. 3814 before a Subcommittee of the Committee on Appropriations of the United States Senate 104th Congress*, S. HRG. 104-744, at 269, 273-281 (1997) (statement of Doris Meissner, Commissioner of the Immigration and Naturalization Service given May 9, 1996), available in 1996 WL 10163824.

³ *Id.*

⁴ INS Commissioner Doris Meissner reported that “over 4,000 illegal aliens were apprehended [which] resulted in making over \$55 million in wages available to U.S. citizens and other authorized workers.” *Id.* Surveys of businesses where undocumented persons were working showed that 2,400 of those jobs had been filled by legal workers. *INS Commissioner Announces Results of Operation Southpaw*, U.S. NEWswire, Sept. 26, 1995, available in 1995 WL 6619818. Others were critical of the impact of the raids: “‘The suggestion that they are freeing up jobs for American citizens is just nonsense,’ says Archie Schaffer III, company spokesman for Tyson Foods Inc. of Springdale. ‘Anybody in northwest Arkansas who wants a job can go to work this afternoon if they want to.’” Tyler Treadway, *Raids Rile Officials, Hispanics: Who Will Fill Jobs Opened Up by Operation Southpaw?*, ARK. BUS., Sept. 25, 1995, at 1, available in 1995 WL 7904090. See also Marc Cooper, *The Heartland’s Raw Deal: How Meatpacking is Creating a New Immigrant Underclass*, THE NATION, Feb. 3, 1997, at 11 (describing the employment of thousands of third world workers in the meat packing industry as part of an industry survival strategy supported by state and local government tax breaks and subsidies).

⁵ We understand ideology to be a “primary means of managing social contradictions and reproducing class relations.” James H. Kavanagh, *Ideology*, in CRITICAL

The papers in this Symposium investigate the aporetic relations among the nation-state, liberal understandings of citizenship, and problematic constructions of race and ethnicity as they are applied to immigrants. By centering the immigrant in a discussion of citizenship, we aim to highlight the links between the international and intranational spheres. Focusing on the "Inter/national" demonstrates that the traditional enlightenment-based liberal vision of a world composed of bounded and sovereign nation-states conceals as much as it purports to reveal about the movements of people, citizens and otherwise, across the nation-states' bounded peripheries.

The Symposium participants address three overlapping clusters of issues and ideas: (1) the interaction of citizenship, immigration, and race from a U.S. vantage point; (2) a reframing of race, slavery, and the colonial encounter both inside and outside of the U.S. context; and (3) the interrelationship of transnational flows of capital and information and the increasing flow of persons across national boundaries.

At the close of the twentieth century, increasing migrations of persons are straining traditional concepts of the imagined community of the nation-state as well as the imagined community among nation-states. Each piece in this Symposium attempts to center the immigrant by examining individual and group agency within these changing communities.

I

RACE, CITIZENSHIP AND POLITICAL COMMUNITY WITHIN THE NATION-STATE

The first cluster of essays examines the interaction of citizenship, immigration, and race from a perspective situated within the United States, exploring how the image and reality of the immigrant has transformed our domestic understandings of political community and citizenship. Neil Gotanda opens the Symposium with a discussion of the salience of citizenship and race as they relate to determining who comprises "We, the People."

TERMS FOR LITERARY STUDY 306, 308 (Frank Lentricchia & Thomas McLaughlin eds., 2d ed. 1995). Further, following Louis Althusser, "[I]deology designates a rich 'system of representations,' worked up in specific material practices, which helps form individuals into social subjects who 'freely' internalize an appropriate 'picture' of their social world and their place in it." *Id.* at 310. See also RAYMOND WILLIAMS, *Ideology*, in *KEYWORDS: A VOCABULARY OF CULTURE AND SOCIETY*, 153, 153-57 (rev. ed. 1983).

Professor Gotanda surveys proposals to abolish birthright citizenship in the United States, examining the implications of "citizenship by consent."⁶ Although Professor Gotanda delineated these issues over a decade ago, his observations remain more timely now than ever.

Natsu Saito follows with a detailed historical analysis of the changing meanings of alienage classifications in U.S. law and the strange but pervasive collapse of race and nationality epitomized by the continuing "foreign-ness" of Asian Americans.⁷ Kevin Johnson comments insightfully on Professor Saito's piece, relating it to the recently enacted Immigration Reform Act⁸ and the Antiterrorism and Effective Death Penalty Act.⁹ Professor Johnson also underlines the salience of Saito's analysis with regard to constructions of Latina/os as "perpetual foreigners."¹⁰

In the next article, Enid Trucios-Haynes reflects on the problems and possibilities of interracial coalitions in a country with a shameful history of racially discriminatory immigration laws and notes a disturbing recent resurgence of nativist racism.¹¹ It is far from clear at this point in U.S. history, whether such vitally important coalitions will be sustained.

One way to view a nation is to see how it treats its immigrants, past and present. Professor Victor Romero concludes this cluster by considering the relationships among the Plenary Power Doctrine, which grants Congress virtually unlimited power over immigration,¹² federal and state law classifications of noncitizens,

⁶ Neil Gotanda, *Race, Citizenship, and the Search for Political Community Among "We the People,"* 76 OR. L. REV. 233 (1997).

⁷ Natsu Saito, *Alien and Non-Alien Alike: Citizenship, "Foreignness" and Racial Hierarchy in American Law,* 76 OR. L. REV. 261 (1997).

⁸ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (to be codified at 8 U.S.C. § 1101).

⁹ Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996) (to be codified at 18 U.S.C. § 1).

¹⁰ Kevin R. Johnson, *Racial Hierarchy, Asian Americans and Latinos as "Foreigners," and Social Change: Is Law the Way to Go?*, 76 OR. L. REV. 347, 356 (1997).

¹¹ Enid Trucios-Haynes, *The Legacy of Racially Restrictive Immigration Laws and Policies and the Construction of the American National Identity,* 76 OR. L. REV. 369 (1997).

¹² U.S. CONST. art. I, § 8, cl. 4 (authorizing Congress to establish uniform naturalization laws). See also *Chae Chan Ping v. United States*, 130 U.S. 581, 603-04 (1889) (holding that Congress had the absolute power to exclude Chinese nationals from reentry into the United States on the grounds that they posed an imminent threat because of their inability to assimilate); Hiroshi Motomura, *Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation*, 100 YALE L.J. 545 (1990).

and the recent *Adarand Constructors, Inc. v. Peña*¹³ decision.¹⁴ In important ways, these articles view the immigrant through the troubled lens of U.S. law. They examine the barriers to equality faced by citizens and noncitizens and discuss how noncitizens are excluded from the imagined political community of “We, the People.”¹⁵

A. Citizenship Theory and Its Discontents

The treatment, legal and otherwise, that an immigrant receives before, during, and after entering a new country reveals much about a nation that many members might prefer not to confront.¹⁶ As the immigrant crosses a national border, she may find that once she has passed through and is “inside,” many other significant borders, both racial and spatial remain to be negotiated.¹⁷ The immigrant may find that the border has not been left behind, that the border is not just a phenomenon of geographic

¹³ 515 U.S. 200 (1995).

¹⁴ Victor C. Romero, *The Congruence Principle Applied: Rethinking Equal Protection Review of Federal Alienage Classifications After Adarand Constructors, Inc. v. Peña*, 76 OR. L. REV. 425 (1997).

¹⁵ U.S. CONST. preamble.

¹⁶ This statement incorporates the notion of subject positions where the immigrant describes the subject position of a person in a specific relation to the nation. By subject position, we mean the following:

Within every society, each social agent is inscribed in a multiplicity of social relations—not only social relations of production but also the social relations, among others, of sex, race, nationality, and vicinity. All these social relations determine positionalities or subject positions, and every social agent is therefore the locus of many subject positions and cannot be reduced to only one Furthermore, each social position, each subject position, is itself the locus of multiple possible constructions, according to the different discourses that can construct that position.

Chantal Mouffe, *Hegemony and New Political Subjects: Toward a New Concept of Democracy* (Stanley Gray trans.), in *MARXISM AND THE INTERPRETATION OF CULTURE* 89, 89-90 (Cary Nelson & Lawrence Grossberg eds., 1988).

In addition to describing a subject position, the immigrant also exists as a discursive formation that is itself the site of contested meanings. The immigrant might refer to someone born outside of the United States; it might also refer to Asian Americans and Latina/os who were born in the United States but who are discursively produced as foreign and hence immigrant. See also Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. (forthcoming 1997); Margaret Chon, *Acting Upon Immigrant Acts: On Asian American Cultural Politics by Lisa Lowe*, 76 OR. L. REV. 765 (1997).

¹⁷ For example, once inside the national border, there are additional borders between racial groups, classes, and between citizens and noncitizens, which govern access to necessities such as food, shelter, medical care, language, and political representation.

margin or territorial periphery.¹⁸ Through legal and extra-legal policing of the border, the immigrant may discover that she carries the border with her, that her body is marked by the border. Indeed, she carries the border *within* her.¹⁹ In a racialized country such as the United States to be an immigrant is to be indelibly marked in complex ways by the border. However, it is important to note that not all immigrants are marked in the same way or to the same degree. "Some immigrants are able to pass while others (and sometimes even their U.S.-born descendants) remain perpetual foreigners."²⁰

Comparing a nation's treatment of immigrants (and prospective immigrants) with how the nation *should* treat immigrants asks us to try to find some normative theory of the state that may guide us toward understanding how a nation (and its decision-makers) determines who to admit or exclude.²¹ Citizenship theory is one promising direction of inquiry and is an area that has recently encountered an "explosion of interest . . . among polit-

¹⁸ See Rosemary J. Coombe, *The Cultural Life of Things: Anthropological Approaches to Law and Society in Conditions of Globalization*, 10 AM. U. J. INT'L L. & POL'Y 791 (1995); Laura Ho et al., *(Dis)Assembling Rights of Women Workers Along the Global Assembly Line: Human Rights and the Garment Industry*, 31 HARV. C.R.-C.L. L. REV. 393 (1996); Cooper, *supra* note 4; Eyal Press, *Barbie's Betrayal: The Toy Industry's Broken Workers*, THE NATION, Dec. 30, 1996, at 11.

¹⁹ Indeed, the border is inscribed on her body. See Anthony Paul Farley, *The Black Body as Fetish Object*, 76 OR. L. REV. 457 (1997).

²⁰ See Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. (forthcoming 1997). A number of scholars have commented on the way foreignness is attributed to certain groups regardless of birthplace. See, e.g., Keith Aoki, "Foreign-ness" and Asian American Identities: *Yellow Face, World War II Propaganda and Bifurcated Racial Stereotypes*, 4 UCLA ASIAN PAC. AM. L.J. (forthcoming 1997); Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241, 1258 (1993); Pat K. Chew, *Asian Americans: The "Reluctant" Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1, 33-38 (1994); Margaret Chon, *On the Need for Asian American Narratives in Law: Ethnic Specimens, Native Informants, Storytelling and Silences*, 3 UCLA ASIAN PAC. AM. L.J. 4 (1995); Neil Gotanda, "Other Non-Whites" in *American Legal History: A Review of Justice at War*, 85 COLUM. L. REV. 1186 (1985); Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997); Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. REV. 965, 988-90 (1995).

²¹ In making this comparison, we must remember that there is no compelling relation between the "ought" and the "is." See DAVID HUME, A TREATISE OF HUMAN NATURE bk. II, pt. III, sec. III, at 416 (L.A. Selby-Bigge & P.H. Nidditch eds., 1978) (1888) ("'Tis not contrary to reason to prefer the destruction of the whole world to the scratching of my finger."). If there is a disjuncture between the two, the "is" can be made to conform to the "ought" only through political struggle.

ical theorists.”²² Will Kymlicka and Wayne Norman account for this trend as follows:

At the level of theory, it is a natural evolution in political discourse because the concept of citizenship seems to integrate the demands of justice and community membership Citizenship is intimately linked to ideas of individual entitlement on the one hand and of attachment to a particular community on the other.²³

Within this discussion, the status of the immigrant poses tantalizing questions. What may the immigrant justifiably demand of the nation? What may the nation justifiably demand of the immigrant?²⁴ It seems intuitively correct that *any* theory of the state—relying on a notion of citizenship—must also necessarily address the immigrant and the movement of persons between nation-states. Until recently, however, relatively few Western political theorists attended to these issues.²⁵ Instead, many of these theorists assume the existence of the adult abstract citizen, who has generally been imagined as White, upper-middle-class, and male.²⁶ The citizen thus imagined is sprung fully formed from the philosopher’s mind without any account of how someone comes to be a citizen or why certain persons are denied that status.²⁷

²² Will Kymlicka & Wayne Norman, *Return of the Citizen: A Survey of Recent Work on Citizenship Theory*, 104 ETHICS 352, 352 (1994) (noting also that the concept of citizenship had been out of fashion since the late 1970s).

²³ *Id.*

²⁴ Leti Volpp, *Talking “Culture”: Gender, Race, Nation and the Politics of Multiculturalism*, 96 COLUM. L. REV. 1573 (1996).

²⁵ One commentator observes that among mainstream liberal political theorists, “[n]either Robert Nozick, John Rawls, nor Ronald Dworkin has raised the issue of the rights of aliens” and that “Bruce Ackerman is probably the most influential of those who have examined the transnational aspects of liberalism.” Donald Gallo-way, *Liberalism, Globalism, and Immigration*, 18 QUEEN’S L.J. 266, 269 n.4 (1993). Michael Walzer is another notable exception. See MICHAEL WALZER, SPHERES OF JUSTICE (1983). For an excellent discussion of Walzer’s work, see Linda S. Bosniak, *Membership, Equality, and the Difference that Alienage Makes*, 69 N.Y.U. L. REV. 1047, 1068-87 (1994). See also Gotanda, *supra* note 6.

²⁶ See, e.g., PETER BRIMELOW, ALIEN NATION: COMMON SENSE ABOUT AMERICA’S IMMIGRATION DISASTER (1995); RICHARD D. LAMM & GARY IMHOFF, THE IMMIGRATION TIME BOMB: THE FRAGMENTING OF AMERICA (1985); Maureen Dowd, *Buchanan’s Alternative: Not Kinder or Gentler*, N.Y. TIMES, Jan. 15, 1992, at A12 (quoting Patrick Buchanan as saying: “I think God made all people good. But if we had to take a million immigrants in, say, Zulus, next year, or Englishmen, and put them up in Virginia, what group would be easier to assimilate and would cause less problems for the people of Virginia?”).

²⁷ Susan Moller Okin makes a similar point in her critique of John Rawls, arguing that Rawls does not account sufficiently for the role of the family in producing the

The failure of these theories to account for the immigrant shows how these theories of the state are themselves bounded, constructed within the confines of a national imagination that cannot (or will not) account for international or transnational dimensions of personhood.²⁸ The immigrant represents a significant bridge between the national and the international and allows us to explore and attack implications of these otherwise bounded theories. It allows us to create a space to imagine the inter/national, an examination that at once operates within the interstices between nation-states and simultaneously encompasses both intranational and international spheres.

sort of citizen capable of the deliberative justice required by his theory of justice. She asks: "If both parents do not *share* in nurturing activities, are . . . [male and female children] likely to maintain in adult life the capacity for empathy that underlies a sense of justice?" SUSAN MOLLER OKIN, *JUSTICE, GENDER, AND THE FAMILY* 100 (1989). The fact that one is not born a citizen but becomes one (citizen is taken here to mean a political actor), requires that attention be paid to the various factors affecting this process of becoming, such as gender, race, class, and sexuality. Further to be considered are basic human capabilities, enumerated as follows from Martha C. Nussbaum's "thick vague theory of the 'good:':"

1. Being able to live to the end of a complete human life, as far as is possible; not dying prematurely, or before one's life is so reduced as to be not worth living.
2. Being able to have good health; to be adequately nourished; to have adequate shelter; having opportunities for sexual satisfaction; being able to move from place to place.
3. Being able to avoid unnecessary and nonbeneficial pain and to have pleasurable experiences.
4. Being able to use the five senses; being able to imagine, to think, and to reason.
5. Being able to have attachments to things and persons outside ourselves; . . . to love, grieve, to feel longing and gratitude.
6. Being able to form a conception of the good and to engage in critical reflection about the planning of one's own life.
7. Being able to live for and h others, to recognize and show concern for other human beings, to engage in various forms of familial and social interaction.
8. Beging able to live with concern for and in relation to animals, plants, and the world of nature.
9. Being able to laugh, to play, to enjoy recreational activities.
10. Being able to live one's . . . life and nobody else's; being able to live one's own life in one's very own surroundings and context.

Martha C. Nussbaum, *Human Functioning and Social Justice: In Defense of Aristotelian Essentialism*, 20 *POL. THEORY* 202, 222 (1992).

²⁸ Linda Bosniak makes a similar point about the boundedness of the national imagination that is unable to accord undocumented persons human dignity. Linda S. Bosniak, *Opposing Prop. 187: Undocumented Immigrants and the National Imagination*, 28 *CONN. L. REV.* 555 (1996).

B. "Race-ing" the Immigrant Within the Nation-State

Within the United States, the immigrant's entry into a racialized state instigates an examination of the political economy of race. We may examine how race is utilized in distributing power, access to scarce and valuable resources, and maintaining White privilege both inside and outside the United States. Examining the odd, but paradoxically ubiquitous position of the immigrant allows us to observe the dynamics of racial formation²⁹ as immigrants enter the political and cultural space of the United States and "become" Asian American, Black, Latina/o, and White.³⁰

II

ECHOES OF THE "BIG BANG": SLAVERY, RACE AND THE COLONIAL ENCOUNTER INSIDE AND OUTSIDE THE NATION-STATE

The second cluster of articles in this Symposium may be thought of as a trilogy of pieces suggesting ways to rethink the interconnections among race, slavery, and the colonial encounter

²⁹ We use racial formation in the sense proffered by Michael Omi and Howard Winant:

We define *racial formation* as the sociohistorical process by which racial categories are created, inhabited, transformed, and destroyed. . . . First, we argue that racial formation is a process of historically situated *projects* in which human bodies and social structures are represented and organized. Next we link racial formation to the evolution of hegemony, the way in which society is organized and ruled.

MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960s TO THE 1990s* 55-56 (2d ed. 1994). We also adhere to their definition of race as "a concept which signifies and symbolizes social conflicts and interests by referring to different types of human bodies." *Id.* at 55 (emphasis omitted).

³⁰ Although some work has been done in this area, much work remains. Recent work addressing the racialization of immigrants (at differing levels of temporal and geographic specificity) includes THEODORE W. ALLEN, *1 THE INVENTION OF THE WHITE RACE: RACIAL OPPRESSION AND SOCIAL CONTROL* (1994); ROBERT S. CHANG, *DIS-ORIENTED: ASIAN AMERICANS, LAW, AND THE NATION-STATE* (forthcoming 1998); *CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR* (Richard Delgado & Jean Stefancic eds., 1997); YEN LE ESPIRITU, *ASIAN AMERICAN PANETHNICITY: BRIDGING INSTITUTIONS AND IDENTITIES* (1992); NOEL IGNATIEV, *HOW THE IRISH BECOME WHITE* (1995); LISA LOWE, *IMMIGRANT ACTS: ON ASIAN AMERICAN CULTURAL POLITICS* (1996); SUZANNE OBOLER, *ETHNIC LABELS, LATINO LIVES: IDENTITY AND THE POLITICS OF (RE)PRESENTATION IN THE UNITED STATES* (1995); DAVID R. ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* (1991); GEORGE J. SANCHEZ, *BECOMING MEXICAN AMERICAN: ETHNICITY, CULTURE, AND IDENTITY IN CHICANO LOS ANGELES, 1900-1945* (1993); TEKLE WOLDEMIKAEL, *BECOMING BLACK AMERICAN: HAITIANS AND AMERICAN INSTITUTIONS IN EVANSTON, ILLINOIS* (1989).

both inside and outside the U.S. context. The repercussions of chattel slavery—the market in human beings premised on White supremacy and Black inferiority and subordination—has echoes that continue to be felt today. Anthony Farley links profound and pervasive strands of U.S. racial discourse—that depend on structural and experiential assumptions premised on White supremacy and Black subordination—with decolonization projects here and abroad with the underlying objective of finding ways to promote individual and group liberation.³¹ Professor Farley importantly adds the dimension of eros to the discussion of the political economy of race. Criticizing the way that the colonized “black body” has been pervasively constructed in U.S. law and society, Professor Farley exposes how “[t]he entire project of the black body was dependent on its being understood as a natural, not a social, artifact . . . [a] project [that] has undermined itself by completing itself.”³² Frederick Dennis Greene considers the effects of long-standing, pernicious and pervasive revisionist re-tellings of the history of slavery. Professor Greene evaluates the ongoing ripples that the colonial political economy of chattel slavery has had on legal institutions and mainstream legal consciousness in terms of what he calls “Afrophobia.”³³ It is a difficult task to reconstruct and recenter the position of “immigrants in chains,” particularly in a legal discourse that has relentlessly marginalized and erased their experiences. Completing this trilogy while transitioning to the next cluster of pieces, Hope Lewis discusses the subject position of “Lionheart Gals,” Jamaican American women in the United States, who occupy an aporetic position in the American class, racial, and gender schemas. She artfully delineates how the U.S. racial category of “Black” has been complexified on the axes of gender, class, language, and nationality by recent influxes of people from the Caribbean. Professor Lewis’ analysis links understandings of race, sex, class, and nation to massive global economic restructurings and structural adjustment policies of institutions, such as the International Monetary Fund and the World Bank, that have produced increasing migrations and concomitant social, economic, political,

³¹ Farley, *supra* note 19.

³² Farley, *supra* note 19, at 533-34.

³³ Frederick Dennis Greene, *Immigrants in Chains: Afrophobia in American Legal History—The Harlem Debates Part 3*, 76 OR. L. REV. 537 (1997).

and racial dislocations.³⁴

A. *The Political Economy of Nativistic Racism*

Migrations across U.S. borders create fear about uncontrolled immigration, giving it the dimensions of a national security issue. However, it is curious why only certain immigrant bodies seem to incite this fear. As a result, we are left with contradictory directives to limit legal immigration and to encourage immigration from Northwestern European countries such as Ireland.³⁵ The evening news brings us the image of the furtive figure of the Mexican border crosser or the desperate Chinese boat person³⁶ but shows us nothing of Italians, Poles, Irish, and Russians who, for example, represent four of the five largest groups of undocumented immigrant groups in New York City.³⁷ Fears about immigration have a certain color in the national imagination, described by the Symposium authors as “nativistic racism.” “Nativistic racism” is not merely an intersectional term, but describes a situation where both nativism and racism are mutually constitutive of the other.³⁸ Nativist movements in the United States have

³⁴ Hope Lewis, *Lionheart Gals Facing the Dragon: The Human Rights of Inter/national Black Women in the United States*, 76 OR. L. REV. 567 (1997).

³⁵ Dennis Conway, *Are There New Complexities in Global Migration Systems of Consequence for the United States “Nation-State?”*, 2 IND. J. GLOBAL LEGAL STUD. 31, 41-42 (1994) (citing Immigration Act of 1990, Pub. L. No. 101-649, § 132, 104 Stat. 4978, 5000 (codified as amended at 8 U.S.C. § 1153 (Supp. V 1993))).

³⁶ See, e.g., Sam Dillon, *Job Search Lures Mexicans to Far Corners of U.S.*, N.Y. TIMES, Feb. 4, 1997, at A2; Celia W. Dugger, *Dozens of Chinese From 1993 Voyage Still in U.S. Jail*, N.Y. TIMES, Feb. 3, 1997, at A1; Steven Lee Myers, *Captain and Crew Charged in Voyage of Chinese to U.S.*, N.Y. TIMES, June 8, 1993, at A1.

³⁷ While the Italians are the largest group, Ecuadorians are second, followed by the others. Leti Volpp, *supra* note 24, at 1605 n.158 (citing Jeff Yang & Karen Lam, *Could It Happen Here*, THE VILLAGE VOICE, Dec. 6, 1994). Obviously, the composition of undocumented immigrants varies depending on the geographic locale. Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258 (1992); Cynthia Kwei Yung Lee, *Race and Self-Defense: Toward a Normative Conception of Reasonableness*, 81 MINN. L. REV. 367 (1996).

³⁸ Many commentators discuss racism and nativism together as part of a list. See, e.g., Lynne Henderson, *Authoritarianism and the Rule of Law*, 66 IND. L.J. 379, 380 (1991) (noting the recent “resurgence of active manifestations of racism, anti-semitism and nativism”) (footnote omitted); David A. Martin, *Due Process and Membership in the National Community: Political Asylum and Beyond*, 44 U. PITT. L. REV. 165, 204 (1983) (describing patriotism as “the vehicle for racist or nativist policies”). Rather than think of the terms as co-equal, Kenneth Karst explores the intersection of racism and nativism, commenting that the belief “that full membership in America would be extended to all who would embrace the nation’s ideals—was so easily twisted into racist nativism.” KENNETH KARST, BELONGING TO AMERICA:

never been indiscriminately directed against all foreigners—they have been directed against those immigrants that can be racialized.³⁹ Race and nation become tightly linked such that even White racism directed against Blacks contains a national dimension.⁴⁰ Understood in this way, Asian American, Black, Latina/

EQUAL CITIZENSHIP AND THE CONSTITUTION 84 (1989). Likewise, John Higham in his brilliant examination of American nativism uses the term “racial nativism” to examine the “intersection of racial attitudes with nationalistic ones” which provided the vocabulary or technology that enables “the extension to [certain] European nationalities of that sense of absolute difference which already divided white Americans from people of other colors.” JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM, 1860-1925*, at 132 (2d ed. 1988).

³⁹ We recognize that there was a strong early twentieth-century nativist movement directed against Catholics. However, we would argue that even this religious-based nativism had a racial component insofar as Catholics were racialized. They owed their allegiance to the Pope, and as such were members of a quasi-nation. As members of this quasi-nation, they were racialized. See HIGHAM, *supra* note 38, at 75. See also *Meyer v. Nebraska*, 262 U.S. 390 (1923) (striking down law that discriminated against German immigrants by prohibiting the teaching of languages other than English in any private or public grammar school); *Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925) (striking down anti-Catholic law requiring mandatory attendance in public schools).

There were also nativist movements directed against immigrants from southern and eastern Europe, immigrants who were ostensibly white. However, as John Higham demonstrates, nativism against those groups did not gain real currency until scientific racism provided a language that allowed for what he termed a “racial nativism.” Thus, they were represented as racially distinct from “White” Americans who originated from northwestern Europe. HIGHAM, *supra* note 38, at 87. See also STEPHEN J. GOULD, *THE MISMEASURE OF MAN* (1981).

⁴⁰ Ironically, the granting of freedom and formal national membership to newly-freed slaves after the Civil War provided the predicate for a new form of racial nationalism, the ideology underwriting “[t]he identification of American with white (and the colonization or, failing that, segregation of blacks).” Walter Benn Michaels, *The Souls of White Folk*, in *LITERATURE AND THE BODY: ESSAYS ON POPULATIONS AND PERSONS* 185, 188 (Elaine Scarry ed., 1988). The demise of the master/slave relationship and the formal ban against racial discrimination necessitated new technologies of racism if White privilege was to be preserved. The Supreme Court “came to the rescue” in *Plessy v. Ferguson*, 163 U.S. 537 (1896), setting forth the “separate but equal” doctrine that marked

a new development in racial thinking [that] affirmed racial distinction as *such*; it affirmed, that is, racial distinction independent of any other legal consideration so that the relation between black and white was radically distinguished from the relation between master and slave. Slaves, in principle, could become free; blacks could never become white.

Id. at 188-89. Racial nationalism, or “the identification of American with white,” required that blacks never become American. The doctrine of “separate but equal” enabled the economic disempowerment, political disenfranchisement, and physical terrorization of Blacks, preserving the national community as White. See also Gabriel J. Chin, *The Plessy Myth: Justice Harlan and the Chinese Cases*, 82 IOWA L. REV. 151 (1996); Garrett Epps, *Of Constitutional Seances and Color-Blind Ghosts*, 72 N.C. L. REV. 401 (1994); Greene, *supra* note 33; Farley, *supra* note 19.

o, and White are *simultaneously* racial and national formations.⁴¹

These racial and national formations are dynamic and are subject to reconfiguration. When immigrants enter the United States, they begin the process of becoming Asian American, Black, Latino/a, and White. However, this is not a one-way process. The entry of immigrants changes the content of these formations and reminds us of the diversity that is and has always been present, that Asian American, Black, Latina/o, and White communities have been and always will be, "heterogenous, hybrid, and multiple."⁴² Examination of the immigrant requires us

⁴¹ By "national formation," we mean the nominal form, paraphrasing Omi and Winant on racial formation, of the sociohistorical process by which national categories are created, inhabited, transformed, and destroyed. OMI & WINANT, *supra* note 29, at 55-56. By linking "race" and "nation," we hope to avoid universalizing "race," recognizing the importance of temporal and spatial specificity. For a further discussion of temporal and spatial dimensions of racial identity for Asian Americans and Latina/os, see Chang & Aoki, *supra* note 20.

⁴² LOWE, *supra* note 30. A number of scholars have commented on the tremendous diversity within the Asian American and Latina/o groups. See, e.g., Chew, *supra* note 20 (discussing diversity among Asian Americans); Berta Hernandez Truyol, *Building Bridges: Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1994) (discussing diversity among Latina/os). Relatively little attention has been paid to the new immigration that is bringing an increased diversity to Black communities. Some exceptions include Dennis Conway, *Are There New Complexities in Global Migration Systems of Consequence for the United States "Nation-State"?*, 2 IND. J. GLOBAL LEGAL STUD. 31, 33 (1994) ("new immigration from such non-traditional source regions as Africa, the Caribbean, and south Asia is bringing multicultural plurality to the Black- or African-American community."); WOLDEMIKAEL, *supra* note 30 (discussing the acculturation of Black Haitians in Evanston, Illinois). And despite the growing literature on Whiteness as a racial phenomenon, insufficient attention has been paid to the diversity encompassed within Whiteness. See, e.g., ALLEN, *supra* note 30; RUTH FRANKENBERG, *WHITE WOMEN, RACE MATTERS: THE SOCIAL CONSTRUCTION OF WHITENESS* (1993); IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996); ROEDIGER, *supra* note 30; Barbara Flagg, "Was Blind, but Now I See": *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953 (1993); Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993); George Lipsitz, *The Possessive Investment in Whiteness: Racialized Social Democracy and the "White" Problem in American Studies*, 47 AM. Q. 369 (1995).

For some recent work on the interconnectedness of Whiteness and Blackness, see ERIC LOTT, *LOVE AND THEFT: BLACKFACE MINSTRELSY AND THE AMERICAN WORKING CLASS* (1993); TONI MORRISON, *PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION* (1992); *PASSING AND THE FICIONS OF IDENTITY* (Elaine K. Ginsberg ed., 1996); ERIC J. SUNDQUIST, *TO WAKE THE NATIONS: RACE IN THE MAKING OF AMERICAN LITERATURE* (1993); Shelley Fisher Fishkin, *Interrogating "Whiteness," Complicating "Blackness": Remapping American Culture*, 47 AM. Q. 428 (1995).

to take pluralism seriously. It allows us to talk about what it means to be a nation.

Multiculturalism, then, is not just about recognizing and respecting the presence of minority cultures against the backdrop of a dominant White Euro-American culture. There is no monolithic White culture. Minority *and* majority communities are *always* already multicultural.⁴³

B. *The Move from Identity Politics to Political Identities*

Examining the immigrant, a central figure in the American allegory, requires us to take pluralism seriously. This is not to say that commonalities or communities do not exist. However, we cannot and must not assume that a person's political orientation is or should be based solely on her racial, national, gender, religious, geographic, class, or other identity.⁴⁴ Instead, we must remember that diversity enables the politics of identity, or, for that matter, politics of any sort.⁴⁵ The question then becomes what form such a politics of identity might take. It could take the form of color-blind constitutionalism where racial differences are not permitted any political significance.⁴⁶ This position is typified in Justice Scalia's pronouncement in *Adarand*:

To pursue the concept of racial entitlement—even for the most admirable and benign of purposes—is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of

⁴³ See LOWE, *supra* note 30.

⁴⁴ Angela Harris reminds us:

There are no “people of color” waiting to be found; we must give up our romance with racial community. . . . If any lesson of the politics of difference can yet be identified, it is that solidarity is the product of struggle, not wishful thinking; and struggle means not only political struggle, but moral and ethical struggle as well.

Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741, 784 (1994) (footnote omitted).

⁴⁵ In a similar fashion, the demise of the essential subject, rather than disabling politics, is the enabling condition of politics. See generally Robert S. Chang, *The End of Innocence or Politics After the Fall of the Essential Subject*, 45 AM. U. L. REV. 687 (1996).

⁴⁶ See generally Neil Gotanda, *A Critique of “Our Constitution is Color-Blind”*, 44 STAN. L. REV. 1 (1991).

Iris Marion Young describes this more generally as the assimilation ideal which would bring about liberation from group-based oppression through the elimination of group-based difference. IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 158 (1990) (discussing Richard Wasserstrom, *On Racism and Sexism*, in *PHILOSOPHY AND SOCIAL ISSUES* (1980)).

government, we are just one race here. It is American.⁴⁷

Under this vision, only those who insist on the salience of racial differences are keeping us from the Promised Land.⁴⁸

Such a position, however, fails to account for the continuing material significance of race—as well as language, religion, gender, sexuality, and national origin—despite the outlawing of formal discrimination.⁴⁹ The United States remains a race and gender hierarchic society that has continuously failed to live up to its democratic ideals. We need to find ways to imagine and work toward realizing an emancipatory politic that will move us toward what Ernesto Laclau and Chantal Mouffe describe as “a radical and plural democracy.”⁵⁰ Instead of advocating sameness, the “concept of solidarity” may be invoked to establish a “chain of equivalents” among the different groups and their struggles against oppression and subordination.⁵¹

For people of color in the United States, a starting point is the ideology of White supremacy that permitted and encouraged the genocide of Native Americans, the enslavement of Africans, the conquest and dispossession of Mexicans, and the exclusion and unconstitutional internment during World War II of Japanese Americans and Japanese immigrants “ineligible for citizenship”—all of which have continuing distributive effects today. Significantly, White supremacy located within the United States tells only part of the story. The United States participated in many colonialist and imperialist adventures, motivated and informed by White supremacy and/or manifest destiny.⁵²

Once the confines of a constricted national imagination are es-

⁴⁷ *Adarand Constructors, Inc. v. Pena*, 115 S. Ct. 2097, 2119 (1995) (Scalia, J., concurring). Cf. *Romero*, *supra* note 14, at 438-54.

⁴⁸ See generally RONALD SURESH ROBERTS, CLARENCE THOMAS AND THE TOUGH LOVE CROWD (1995).

⁴⁹ As Alan Freeman writes, “[A]s surely as the law has outlawed racial discrimination, it has affirmed that Black Americans can be without jobs, have their children in all-black, poorly funded schools, have no opportunities for decent housing, and have very little political power, without any violation of antidiscrimination law.” Alan David Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1050 (1978).

⁵⁰ ERNESTO LACLAU & CHANTAL MOUFFE, *HEGEMONY & SOCIALIST STRATEGY: TOWARD A RADICAL DEMOCRATIC POLITICS* 176 (1985).

⁵¹ Chantal Mouffe, *Hegemony and New Political Subjects: Toward a New Concept of Democracy*, in *MARXISM AND THE INTERPRETATION OF CULTURE* 89, 100 (Cary Nelson & Lawrence Grossberg eds., 1988).

⁵² Greene, *supra* note 33.

aped, the chain of democratic equivalences strengthens, making it easier to link those who have struggled in the United States for generations with those who have arrived more recently as well as those who will arrive in the future. Examining White supremacy, colonialism, and imperialism and their relation to patriarchy may help us understand the linkages between race and gender. This understanding may be used to promote solidarity with women's struggles,⁵³ while an examination of the nation-state's relation to the movements of global capital may promote solidarity with working-class struggles both inside and outside the United States.⁵⁴

III

RETHINKING AGENCY: GLOBAL ECONOMIC RESTRUCTURING AND THE IMMIGRANT

The pieces in the third cluster address the interrelationship of a growing transnational flow of goods, capital, and information and increasing flows of persons among nations in the inter/national. Using examples of colonial migrations drawn from India, Tayyab Mahmud shows how "determinants of migration and constructions migrant identities [exist] at the intersection of the demands of global systems of production and imperatives of the principles of sovereignty and nation-state . . . [such that] migrant identities are forged through both operations of power and strategies of resistance."⁵⁵ Professor Mahmud convincingly demonstrates how questions of sovereignty and immigration are both complex and in many ways indeterminate to varying political effect—migrations have at different times been fueled by colonial expansion, anti-colonial resistance, and post-colonial partition. Kunal Parker looks at parallels and gaps occurring at the intersection of the discourse of global economic restructuring and the domestic U.S. discourse of difference (racial and otherwise) that combine to produce the subject position of "the immigrant" in the context of recent changes in U.S. immigration laws.⁵⁶

Tanya Hernandez examines how and why shifting construc-

⁵³ Tayyab Mahmud, *Migration, Identity, & the Colonial Encounter*, 76 OR. L. REV. 633 (1997); Leti Volpp, *Talking "Culture:" Gender, Race, Nation and the Politics of Multiculturalism*, 96 COLUM. L. REV. 1573 (1996).

⁵⁴ Chang & Aoki, *supra* note 20.

⁵⁵ Mahmud, *supra* note 53, at 635. See also Lewis, *supra* note 34.

⁵⁶ Kunal M. Parker, *Official Imaginations: Globalization, Difference, and State-Sponsored Immigration Discourses*, 76 OR. L. REV. 691 (1997).

tions of immigrants along racial, gender, class, and national lines have been and continue to be used in conjunction with the fluid U.S. racial hierarchy to produce “middleman” minorities to police, in pernicious ways, those at the bottom of the racial hierarchy.⁵⁷ Finally and in conceptual conclusion, Margaret Chon uses a review of Lisa Lowe’s recent book, *Immigrant Acts: On Asian American Cultural Politics*⁵⁸ to consider “the forcible separation of interlinked spheres of economy, polity and civil society—a separation that law enforces and reinforces.”⁵⁹

A. *Beyond Sovereign(ties)? Global Economic Restructuring*

The global pathway to the twenty-first century is haunted by increasingly strident voices of doubt, discontent and disenchantment. One set of voices represented by Western voters demands a halt to some effects of unbridled market competition by replacing conservative Cold War-era governments with mushy “I feel your pain,” entitlement-protecting, social-democrat types. In the Third World, even as many governments (for example, Peru, Brazil, Ghana, Uganda, and Indonesia) more forcefully embrace neo-liberal free market ideology (including privatizing state enterprises at the behest of a variety of “global” institutions), people are organizing for a democracy that has yet to reach the inter/national economic sphere.⁶⁰ The triumphant attitude of the West that followed the end of the Cold War⁶¹ must now confront the realities of the economically and psychologically dispossessed of the new world disorder. The dispossessed will not die quietly in the shanty towns and deteriorating inner cities that discolor and deform the map of globalization; nor will they forget easily the rewards they were promised for collaborating in the Manichean

⁵⁷ Tanya Katerí Hernández, *The Construction of Race and Class Buffers in the Structure of Immigration Controls and Laws*, 76 OR. L. REV. 731 (1997).

⁵⁸ LISA LOWE, *IMMIGRANT ACTS: ON ASIAN AMERICAN CULTURAL POLITICS* (1996).

⁵⁹ Margaret Chon, *Acting Upon Immigrant Acts: On Asian American Cultural Politics by Lisa Lowe*, 76 OR. L. REV. 765 (1997).

⁶⁰ The United States, for example, has not hesitated to act vigorously against the wishes of most of the world, including its principal allies, in enforcing its economic embargo against Cuba. See David E. Sanger, *U.S. Won't Offer Trade Testimony on Cuba Embargo*, N.Y. TIMES, Feb. 21, 1997, at A1, A7. It has also blocked the application of the largest nation in the world, China, to join the WTO.

⁶¹ See, e.g., LOUIS HENKIN, *THE AGE OF RIGHTS* (1989) (giving the West, in particular, credit for the internationalization of the idea of human rights); Thomas Franck, *The Emerging Right to Democratic Governance*, 86 AM. U. J. INT'L LAW 46 (1992).

struggle that began with the end of World War II and Soviet rejection of the American Marshall Plan⁶² and ended with the demise of the economically bankrupt Soviet Union.

Two key consequences of these developments include the exodus of the economically dispossessed to the nodal points of the globalization matrix and the growing hatred these immigrants evoke from many within the First World. Three interconnected phenomena account for these consequences, especially in the nations of the developed postindustrial world. First, capital has flowed from developed countries to less-developed domestic regions and to the developing nations of the South and Pacific Basin.⁶³ This movement was in part a response to rising tax rates and unionization as well as cheaper labor and lower tax and regulatory burdens abroad.⁶⁴ The political struggle against the threat posed by communism was always claimed to be an integral part of these economic moves,⁶⁵ especially when capital flows

⁶² See LESTER C. THUROW, *HEAD TO HEAD: THE COMING ECONOMIC BATTLE AMONG JAPAN, EUROPE, AND AMERICA* 22 (1992). See generally *FIFTY YEARS IS ENOUGH: THE CASE AGAINST THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND* (Kevin Danaher ed., 1994); *PERPETUATING POVERTY: THE WORLD BANK, THE IMF, AND THE DEVELOPING WORLD* (Doug Bandow & Ian Vásquez eds., 1994).

⁶³ Curiously, the global economic restructuring that produced these massive outward capital flows also produced and significantly exacerbated levels of immiseration within specific pockets of the developed world. For example, the financial district of London is closer to the financial center of Los Angeles (at least with regard to communications) than downtown Los Angeles is to South Central Los Angeles. This is a pattern one sees over and over again: the periphery folds back into the center and the center instantiates itself in the periphery. There are significant pockets of Third World entrenched poverty within all of the major urban centers, just as there are pockets or nodes of First World affluence and consumption in almost every Third World country.

⁶⁴ See generally LINDA BASCH ET AL., *NATIONS UNBOUND: TRANSNATIONAL PROJECTS, POSTCOLONIAL PREDICAMENTS, AND DETERRITORIALIZED NATION-STATES* (1994); ROBERT W. COX, *PRODUCTION, POWER AND WORLD ORDER: SOCIAL FORCE IN THE MAKING OF HISTORY* (1987); *GLOBALIZATION: CRITICAL REFLECTION* (James H. Mittelman ed., 1996); JOYCE KOLKO, *RESTRUCTURING THE WORLD ECONOMY* (1988); MICHAEL STORPER & RICHARD WALKER, *THE CAPITALIST IMPERATIVE: TERRITORY, TECHNOLOGY AND INDUSTRIAL GROWTH* (1989).

⁶⁵ One must not overlook the importance of the lasting effects of U.S. military intervention in Southeast Asia in the 1960s and 1970s, as well as similar U.S.-backed efforts in Central America during the 1980s that created havoc and disruptions, economic and otherwise, which worked as a significant "push" force, driving U.S.-bound immigration. This also begs the question of category: are persons who are driven from their homelands by the devastation of civil conflict and war "immigrants" or "refugees?"

Similarly, while not as ostensibly destructive as bombs, one might wonder what effect U.S. "Big Agribiz" has had on sustainable Third World subsistence farming

crossed national borders.⁶⁶ However, what are we to make of these arguments in the post Cold War world? Second, deindustrialization and the rise of a bifurcated high and low end service sector economy has occurred in the developed world of the North, resulting in part from incessant capital transfers in search of greater efficiencies and profits.⁶⁷ Finally, several Asian regions, including Japan, South Korea, Taiwan, Indonesia, and city-states such as Hong Kong and Singapore, have experienced very rapid but bumpy economic development in the late twentieth century.⁶⁸ The relationship among these three phenomena is a type of “cheap labor” race to the bottom: short term development is underwritten by the availability of cheaper labor and less regulation elsewhere. As rapid industrialization occurs in one region, less regulated and less expensive labor markets spring up in another. Thus, South Korea and Japan have relocated manufacturing plants to Indonesia, Malaysia, and Guatemala.⁶⁹

David Elkins defines globalization as “the process by which ever larger proportions of the world’s population become aware

practices. If the net effect is consolidation of small parcels into large mechanized farms growing monocultured crops, what happens when former subsistence farmers head for the cities? Or to the United States? One might see them as environmental refugees. See generally, WILLIAM GREIDER, *ONE WORLD, READY OR NOT* (1997); *THE CASE AGAINST THE GLOBAL ECONOMY* (Jerry Mander & Edward Goldsmith eds., 1996).

⁶⁶ See Cuban Democracy Act of 1992, Pub. L. No. 102-484, 106 Stat. 2575, an almost universally condemned escalation of efforts by the United States to use economic leverage to force the overthrow of the Castro government. See also The Cuban Assets Control Regulations 31 C.F.R. § 515 (1996), and The Cuban Liberty and Democratic Solidarity Act of 1996, Pub. L. No. 104-114 (to be codified at 22 U.S.C. §§ 6021-6091, 16431 and 28 U.S.C. § 1611) (the Helms-Burton Act). The extraterritorial impact of these anti-Cuban laws has created severe strain in U.S.-foreign relations. See David E. Sanger, *U.S. Won't Offer Trade Testimony on Cuba Imbargo*, N.Y. TIMES, Feb. 21, 1997, at A1. Note that the United States protects itself from unfriendly foreign investments through the Exon-Florio Amendment to the Defense Production Act of 1950, 50 U.S.C. App. § 2170 (1994), 31 C.F.R. § 800.101 (1996).

⁶⁷ BENNETT HARRISON & BARRY BLUESTONE, *THE GREAT U-TURN: CORPORATE RESTRUCTURING AND THE POLARIZING OF AMERICA* (1988); Raul Hinojosa et al., *An Even Greater U-Turn: Latinos and the New Inequality*, in *HISPANICS IN THE LABOR FORCE: ISSUES AND POLICIES* 25 (Edwin Melendez et al. eds., 1991).

⁶⁸ Clive Hamilton, *Capitalist Industrialization In the Four Little Tigers of East Asia*, in *NEO-MARXIST THEORIES OF DEVELOPMENT* 137 (Peter Limquaco & Bruce McFarlane eds., 1983); Linda Y.C. Lim, *Women Workers in Multinational Corporations: The Case of the Electronics Industry in Malaysia and Singapore*, in *TRANSNATIONAL ENTERPRISES: THEIR IMPACT ON THIRD WORLD SOCIETIES AND CULTURES* 109 (Krishna Kumar ed., 1980).

⁶⁹ See generally *THE POLITICAL ECONOMY OF THE NEW ASIAN INDUSTRIALISM* (Frederic C. Deyo ed., 1987).

of differences in culture, style of life, affluence, and other matters."⁷⁰ However, global economic restructuring has occurred unevenly as among nations and regions and even within nation-states themselves. Rosemary Coombe and Saskia Sassen point out that the process of globalization has "multiple spatial coordinates" and cannot be viewed as unitary or singular, but rather is economically, socially, and politically very uneven.⁷¹ The increasing mobility of largely intangible skills, information, and information-based products in a global (or at least multinational) market means that particular nation-states will be less sure of retaining transnational companies and employment opportunities. The rise of nodal "global cities" and the growth of the bifurcated service sector bring to the surface the increasingly poor fit between territorial political authority and global, nonterritorial information flows.⁷² The economies and spaces of these "global cities" are premised on the ability to direct and otherwise control vast flows of an increasing array of information, as well as capital, across porous borders.

Development of global cities possessing a sharply bifurcated service economy can be traced in part to economic patterns occurring in the United States and the rest of the developed world over the past thirty years. Some of these patterns involve deindustrialization, including a significant reduction in the rate of return on capital (from nine percent in the mid-1960s to below six percent in the late 1970s). This precipitated: (1) movements by ownership and management of U.S. corporations to reduce labor costs and reduce or avoid costs of compliance with labor, environmental, and other regulations; and (2) pursuit of strategies to increase efficiency via reorganization and investment in

⁷⁰ DAVID J. ELKINS, *BEYOND SOVEREIGNTY: TERRITORY AND POLITICAL ECONOMY IN THE TWENTY-FIRST CENTURY* 27 (1995). See also Globalization, *supra* note 64; SASKIA SASSEN, *LOSING CONTROL? SOVEREIGNTY IN AN AGE OF GLOBALIZATION* (1996).

⁷¹ Rosemary J. Coombe, *The Cultural Life of Things: Anthropological Approaches to Law and Society in Conditions of Globalization*, 10 AM. U. J. INT'L L. & POL'Y 791, 799-801 (1995); SASKIA SASSEN, *THE GLOBAL CITY: NEW YORK, LONDON, TOKYO* 3-13 (1991).

⁷² ELKINS, *supra* note 70, at 93, 112-14, 260-61. See generally ANTHONY D. KING, *URBANISM, COLONIALISM, AND THE WORLD-ECONOMY: CULTURAL AND SPATIAL FOUNDATIONS OF THE WORLD URBAN SYSTEM* (1990); SASKIA SASSEN, *CITIES IN A WORLD ECONOMY* (1994); John Friedmann, *Where We Stand: A Decade of World City Research*, in *WORLD CITIES IN A WORLD SYSTEM* (Paul L. Knox & Peter J. Taylor eds., 1995).

new technology, where such costs would be lower still.⁷³

The first strategy, deindustrialization, included widespread layoffs, wage cuts, increased hours, and relocation of manufacturing to lower cost domestic regions and off-shore facilities.⁷⁴ Deindustrialization also meant that within the United States a bifurcated service economy emerged and manufacturing was eclipsed, with concomitant loss of blue-collar jobs and management of firms out of the older industrial cities of the Northeast and Midwest—the so-called industrial “rust belt” of the United States. Oil shortages during the mid-1970s, brought about by overdependence of the developed world on until-then relatively cheap OPEC oil, drove costs of producing virtually everything higher.⁷⁵

Under assault, with union membership declining from 23.8% in 1979 to 16.3% in 1989, organized labor in the U.S. retreated significantly during this period.⁷⁶ Incorporating immigrant workers from Asia and Central America into the low-end service sector economy (involving low-wage jobs that cannot be exported) also increased during this period. This exerted further downward pressure on wages.⁷⁷ These low-end service workers were generally not unionized. Many were also undocumented immigrants and therefore could not vote or, following passage of initiatives like California’s Proposition 187, access vital social services such as emergency medical assistance or education. Additionally, the disappearance of certain kinds of relatively high-paying, low-skill work (because manufacturing jobs moved off-shore to countries

⁷³ See generally BENNETT HARRISON & BARRY BLUESTONE, *THE GREAT U-TURN: CORPORATE RESTRUCTURING AND THE POLARIZING OF AMERICA* (1988).

⁷⁴ See generally SASKIA SASSEN, *THE MOBILITY OF LABOR AND CAPITAL: A STUDY IN INTERNATIONAL INVESTMENT AND LABOR FLOW* (1988); Linda A. Bell & Richard B. Freeman, *The Causes of Increasing Interindustry Wage Dispersion in the United States*, 44 *INDUS. & LAB. REL. REV.* 275 (1991); Roger Waldinger & Greta Gilbertson, *Immigrant’s Progress: Ethnic and Gender Difference Among U.S. Immigrants in the 1980s*, 37 *SOC. PERSP.* 431 (1994).

⁷⁵ See generally ONG ET AL., *THE NEW ASIAN IMMIGRATION IN LOS ANGELES AND GLOBAL RESTRUCTURING* 9-10 (1994).

⁷⁶ DANIEL J.B. MITCHELL, *UNIONS, WAGES, AND INFLATION* (1980); Michael L. Wachter & William H. Carter, *Norm Shifts in Union Wages: Will 1989 be a Replay of 1969?*, *BROOKINGS PAPERS ON ECONOMIC ACTIVITIES*, no. 2, at 233 (1989).

⁷⁷ See generally Christian Zloniski, *The Informal Economy in an Advanced Industrialized Society: Mexican Immigrant Labor in Silicon Valley*, 103 *YALE L.J.* 2305 (1994); Marc Cooper, *Class.War@Silicon.Valley: Disposable Workers in the New Economy*, *THE NATION*, May 27, 1996, at 11; Jeremy Rifkin, *Civil Society in the Information Age: Workerless Factories and Virtual Companies*, *THE NATION*, Feb. 26, 1996, at 11.

with less labor and environmental regulation) put newly arrived immigrants in a bind—rather than work or starve, sometimes they worked and starved.⁷⁸

Beside creating downward pressures on labor costs, U.S. corporations during this period responded to declining profitability resulting from global economic restructuring by undergoing waves of corporate reorganizations via debt-financed acquisitions and mergers. In many cases, these corporate strategies brought about the breakup of otherwise productive properties, as heavily leveraged debt-encumbered companies drained vital resources to pay off interest on immense debt undertaken to finance reorganization.⁷⁹

Another form of reorganization that emerged during this period can be characterized by two trends. First, rapid advancements in communications and transportation technology facilitated geographic fragmentation of firms creating pervasive spatial dispersal of companies. This resulted in a general (if grossly uneven)⁸⁰ shift to flexible accumulation⁸¹ along a post-

⁷⁸ See generally WILLIAM JULIUS WILSON, *THE DISAPPEARANCE OF WORK* (1996); Laura Ho et al., *(Dis)Assembling Rights of Women Workers Right Along the Global Assembly Line: Human Rights and the Garment Industry*, 31 HARV. C.R.-C.L. L. REV. 353 (1996); Marc Cooper, *The Heartland's Raw Deal: How Meatpacking is Creating a New Immigrant Underclass*, THE NATION, Feb. 3, 1997, at 11; Cooper, *supra* note 77, at 11; Rifkin, *supra* note 77, at 11. See also Julie A. Su, Remarks at the Critical Race Theory Conference at Yale Law School (Nov. 13, 1997) ("Asians and Latinos suffer similar exploitation in the underworld of American garment industry sweatshops. They often labor side by side, where their inability to talk to each other given language differences and the daily indignities they suffer make them shy away from contact, at best, and hate each other, at worst. Ethnic and racial differences are further exacerbated by the structure of the garment industry White owners of large corporations remain far above the fray, and can blame the interracial conflict at the bottom for the problems of the workers, even though they created the conditions for that conflict. . . . [D]ivisions are entrenched, interracial hostility solidified, and white racism absolved. . . . [T]he garment industry is a metaphor for racial conflict throughout our society.") (transcript available from author).

⁷⁹ See generally HARRISON, *supra* note 67; *THE POLITICS OF ECONOMIC ADJUSTMENT: PLURALISM, CORPORATISM, AND PRIVATIZATION* (Richard E. Foglesong & Joel D. Wolfe eds., 1989).

⁸⁰ Saskia Sassen and others point to the increasingly complex nature of uneven development. Regions, localities, and cultures overlap and create heterogeneity within and across boundaries of the nation-state. See SASKIA SASSEN, *CITIES IN A WORLD ECONOMY* 121-23 (1994); SASKIA SASSEN, *THE GLOBAL CITY: NEW YORK, LONDON, TOKYO* 245-320 (1991); SASKIA SASSEN, *THE MOBILITY OF LABOR AND CAPITAL: A STUDY IN INTERNATIONAL INVESTMENT AND LABOR FLOW* 126-70 (1988).

⁸¹ Shifts from older Fordist models of standardized mass production to an emerg-

Fordist model.⁸² Second, a bifurcated service economy arose within the United States with a sharply divided high and low end.⁸³ The high-end service sector has been referred to as the FIRE sector (financial, insurance, real estate) but also includes legal, management, consulting, communications, and media services as well.

Many commentators have recognized that the emergent pos-

ing post-Fordist mode of flexible accumulation fundamentally transform the relationship of a nation's economy with its territory. Fordism was a comparatively stable period in the United States when relatively high wages were paid to assembly line workers, enabling them to purchase more consumer goods. Fordism describes the brief period of equilibrium where increasing mass production capability because of new technology (increasing supply) was balanced by increasing consumption (increasing consumer demand for manufactured goods)—the workers in a Ford Motor plant could afford to buy the Model Ts they produced. As modes of production (because of transportation or communications advances) became more “flexible” and specialized, the ability of capital to “flexibly accumulate” was enhanced. Input costs, such as wages, energy cost, and state regulation could be reduced or avoided by moving production to other regions or offshore to other countries where inputs were cheaper. This creates a “flexible accumulation” “race-to-the-bottom” in terms of a search by multinational capital for areas where labor unions are nonexistent, and which lack minimum wage, employee safety, and environmental regulations. The word “PostFordism” captures this shift to regimes of “flexible accumulation.” See generally MICHEL AGLIETTA, *A THEORY OF CAPITALIST REGULATION: THE U.S. EXPERIENCE* (David Fernbach trans., 1976); DAVID HARVEY, *THE CONDITION OF POSTMODERNITY: AN ENQUIRY INTO THE ORIGINS OF CULTURAL CHANGE* (1989); ONG ET AL., *supra* note 75, at 18 (“Decentralization is linked to a shift from Fordist, assembly-line-style mass production, to ‘flexible specialization,’ in which smaller plants use skilled workers and flexible, computer-based machinery to produce more varied goods for an ever changing market.”) (internal citation omitted).

⁸² Despite this structural decentralization, we can see the actual inhabited spaces that the information economy produces in the geographies of certain “global cities.” While an extensive, structurally decentralized network of computers makes possible the territorial dispersal of economic activity, it does not follow that decentralized control or deconcentration of such activity results. Sassen wonders whether cyber space “constitute[s] a new form of organizing the territory of the ‘centre’, rather than, as in the more conventional view, an instance of suburbanization or geographic dispersal.” Saskia Sassen, *On Concentration and Centrality in the Global City, in WORLD CITIES IN A WORLD SYSTEM* 63-7 (Paul L. Knox & Peter J. Taylor eds., 1995).

⁸³ HERBERT I. SCHILLER, *INFORMATION INEQUALITY: THE DEEPENING SOCIAL CRISIS IN AMERICA* 97 (1996) (A similar condition of growth alongside immiseration is found in the United States. “‘Today,’ writes an economic reporter for the *New York Times*, ‘the economy can keep on growing with the wealthiest 40% of the nation’s families getting 68% of the income, even though 60% of the population is unhappily on the sidelines.’”). See also KEVIN PHILLIPS, *THE POLITICS OF RICH AND POOR: WEALTH AND THE AMERICAN ELECTORATE IN THE REAGAN AFTERMATH* (1990); Janet Lippman Abu-Lughod, *Comparing Chicago, New York and Los Angeles: Testing Some World Cities Hypothesis, in WORLD CITIES IN A WORLD-SYSTEM* (Paul L. Knox & Peter J. Taylor eds., 1995); Rifkin, *supra* note 77, at 11.

tindustrial “global cities” housing the information technology and its managers are the spaces where globalization’s processes are most visible.⁸⁴ Political geographers have begun analyzing why certain urban centers become nodes that are linked into and constitute a rapidly changing transnational communications and financial network.⁸⁵ These high-end managers, or “symbolic analysts,”⁸⁶ that are living and working in these nodal sites control and manage an increasingly wide geographical dispersion of manufacturing plants and transportation facilities with substantial influence on multiple markets. Geographic spatial effects are felt as older manufacturing areas collapse economically, producing sharply uneven technological and capital distributions that shape and reshape the spaces of the global cities, whether they are Kuala Lumpur or Los Angeles.⁸⁷

In these nodal postindustrial information cities, there is a sharp bifurcation and polarization between the high- and low-end service sectors. Highly-paid, well-educated information managers direct, interpret, and manage flows of capital and information across widely dispersed areas. The dichotomy is between this comparatively cohesive “core” group of global professionals who are “wired in” to the increasingly global corporate economy and an ethnically and culturally diverse “periphery” that is increas-

⁸⁴ See, e.g., MANUEL CASTELLS, *THE INFORMATIONAL CITY: INFORMATION TECHNOLOGY, ECONOMIC RESTRUCTURING, AND THE URBAN-REGIONAL PROCESS* (1989); SASKIA SASSEN, *CITIES IN A WORLD ECONOMY* 121-23 (1994); SASKIA SASSEN, *THE GLOBAL CITY: NEW YORK, LONDON, TOKYO* 245-320 (1991); SASKIA SASSEN, *THE MOBILITY OF LABOR AND CAPITAL: A STUDY IN INTERNATIONAL INVESTMENT AND LABOR FLOW* 126-70 (1988); Saskia Sassen, *On Concentration and Centrality in the Global City*, in *WORLD CITIES IN A WORLD-SYSTEM* 63-7 (Paul L. Knox & Peter J. Taylor eds., 1995).

⁸⁵ See, e.g., CASTELLS, *supra* note 84 (examining interactions between advances in information technology and urban development).

⁸⁶ See ROBERT B. REICH, *THE WORK OF NATIONS: PREPARING OURSELVES FOR 21ST CENTURY CAPITALISM* 178 (1991) (“Symbolic analysts solve, identify, and broker problems by manipulating symbols. They simplify reality into abstract images that can be rearranged, juggled, experimented with, communicated to other specialists, and then, eventually, transformed back into reality. The manipulations are done with analytic tools, sharpened by experience. The tools may be mathematical algorithms, legal arguments, financial gimmicks, scientific principles, psychological insights about how to persuade or to amuse, systems of induction or deduction, or any other set of techniques for doing conceptual puzzles.”).

⁸⁷ BARRY BLUESTONE & BENNETT HARRISON, *THE DEINDUSTRIALIZATION OF AMERICA: PLANT CLOSINGS, COMMUNITY ABANDONMENT, AND THE DISMANTLING OF BASIC INDUSTRY* 25-48 (1982) (describing economic devastation resulting from loss of industry); JOHN H. MOLLENKOPF, *THE CONTESTED CITY* 12-41 (1983) (tracing impact of decline in manufacturing and heavy industry on United States cities).

ingly unable to organize politically to influence that “core” upon which its limited forms of security depend.⁸⁸ Thus, these pockets of Third World impoverishment within the First World’s global cities mirror the emergence of pockets of First World affluence that have emerged in the Third World, presenting a complex and troubling interpenetration of the First/Third; East/West; North/South; and developed/developing worlds. This is perhaps even more so since the collapse of the so-called Second World communist bureaucracies of Central and Eastern Europe since 1989. The global city is thus a dual city, due to the increased social and economic polarization it embodies.⁸⁹

Within the United States, driven by strategies designed to drive down labor costs and maximize organizational efficiency, profits, and corporate reorganization, global economic restructuring has undoubtedly and significantly exacerbated income inequality.⁹⁰ This widening inequality fed into the national identity crisis: people and communities of color were impacted—albeit to varying degrees—by plant closures, layoffs, downsizings, and concomitant loss of earnings and social dislocations. Rising hostility to affirmative action, thinly veiled racial subtexts in political campaigns, and the assertion of reverse racism against Whites all manifested in growing racial polarization, which was fueled by growing economic polarization.⁹¹ These factors contributed to the national identity crisis over who may legitimately be a “citi-

⁸⁸ SASKIA SASSEN, *CITIES IN A WORLD ECONOMY* at 121-23 (1994) (suggesting that globalization’s effects may include the growth of an informal economy, which may include sweat-shops, home work, and piecework at below minimum wages under substandard working conditions, gentrification, displacement, and rising levels of homelessness, heightened ethnic and racial tensions, and in general a sharply increasing degree of inequality as represented by the distance between high- and low-end workers). See also PERSISTENT INEQUALITIES: WOMEN AND WORLD DEVELOPMENT (Irene Tinker ed., 1990); Ho et al., *supra* note 18; Cooper, *supra* note 77, at 12 (“As the information industry matures, it ‘unbundles.’ Leading a corrosive national trend, high-tech is increasingly turning to temporary workers, part-timers, and subcontractors [thereby short-circuiting] the traditional paths of upward mobility, locking lower-rung workers into a lifetime of dead-end, insecure jobs.”); Cooper, *supra* note 6.

⁸⁹ PAUL M. ONG, *THE WIDENING DIVIDE: INCOME INEQUALITY AND POVERTY IN LOS ANGELES* (1989); Paul M. Ong, *Race and Post-Displacement Earnings Among High-Tech Workers*, 30 *INDUS. REL.* 456 (1991).

⁹⁰ See generally HARRISON, *supra* note 67; MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S* (2d ed. 1994); HOWARD WINANT, *RACIAL CONDITIONS: POLITICS, THEORY, COMPARISONS* (1994).

⁹¹ See also Robert S. Chang, *Reverse Racism!: Affirmative Action, the Family and the Dream That Is American*, 23 *HASTINGS CONST. L.Q.* 1115 (1996).

zen” and related atmosphere of backlash and nativist racialized reaction.

CONCLUSION

By considering the place of the immigrant in the inter/national imagination, this Symposium also allows for a critique of identity that questions current conceptions of citizenship. This critique necessarily challenges the viability of the nation-state’s modern incarnation. Current notions of citizenship are intimately tied to an archaic notion of sovereignty that rejects the existence and promise of multiple sovereignties.⁹² Technological advances in transportation and communication have facilitated the ability of immigrants to participate actively in both their country of residence and their former homeland. Indeed, some countries permit dual and multiple citizenship. Additionally, entities such as multinational corporations and religious denominations exist as “sovereignties” that transcend state-based boundaries. These new forms of overlapping and clashing sovereignties force us to rethink and transform traditional conceptions of both citizenship and the nation-state. With the increase in forms of informal multiple citizenship and the late-twentieth century transformation of the nation-state, we see that the immigrant truly has become an inter/national actor. The immigrant offers the most promising site to critique traditional notions of citizenship. But as we imagine new forms of citizenship transcending the nation-state, we would be naive to assume that they will inevitably take emancipatory forms. We must remain vigilant against the inevitable repetitions of racism, sexism, and heterosexism. Instead, we must remember our core objective: to build a radical and plural democracy that gives meaning to freedom and justice while rejecting the impoverished emptiness of formal equality. The articles and essays in this Symposium have kept faith with this core objective. They have challenged traditional notions of citizenship and equality by centering the immigrant in the inter/national imagination.

⁹² ELKINS, *supra* note 70; SASKIA SASSEN, *LOSING CONTROL: SOVEREIGNTY IN AN AGE OF GLOBALIZATION* (1996). See also Jerry Frug, *Decentering Decentralization*, 60 U. CHI. L. REV. 253 (1993).