Nationalism

*939 LIMIT HORIZONS & CRITIQUE: SEDUCTIONS AND PERILS OF THE NATION

Tayyab Mahmud [FNa1]

Getting its history wrong is part of being a nation. [FN1]

We make up a story to cover the facts we don't know or can't accept. [FN2]

We live in the world, like it or not, in which the national dimension of history haunts us in ways from which we are finding there is no easy escape. [FN3]

[S]ense of words like "nation," "people", "sovereignty" . . . "community" . . . are leaking out of so many cracked vessels. [FN4]

I. Introduction

THE four contributors to this cluster interrogate the nation and nationalism, and in the process open new avenues that broaden and deepen the project of critical legal scholarship. As much heralded "globalization," "harmonization of laws," "end of history" and "demise of sovereignty" appear trumped by the resurgent empire, now wrapped in a self-proclaimed right of "preeminence" and "preemption," questions of the nation and nationalism present themselves with renewed urgency. The stream of scholarship forged under the wide-umbrella of Latina/o Critical Legal Theory is well positioned to confront these questions. This movement, whose point of departure is the grounds of critique demarcated by Legal Realism, Critical Legal Studies, Feminist Legal Theory and Critical Race Theory, has over the years progressively incorporated insights of Postcolonial Studies, Culture Studies and Subaltern Studies. The contributions to this cluster should help us train this formidable critical arsenal on the persistent and renewed questions of the nation and nationalism.

*940 II. Limit Horizons and Critique

Before addressing the four contributions to this cluster, a word needs to be said about the prospects and limits of critique itself. Critique holds the promise of laying bare foundations, scaffoldings, structures and operations of power that subordinate in order to augment the transformatory political project of anti-subordination. To remain honest to its task, however, critique must move along two tracks concurrently: relentless critique of power and on-going self-critique.

On-going self-critique is indispensable to ensure that ontological, epistemological and programmatic frameworks of critique are conducive to the attainment of its agenda. This becomes particularly urgent when the subject of inquiry forms part of the limit horizons of an age. I designate as limit horizons the hegemonic ontological categories that over time so imprint the imaginary [FN5] of an age that even critique remains imprisoned in the normalcy of these categories--an imprisonment that curtails the transformatory potential of critique. To remain vigilant about limit horizons, much less overcome them,

is a formidable task. Rather than being incidental or accidental, imprisonment in limit horizons is an ever-present predicament for critique, with the very inaugural moment of modern critique establishing this inherent vulnerability. No sooner than proclaiming the foundational injunction of the Enlightenment--"dare to know"--Kant declares that:

> The origin of supreme power, for all practical purposes, is not discoverable by the people who are subject to it. In other words, the subject ought not to indulge in speculations about its origin with a view to acting upon them, as if its right to be obeyed were open to doubt . . . Whether in fact an actual contract originally preceded their submission to the states authority . . . whether the power came first, and the law only appeared after it, or whether they ought to have followed this order--these are completely futile arguments for a people which is already subject to civil law, and they constitute a menace to the state. [FN6]

Thus, legitimacy of the state and the law, grounded in the myth of a social contract, act as a limit horizon for Kant, and render knowing not so daring *941 after all. This led Nietzsche to remark that Kant was "in his attitude towards the State, without greatness." [FN7]

The phenomena of the nation and nation-state reflect a similar basic ambivalence concerning the question of authority that prevails in modern political discourse. On the one hand, this discourse ceaselessly questions the form and content of authority, its legitimacy and proper boundaries. On the other, this discourse makes questions about the origin and ultimate grounds of the authority difficult to ask, let alone answer. The source of this ambivalence may be found in modern political discourse itself and in the critical spirit animating it. While it aspires to be critical, it imposes an inner limit to criticism--an inner limit demarcated by ontological limit horizons.

Since the French Revolution, the nation and nationalism have spread. Today, states everywhere legitimate themselves by using the ideology of the nation because the nation has become the normal, sole form of legitimate collective political existence. One implication of the nation-state furnishing the limit horizon of modern political existence is that of necessity, which circumscribes political struggles within the horizon of the state. Limit horizons, by overwhelming the present, turn all history into history of the present. It is no surprise that "[h]istorical consciousness in modern society has been overwhelmingly framed by the nation-state." [FN8] In the modern imaginary, the nation, while remaining a "capital paradox of universality," [FN9] continues to masquerade as a limit horizon of collective political existence. The very form of the nation-state has come to be regarded as "the indispensable framework for all social, cultural, and economic activities." [FN10] This is despite the fact that the question "what is a nation?" posed by Ernest Renan in 1882, still searches for a satisfactory answer. [FN11]

To appreciate the modern construct of nation, one needs to be mindful of the mapping order of modern History. Over the last two centuries, History, a linear, progressive, and Eurocentric history, has become the dominant mode of experiencing time and of being. [FN12] In this History, time *942 overcomes space: a condition in which the "other" of Europe in geographical space will in time resemble Europe. History enables not only the justification of the West's world mastery, but also the appropriation of the "other" as a form of knowledge. [FN13]

If History is the mode of being, the condition that presents modernity as possibility, the nation-state is the designated agency, the subject of History that will realize modernity. [FN14] This History is, of course, mindful of the racial and colonial divide that fractures humanity. [FN15] It is only nations in the fullness of their History that realize freedom. Those without History, uncivilized non-nations, have no claims or rights. Therefore,

civilized nations have the right to destroy non-nations and bring Enlightenment to them. Never was the racialized colonial script given more coherence than when inscribed in the grammar of History and nation. [FN16]

Social Darwinism is only an example of the mutually defining discourse of History, nation and race. The only justification for nationhood was whether a race could be shown to fit within the scheme of historical progress. [FN17] The universalization of History subjects other social and epistemic forms into its own overarching framework and finds them severely deficient. Levinas sees this as an effect of the concept of totality in Western philosophy, which produces all knowledge by appropriating and sublating the "other" within itself. [FN18] As Tagore diagnosed,

*943 [T]he true spirit of conflict and conquest is at the origin and in the center of Western nationalism . . . [i]t has evolved a perfect organization of power . . . [i]t is like the pack of predatory creatures that must have its victims . . . [w]ith all its heart, it cannot bear to see its hunting grounds converted into cultivated fields. [FN19]

The late eighteenth/early nineteenth century European proclivity of locating foundational legitimacy of the state in the latter's congruence with the nation inaugurated the state-nation as a limit horizon. Beginning in the eighteenth century, the relationship between history and political order underwent a profound transformation from having been the very antithesis of order, the concepts of time and history became sources of sameness. Historical time is now tied to expectations of a new and different future, but of the future in which the most cherished traits of present identities are both conserved and refined. All that was solid may well have melted into air in this process, but everything fluid and gelatinous simultaneously became petrified.

The period after the French Revolution has been noted as "a period when concepts of authority were removed from the dimension of contingency and inscribed within the dimension of continuity." [FN20] The net result of this change was that the concepts of state and history became closely intertwined. Not only was the state turned into a historical being and history interpreted as the successive unfolding of the state in time, but also the presence of the state became the condition of the possibility of history.

This historical understanding of the state and the state-centric understanding of history are closely related to another major change in the structure of social political concepts: the fusion of the concepts of state and nation. From Vico to Herder, the nation was conceptualized as grounded in and reflecting manifest and irreducible differences between people. [FN21] The evolution of specific political communities is then described as if their individual histories conformed to a general scheme in spite of their actual diversity. Each community is seen to have an individual trajectory within this universal history, because "the nature of institutions is nothing but they're [sic] coming into being, at certain times and in certain guises." [FN22] All human communities are seen to traverse the same ideal and universal pattern and time, so that "[o]ur science therefore *944 comes to describe at the same time an ideal eternal history traversed in time by the history of every nation." [FN23] National history secures for the contested and contingent nation the false unity of a self-same national subject evolving through time. Status of the nation in the modern imaginary evidences that Enlightenment's "untruth . . . consist[s] . . . in the fact that for Enlightenment the process is always decided from the start." [FN24] Anderson designates this phenomenon "reversed ventriloquism," the process whereby the voice of history is orchestrated by the nation in the present. [FN25] Because History is understood as the gradual realization of reason and the rise of the modern nation-state, it takes on meaning and intelligibility only from the vantage point of the nation-state. If the present is only intelligible in the light of History, the present

also signifies that nation-statehood has become an inescapable part of the modern condition and the sole source of its intelligibility. [FN26]

It is not surprising that the idea of the nation-state was conceptualized as a natural species of being. [FN27] A conceptual limit horizon can hope for no better. As we turn to the contributions of this cluster, my vantage point will be the positioning of these interventions in relation to the nation as a limit horizon.

III. Grounding the Nation

In the first article in this cluster, Maria Clara Dias analyzes contemporary debates about nationalism to address two specific issues: the legitimacy of partiality towards co-nationals and the right to national self-determination. [FN28] She joins the ongoing debate between nationalist and human rights perspectives to explore whether nationalism's demand for special obligations towards co-nationals can be reconciled with the universality of human rights. She uses David Miller as her interlocutor by developing her argument in response to Miller's position about the nation and national identity. [FN29]

Miller's thesis is that only a particularistic moral perspective can validate nationalism. Miller locates this thesis in the divergent metapsychologies *945 of the moral agent upon which universalism and particularism rest. Miller sees universalism as resting upon an implausible conception of the moral agent pointed as an encumbered subject. He holds that this metaphysical and abstract concept of the person is ill-equipped to acknowledge, much less accommodate, the viability and legitimacy of nationalism. In Miller's reading, only a particularistic moral perspective, one that sees situated communitarian links as constitutive of the moral agent, can acknowledge bonds of national community.

Dias questions Miller's reading of the universalist metapsychology of the moral agent. For her, the notion of "the atemporal, unencumbered moral agent . . . has never been more than a useful methodological caricature" to secure values such as "respect [of] human beings and moral equality." [FN30] She acknowledges that universalists "went sometimes beyond these rather modest methodological concerns," [FN31] but assigns the attempts to give moral principles an absolute foundation to "traditional philosophers' arrogance and their speculative vices." [FN32] By Dias's account, very few, if any, believe the metapsychology assigned to universalists by Miller.

Dias posits two premises that "we should accept in advance:" [FN33] 1) that human beings of necessity establish communitarian bonds and seek recognition as members of groups; and 2) that such bonds make humans "feel naturally justified" in adopting partiality towards other members of the group. [FN34] Dias argues that as human beings belong to multiple groups and communities, multiple corresponding spheres of obligation unfold and morality sustains human commitment to the varied spheres, albeit assisted by "different interpretations." [FN35] In order to evaluate Miller's preferred particularistic metapsychology, Dias introduces "the multiculturalist alternative and the notion of complex identity." [FN36] Because "[t]he building of identity is always a construction," Dias argues that "it makes no sense to oppose artificial and natural identities." [FN37] In her reading, "national identity does not have to be seen as something that obliterates and excludes the recognition of other forms of identification." [FN38] This appears to be a rather benign reading of the nation and nationalism's demand of the primacy of national identity.

Dias rejects Miller's critique of a universalist justification for national partiality, namely that national bonds are an efficient means to satisfy human demands in an efficient way. For Dias, the utility of such an instrumentalist view of the nation and nationalism is that,

because national obligations "*946 are intended to promote the well-being of human beings . . . [they] lose their raison d'etre as soon as they do not respond to such a task." [FN39] She is alert to the possibility of nationalism "assuming morally condemned forms, for instance by presenting real threats to the well-being of other human beings." [FN40] In such situations, Dias submits, the "pragmatic or instrumentalist argument for nationalism has the great advantage of being put aside." [FN41]

Dias then proceeds to build an argument to justify the right of national self-determination, seen as "a . . . craving, manifested by certain cultural communities, to establish their own form of political representation." [FN42] Dias sees that "craving for a form of political expression suitable to the values of a specific culture may be perfectly fulfilled inside multicultural states." [FN43] She designates federalism as an example of such a possibility and acknowledges that different settings may require different models. She sees the political structure of the nation as being responsive to the fundamental values of the community. In her reading, the political structure of a nation "mirrors the form of representation of different segments of society and the distribution of rights in the basic structure of society. It establishes the legitimate mechanisms of repairing justice . . . ." [FN44] Dias's portrayal of the political structure of the nation will come as a profound surprise to an overwhelming majority of human beings, for whom the state dressed up as a nation-state acts as the primary agency of the denial of rights rather than their repair. Even more significant is to limit the idea of self-determination to formation of nation-states. Why should self-determination not involve choices of political orders, economic systems, cultural forms and desirable futures?

Dias acknowledges that her celebratory posture towards the nation and nationalism may be met by the charge that "it does not express truthfully nationalism itself[;] . . . nationalism is often reactive, aggressive and exclusivist form[s] of expression." [FN45] Nevertheless, Dias argues that these are no more than human reactions that do not have to be associated by necessity to nationalism; some people react this way, individually or collectively, when they feel that their interests are threatened. [FN46] This is simply, for Dias, "something that we can only lament." [FN47]

For Dias, the nation is a given, a limit horizon, with only the scope of its legitimacy a question worth exploring. This is so notwithstanding the ontological ambivalence of the nation and the fact that the career of the *947 concept of a nation exemplifies that "there is a moment in the life of concepts when they lose their immediate intelligibility and can then . . . be overburdened with contradictory meanings." [FN48] The question of the nation is, by Fitzpatrick's account, "the irresolution of nation." [FN49] Attempts at resolving the question remain remarkably elusive and contradictory. As Habsbawm notes:

> Most of this literature has turned on the question: what is a (or the) nation? For the chief characteristic of this way of classifying groups of human beings is that, in spite of the claims of those who belong to it that it is in some ways primary and fundamental for the social existence, or even the individual identification of its members, no satisfactory criterion can be discovered for deciding which of the many human collectivities should be labeled in this way. [FN50]

Recent efforts by Smith, Gellner and Anderson are cases in point. Anthony Smith searches for "the ethnic origins of nations," and discovers an ethnie which furnishes the foundation of the modern nation and "determines" the nature and limits of nationalism. [FN51] He agrees, however, that ethnie may not have its own prior reality and may be invented. [FN52] The nation either takes over many of the myths, memories and symbols of pre-existing ethnie or "invent[s] ones of its own." [FN53]

For Gellner, the nation is the product of the modern "age of nationalism," an age of industrial society and the homogenized "gelded" beings that inhabit it. [FN54] Here, the nation, as set against the particular and the primordial, is posited as integrally functional to the universalizing and homogenizing thrust of modernity. Gellner acknowledges the arbitrary grounding of the nation. He states, "[t]he cultural shreds and patches used by nationalism are often arbitrary historical inventions. Any old shred would have served as well." [FN55] Curiously, he goes on to insist that, "[b]ut in no way does it follow that the principle of nationalism . . . is itself the least, contingent and accidental." [FN56]

For Anderson, the nation is an "imagined political community." [FN57] The spread of capitalism and print media are seen as the instruments of homogenization and facilitation of this community being imagined. Anderson *948 acknowledges, however, that "all communities larger than the primordial villages of face-to-face contact (and perhaps even these) are imagined." [FN58]

When it comes to the nation, becoming tangled in the debate between universalism and particularism may miss the mark. The nation is not one or the other. Rather, suspended between universalism and particularity, the nation assumes coherence only in being set against alterities. Furthermore, it is the law that constitutes the nation by "mediating between its universal and particular dimensions, between its claim to inclusiveness and its claim to exclusiveness. In doing so, law effects and affirms an hierarchical and homogenizing authority, eliminating or subordinating all that would counter the nation-state in coming between it and its subject, the modern citizen. . . ." [FN59] Given that "[m]odern law . . . clings to nation as its epitome," [FN60] the nation cannot escape the ambivalence of law itself, suspended as the latter is between demands of the universal and the particular.

By grounding debates about the nation in alternative metapsychologies, one's point of departure appears to be a natural, self-contained, sovereign and pre-political subject who chooses to cultivate one particular social bond, namely the nation. After Freud and Foucault, one would have thought social theory would put to rest the over-worked Cartesian sovereign subject. Rather than seeking the roots of the nation in metapsychologies, we should take seriously the proposition that:

> In addition to superimposing undivided rule upon its subjects, the genuinely modern state further requires that those who fall under its authority be united themselves--that they form one people, one nation, morally bound together by a common identity. . . . [T]he modern state generally requires that the represented be a moral person as well, national unity going hand in hand with the political unity of the state. [FN61]

If one function of ideology is to interpolate individuals as subjects, [FN62] nationalism as a foundational ideology of the era of the nation-state interpolates individuals as being part of a nation.

*949 Critique of the nation must render the very grounds of the nation problematic, jettison the assumption of a pre-political subject making choices, and take as its point of departure the genealogy of the modern nation-state, or more accurately, state-nation. Non-national state apparatuses progressively produce the elements of the nation-state, which in turn nationalize the society. As the political community of the nation superseded proceeding cultural systems, there occurred "a fundamental change . . . in modes of apprehending the world, which, more than anything else, made it possible to 'think' the nation." [FN63] The nation is posited to be a social and political category somehow linked to actual or potential geographical boundaries of the state.

Historically, in almost every case, statehood preceded nationhood and not the other way around, notwithstanding widespread myths to the contrary. Once the interstate system was functioning, nationalist movements in European colonies arose demanding the creation of new sovereign states; and these movements sometimes achieved their objectives. Nevertheless, a caveat is in order: these nationalist movements, almost without exception, arose within already constructed colonial administrative boundaries. Hence, a state, albeit a non-independent one, preceded nationalist movements in the colonies. This led Tagore to conclude that the entire East was "attempting to take into itself a history, which is not the outcome of its own living." [FN64]

Any analysis of the nation is often led astray because the archive relied upon to conduct the analysis is itself a product of state-sponsored efforts to create a nation. The nation is a quintessential artifact of modernity--a social creation engineered primarily through the techniques of narration and representation. The modern state exists prior to the modern nation and furnishes the field of possibility of such narration and representation. In this sense, the archive of the nation is the state archive. As a result, "[a]s long as the nation had to fight for its highest objectives, there was no room for objective historiography; after victory had been achieved it rose to predominance by itself." [FN65]

*950 As Hont described the final discursive enactment of the nation- state, it was the outcome of deliberate efforts of Sieyés and others to make sense of popular sovereignty, and to justify it by means of a particular account of popular representations within the state. [FN66] Thus, enunciations like: "The nation is prior to everything. It is the source of everything. Its will is always legal; indeed, it is the law itself." [FN67] The project was to redefine the identity of the community in such a way that it could serve as the ultimate source and locus of sovereignty. [FN68] The sovereign authority of the state becomes premised upon the identity of the nation as much as the identity of the nation becomes derivative of the sovereign authority of the state, so that the concept of the nation-state comes to express nothing more than a vaguely tautological relationship between two entities.

IV. Reforming the Nation

In the second article in this cluster, Angel R. Oquendo takes on an ambitious agenda of exploring the interface between the state and national culture in multicultural societies. [FN69] He begins by acknowledging the ambiguity of the word "national," and aims to "exploit[] the ambiguity." [FN70] The question he poses is whether the state should be fully "post-national." [FN71] His question refers to renouncing of the notion of a single national culture while concurrently refusing to support cultures of national minorities. [FN72] He first provides an overview of liberal and pluralist models of the state/national culture dynamic and then argues that, under certain circumstances, the state should give up its neutrality and support a single culture for the entire society. Designating his model "progressively nationalist," he claims it envisages not a "primitive national state, but rather . . . a post-national state of sorts." [FN73]

Reading liberalism as presented by John Rawls and Ronald Dworkin, Oquendo identifies its prescription that political and legal institutions must rest on a formal conception of rights and remain neutral with respect *951 to any substantive conceptions of the good. [FN74] Consequently, a liberal state "allows individuals to embrace the values of their respective national subgroups [and] does not take a position as to the worthiness of any." [FN75] He finds this approach "singularly attractive" in multicultural societies, and finds in liberalism an impulse "towards a post-national political paradigm." [FN76] He locates the seeds of this in the French Revolution and its further development in the United States, even though it remains "far from a full realization of this post-national

ideal." [FN77] The liberal state, he posits, "does not recognize a thick national identity . . . [and] does not force a substantive national culture on all citizens." [FN78]

He finds salutary Habermas's concept of "constitutional patriotism" and the consolidation of the European Union as a political entity as furnishing the grounds for a post-nationalist formation. [FN79] This position that commitment to the constitution is the only prerequisite to be a German is difficult to reconcile with the German interior minister's statement that "[w]hoever is fluent in the language belongs amongst us." [FN80] We have to be mindful that even today, "coherence is sought in a nation through the excluding of what is thus 'other' to it." [FN81] Balibar frames this process of coherence as one of exclusion in racial terms: a division of humanity "into two main groups, the one assumed to be universalistic and progressive, the other supposed irremediably particularistic and primitive." [FN82] As explicit racist divisions become politically discredited, a cultural divide is posited between the nation and its "other." Gilroy terms this "cultural racism," wherein "biological hierarchy" stands displaced by "new, cultural definitions of 'race' which are just as intractable." [FN83] At large in Europe, for example, are "new rhetorics of exclusion" founded in a "cultural fundamentalism." [FN84] The French ban on Muslim girls' head-scarves, the German refusal to give Turkish immigrants full citizenship rights, the British refusal to extend free labor movement rights to Eastern European members of the European Union and the European Union's rising immigration barriers *952 against non-Europeans are all in tune with the foundational divide between "us" and "them," between Europe and its internal "others." It should also be noted that Oquendo's focus on the Northern hemisphere leads him to assert that it is immigration that leads to the presence of national minorities. Irrespective of the validity of this assertion, in the Southern hemisphere it was not immigration, but the establishment of post-colonial states and state-nations in congruence with colonial demarcation that produced minorities within.

A pluralist model, according to Oquendo, would require that the state provide support on an equal basis to all national groupings, regard the various cultures as patrimony of the entire polity and refrain from establishing a particular national culture for the whole society. [FN85] Of course, as a starting point, a pluralist state "must undertake the formidable task of defining which national communities are legitimate." [FN86] Oquendo sees little difficulty in the state performing this function and sees the state "playing anthropologist in a small number of cases," and endorses that "the state will also disregard interpretations of ethical culture that clash with the political culture." [FN87] That anthropology in its very origin is the colonial discipline par excellence--and the "repugnancy test" was the primary colonial device to reject, and even destroy, customs of the colonized--renders Oqeundo's position ironic. Pluralism, for Oquendo, will achieve the objectives of the polity as a whole, such as political participation. With Michael Walzer, Oquendo sees civic apathy, not fragmentation, as the biggest threat to modern society. [FN88] For Oquendo, the pluralist model is applicable to the United States and Europe because they "are becoming more and more multicultural as they receive citizens from other European countries, immigrants from developing countries, and asylum seekers." [FN89] If the pluralist model is warranted by the presence of multiple cultures within a polity, why the multicultural societies of the South are not found worthy of this is not explained.

Lastly, Oquendo presents the progressive model, which condones official commitment to national culture, an engagement that is "in order when that culture is in peril." [FN90] Using Quebec as an example, he argues that this model is warranted to redress past discriminations in order to place national culture in a position of equality vis-à-vis other cultures. Under this model, the state "must take a position on national cultural matters . . . [and] also commit its entire citizenry to that culture." [FN91] As the state will have to rely on political legitimacy to achieve this goal, he suggests that it must "consult citizens" and the democratic process would suffice *953 as "an effective deliberation

mechanism." [FN92] Oquendo does not address why the democratic process would not result in majoritarianism and bloc efforts of achieving multiculturalism. By assigning all tasks under this model to the state, in his model, the state appears to have a monopoly over social agency with freedom to mould the social formation as it pleases. Oquendo conditions states' intervention to protect national culture on four pre-requisites: (1) the national culture must be under threat; (2) the menace must stem from internal coordination problems or external obstacles to cultural development; (3) protective measures must be narrowly tailored to removing the identified obstacles; and (4) cultural dissidents and minorities must have the ability to live their preferred cultural life without state interference. [FN93] Individuals who believe their cultural rights have been violated by state policy should have the opportunity to seek redress from "a fair and autonomous arbiter." [FN94]

Oquendo's intervention necessitates examining the potential of the nation to accommodate difference. He appears to be in tune with progressive theorists like Hanna Arendt, for whom citizenship in a nation-state serves the limited horizon of rights. [FN95] For progressive theorists, the nation is again a given, ontologically stable and amenable to reform from within. Nationalism, however, has to be seen as a phenomenon that registers difference even as it claims a unitary and unifying identity. Nationalism is best seen as a relational identity: the nation is not the realization of an original essence, but the historical configuration designed to include certain groups and exclude or marginalize others, often violently. The modern nation, born as an imperative of the modern state, of necessity is constituted under the shadow of sovereignty. Given that at a fundamental level, "sovereign power is the very possibility of distinguishing between inside and outside," [FN96] a clear examination of the modern state-nation shows that "between the man and the citizen there is a scar; the foreigner." [FN97] Even within, the nation erases difference rather than accommodate it, no matter if it takes forever. After all, even in France, that birthplace of nation and nationalism, it took over a hundred years to beat peasants into Frenchmen, though still not quite. [FN98]

It may be that "state sovereignty is fully, flatly, and evenly operative over each square centimeter of a legally demarcated territory." [FN99] But the law, being an "infinitely extensible warrant for nation's disciplinary project," *954 [FN100] impacts differentially upon spaces of different bodies. One must take issue with the proposition that sovereignty acts upon legally demarcated territory flatly and evenly. For example, the presence of the law, both in its operation and its impact, in the inner-city versus the suburb, the border versus the heartland, the within versus the without, is differential. [FN101] The external frontiers of the state are also its internal frontiers; external frontiers have to be imagined constantly as a projection and protection of an internal collective personality.

The ideological form that undergirds the nation-state is nationalism, produced by both force and education. Nationalism, then, becomes the religion of modern times. Nationalism constitutes people living within the territorial boundaries of the state as if they formed in a natural community an identity of origins, cultures and interests. In order to achieve that, nationalism operates within an extra degree of particularity, or a principal of closure and exclusion. Narratives of nations are constituted in a form, which attributes to these entities the continuity of an invariant subject. Through myths of origin and national continuity the imaginary singularity of national formation is constituted by moving from the present into the past. The "other" threatens this continuity and singularity. Hence, the imperative of the nation is to erase heterogeneity. Any proposals for an unproblematic multi-culturalism will have to account for the fact that after all the "nation forms through the exclusion of that which yet remains integral to it." [FN102]

V. Containing the Nation

In the third article of this cluster, Berta Esperanza Hernández-Truyol seeks to locate citizenship and the legal subjecthood beyond the canonical confines of the nation-state as the exclusive context for the resolution of these questions. [FN103] She aims at a new vision of human rights that creates a globalized citizenship movement from below, and develops in more detail propositions articulated in an earlier work. [FN104] The article aims at rendering the human rights system truly pluralistic by including voices of the marginalized, exploring the tension between human rights and national security and creating a conceptualization of sovereignty that can accommodate a proposed global citizenship model.

*955 The first part of the paper rehearses the evolution of human rights discourse and its interface with the question of state sovereignty. While she discerns a "laudable and desirable ideal of universality of rights" in this evolution, the discourse remained embedded in an "articulation [of] Western philosophy" resulting in an absence of voices and concerns of the periphery. [FN105] She sees the reconfiguration and transformation of the human rights project into a truly inclusive and pluralistic scheme that acknowledges the dignity and personhood of the subordinated as a necessary prerequisite to the development of the globalized citizenship model. Exploring the sovereignty/security conundrum, she takes as given the classical idea of social contract, whereby maintenance of security was delegated to the sovereign. She then lists the limits placed on the exercise of sovereignty by human rights norms. She turns to theories of citizenship holding the field, and finds them deficient as they fail to accommodate diversities and fractures within a political unit. She finds citizenship's assumptions and demands for homogeneity problematic and argues that the strength of citizenship has to be located in its ability to accommodate heterogeneity.

In symphony with Richard Falk, David Held and Kwami Anthony Appiah, she proposes the creation of global structures for the protection of global citizens in a global public sphere. Global citizenship is warranted by "migrations and relocations of national, ethnic, religious, sexual and racial minorities outside of clearly defined national territorial borders." [FN106] Such a model of citizenship, she posits, would "shift the concept of citizenship from a state based model to a deterritorialized rights, interests, and identity based one." [FN107] This paradigm she sees as being based on "attributes of human beings qua human beings," one that "forms part of a subaltern cosmopolitan legality that opens the door to emancipation." [FN108]

She posits the globalized citizenship as being "complementary to Westphalian citizenship . . . a counter-hegemonic project that protects persons where Westphalian state fails." [FN109] She focuses on those incarcerated at Camp X in Guantánamo Bay to highlight the predicament of those who are left entirely at the mercy of the sovereign state. She highlights that nearly all efforts made to seek redress for these prisoners have been made by organizations committed to the proposition that the writ of sovereignty must yield to directives of international human rights norms.

Hernández-Truyol aims to put in question the nation as the exclusive grounds of collective political identity. The promise of cracking open the limit horizon of the nation, however, is accompanied by a curious deferral to the grounds and interests of the nation-state: institute global citizenship, *956 but with license from the state. Notwithstanding this dissonance, the utility of her intervention is that by focusing on global exclusions rooted in the colonial encounter between the West and the rest, she brings into sharp relief the fact that the nation was not only constituted in counter-distinction to the savage, but it was endowed with "a universal mission to educate." [FN110] It emerged in the divide between "the European family of nations" and those

beyond the pail of History, and thus nationhood. [FN111] Important here is how History and nation transmitted through European colonialism were received and adopted by the colonized; how the nation forms part of "axiomatics of imperialism" that inform terminal vocabularies of modernity. [FN112]

Nationalist elites in the colonies adopted Enlightenment history as their own to animate their project of creating a national subject, which evolved into modernity. The structural imperatives of the world system, however, ensured that the colonized could only mimic the script of the colonizer. The decolonized state was nothing but a progeny of the colonial coercive administrative/extractive apparatus, with its territorial boundaries tracking colonial administrative divides. The state-nation that the decolonized state proceeded to fashion has remained a doomed project, always "becoming" other than what it is.

Sovereignty, assigned to the state and grounded in the nation, is best seen as furnishing a bridge between local and global zones of capitalism as a world system. [FN113] Beginning from the core, nation-states form part of the overall structure of the world economy. They do so as part of historical capitalism, in which the early forms of imperialism and colonialism played a foundational role. Any analyst of the nation should remember that "every modern nation is a product of colonization: it has always been to some degree colonized or colonizing, and sometimes both at the same time." [FN114]

Considering broad strands of world history since the late eighteenth century, the resilience of the nation as limit horizon is quite remarkable. Within Europe, territorial alignment of the state with the nation, a process that remains incomplete and imperfect, necessitated violence and wars on a global scale. Consolidation of the nation-states in Europe was coterminous with European colonization in non-Europe. Colonialism, based on conquest and subjugation, precluded the very acknowledgement of subjecthood *957 of the governed, much less any alignment of political order with nationhood. Colonialism and its aftermath ensure that "the willed (auto)biography of the West still masquerades as disinterested history." [FN115] Tagore diagnosed the imposition of the nation on non-Western societies well:

> This government by the nation is neither British nor anything else; it is an applied science and therefore more or less similar in its principles wherever it is used. It is like a hydraulic press, whose pressure is impersonal, and on that account, completely effective. The amount of its power may vary in different engines. Some may even be driven by hand, thus leaving a margin of comfortable looseness in their tension, but in spirit and in method their differences are small. [FN116]

He is also alert to the fact that both East and West remain in the grip of this limit horizon:

> Not merely the subject races, but you who live under the delusion that you are free, are everyday sacrificing your freedom and humanity to this fetish of nationalism . . . it is no consolation to us to know that the weakening of humanity from which the present age is suffering is not limited to the subject races, and that its ravages are even more radical, because insidious and voluntary in people's who are hypnotized into believing that they are free. [FN117]

VI. Critiquing the Nation

Gil Gott's article, the last one in this cluster, is one of the more refreshing pieces of scholarly intervention in the ongoing debates about the nature and import of recent

changes in legal regimes related to national security. [FN118] Besides a refusal of confinement within the nation as limit horizon, the merit of his article issues from its comprehensive, grounded and nuanced approach to multidisciplinary investigations. It is an ethical commitment that propels Gott's inquiry and leads him to ask the "subordination question" as it implicates national security law and policy. [FN119] His project is to examine how discursive and institutional structures attendant to national security law and policy account for the costs of the exercise of state power that accrue disproportionately to subordinated racialized social groups. This helps him put into question the very legitimacy of the nation.

*958 He first turns to how legal liberalism, the dominant approach to legal studies in the United States, has responded to and accounted for the post 9/11 "war on terrorism." Here, he discerns four distinct strands: (1) the "social learning" thesis advanced by Mark Tushnet; (2) the "institutional process" approach adopted by Samual Issacharoff; and (3) the "emergency constitution" proposed by Bruce Ackerman; and finally, the "progressive legalism" deployed by David Cole. [FN120] Displaying a thorough grounding in doctrine, history and theories of constitutional law, Gott's close reading of these texts is penetrating and nuanced. He demonstrates how an anemic understanding of racial subordination precludes a synthesis of security and liberty that liberal approaches to the "war on terrorism" profess to achieve. For example, he shows that while the Japanese internment during World War II constitutes a thematic common denominator for all liberal post 9/11 legal analysis of security powers, such analysis is marred by the foundational assumption that the internment was an exceptional phenomenon; one that both the law and the society have transcended. [FN121] Such an assumption, Gott argues, renders everyone within the nation equally a "victim" of past evil, and accountability is purged from designs of justice. Gott's critique of David Cole's is particularly instructive. He shows how Cole's reliance on a formal citizen/alien binary is out of tune with the lived experience of "permanent foreignness" that has been the lot of many racialized minorities. [FN122]

Gott then turns to evaluate the costs of the "war on terrorism" as they accrue differentially to different racialized social groups. Masterfully deploying the conceptual and methodological teachings of critical race theory, he shows how a process of "racing" constructs Muslims, Arabs and South Asians as legitimate targets of the "war on terrorism." [FN123] He demonstrates the construction of race as contingent, malleable and purposeful. In the process, he shows how construction of race is inextricably linked with the construction of the nation and the citizen. Gott deftly deploys conceptual categories and methodological departures of critical race theory to lay bare racialization, or "racing," of targeted social groups. He recounts both the genealogy and the post 9/11 phase of this ominous phenomenon. He highlights convergences and divergences with other cases having "family resemblance," particularly internment of Japanese Americans. He offers a perceptive analysis of the phenomenon of "internalized internment" as the lived experience of besieged social groups. Here, he discusses the role of civil society in racialization, which is a welcome departure from standard legal analysis that often exclusively addresses state action when talking about questions of race and racism. In this general context, Gott highlights one crucial dimension of identity formation often *959 overlooked by scholars and commentators; namely, that identity is constituted at the intersection of technologies of power and strategies of resistance. He sketches out how mobilization among Arab and Muslim communities in response to marginalization created spaces to build group solidarity and coalition with other groups. This is an important insight that should be instructive for studies of interest group formation and deployment.

Gott then addresses some foundational theoretical constructs of the modern state in the context of the emerging models of state violence. His assertion, based on his analysis in earlier sections of the article, that there has been a "securitization of race" and a

"racialization of security," should prove very productive to scholars of international relations grappling with foundational structural changes in the post World War II world-order. This thesis also adds to the agenda of historians and critical race theorists. Is the relationship between security and race a post-Cold War phenomenon, or can this entanglement be discerned throughout the colonial career of modernity? Is modern construction of race solely an intra-national affair, or is it unavoidably informed by inter-national imperatives?

Lastly, Gott identifies the implications of post 9/11 security laws, which form a persistent problem for liberal political theory and constitutionalism. Namely, he identifies how liberalism and constitutionalism account for emergencies and states of exception. He expands the scope of the state of exception problem by locating it in the context of globalization and civilizational conflict. How do liberalism and constitutionalism accommodate states of exception in a context where territorial sovereignty is purportedly yielding to an age of extra-national demographics and geographies of cultures? How will the question of racial justice be addressed in this matrix? By a bold stroke, Gott has formulated a central question to be pondered by scholars, policy makers and communities for some time to come.

VII. Conclusion

LatCrit assigns us the task of deploying critique as a strategic practice, bearing in mind that "strategy suits a situation; a strategy is not a theory." [FN124] And theory itself, as Deleuze reminds us, "is exactly like a box of tools, . . . by means of which . . . to move 'obstacles' or 'blockages' and to lever open discursive space for political/intellectual work." [FN125] LatCrit aims to allign with the subordinated, identifying them as our community. Community, as Nancy reminds us, "is not historical as if it were a permanently changing subject within . . . a permanently flowing time . . . . But history is community, that is, the happening of a certain space of time--as *960 a certain spacing of time, which is the spacing of a 'we.'" [FN126] We must take seriously Nancy's challenge, namely that "history--if we can remove this word from its metaphysical, and therefore historical, determination--does not belong primarily to time, nor to succession, nor to causality, but to community, or being-in-common." [FN127] When confronted with limit horizons that preclude alternatives, we must refuse to live a life of "living without an alternative," mindful that a "world without alternatives needs self-criticism as a condition of survival and decency." [FN128] Faced with limit horizons, we should bear in mind that far from being a rigid, all-encompassing and unchallenged structure, "[a] lived hegemony is always a process . . . continually to be renewed, recreated, defended, and modified." [FN129] There are always non-hegemonic or counter-hegemonic values at work to resist, restrict and qualify the operations of the hegemonic order. If we accept that no hegemony can be so penetrative and pervasive as to eliminate all grounds for contestation or resistance, this leaves us with the question of how we are to identify and configure such grounds. One avenue available to critical theory is the construction of subjectivity through negation and the related conceptualization of experience. The project involves an effort to recover the experiences, the distinctive collective traditions, identities and active historical practices of subaltern groups in a wide variety of settings-- conditions and practices that have been silenced and erased by hegemonic historiography.

The state is never quite able to eliminate alternative constructions of belonging and identity. These alternative constructions must be marshaled to fashion a counter-narrative to allocate subjecthood and marginalization differentially. The task at hand is to read the nation and nationalism in ways that create an estrangement effect, whereby the texts of the nation and nationalism are deprived of their seemingly natural and self-

evident air to lay bare their contrived and contingent nature. The need is to trigger alternative narratives of the nation that contest the hegemony of Eurocentric History.

The task of critique today is to question the ontological grounds of normalized practices. Here critique should be mindful that "a logic in which the answers are attended to and the questions neglected is a false logic." [FN130] In its irresolution, nation is not the only limit horizon that is vulnerable. Nancy reminds us that today, "sense of words like 'nation', 'people', 'sovereignty' . . . [and] 'community' . . . are leaking out of so many cracked vessels." [FN131]

*961 To be true to its vocation in this context, the critical project will have to posit a subject not reduced to a mere property and effect of discourse and a consciousness not equated with hegemony. We need to "think beyond narratives of originary and initial subjectivities and to focus on those moments or processes that are produced in the articulation of cultural differences." [FN132] Of great utility here is Antonio Gramsci's model of a fragmented composite subject that is constituted as an "inventory of traces" of multiple and fragmented hegemonies. [FN133] Similarly useful is to theorize a desiring subject who elides complete determination by the symbolic order by virtue of the surplus of the "[r]eal" over any symbolization. [FN134] Critical scholars should explore the ever-present tension between specific structures of domination and "lines of flight"--desires that escape hegemonic formations and thus bear the potential of transformation. [FN135] We have to plot the fault lines between domination and desire where the "individual repeatedly passes from language to language." [FN136] We may have to dig under modern technologies of power to uncover the surviving "'polytheism' of scattered practices[,] dominated but not erased by the triumphal success of one of their number." [FN137] Nothing less than an "insurrection of subjugated knowledges" [FN138] will suffice as a means to "bring[ ] hegemonic historiography to crisis." [FN139] The first step in that direction is "to change the imaginary in order to be able to act on the real." [FN140] With the benefit of the interventions that comprise this cluster, the LatCrit project is well positioned to undertake this task.

Footnotes:

[FNa1]. Professor of Law, Chair, Global Perspectives Group, John Marshall Law School, Chicago.

[FN1]. E.J. Hobsbawm, Nations and Nationalism Since 1780 12 (1990) (quoting Ernest Renan).

[FN2]. Julian Barnes, A History of the World in 10 1/2 Chapters 240 (1990).

[FN3]. The National Question in Europe in Historical Context xix (Mikulas Teich & Roy Porter eds., 1993).

[FN4]. On Jean-Luc Nancy: The Sense of Philosophy 13 (Darren Sheppard et al. eds., 1997) [hereinafter The Sense of Philosophy].

[FN5]. I use the concept of the "imaginary," developed by Jacques Lacan and Cornelius Castoriadis, as an inclusive category that refers to culturally specific images, symbols, metaphors and representations that constitute various forms of subjectivity. See Cornelius Castoriadis, The Imaginary Institution of Society 146-164 (Kathleen Blamey trans., 1987); Jacquline Rose, The Imaginary, in The Talking Cure 132 (Colin MacCabe ed., 1981).

[FN6]. Kant, Political Writings 143 (Hans Reiss ed., 1991), quoted in Slavoj Zizek, For

They Know Not What They Do: Enjoyment as a Political Factor 204 (1991).

[FN7]. Frederic Nietzsche, Untimely Meditations, quoted in Walter Kaufmann, Nietzsche: Philosopher, Psychologist, Antichrist 104 (3d ed. 1968).

[FN8]. Prasenjit Duara, Rescuing History from the Nation: Questioning Narratives of Modern China 3 (1995).

[FN9]. Jacques Derrida, The Other Heading: Reflections on Today's Europe 71 (Pascale-Anne Brault & Michael B. Naas trans., 1992).

[FN10]. Peter Fitzpatrick, Modernism & The Grounds of Law 124 (2001) (quoting Hans Kohn, the Idea of Nationalism 63 (1967)).

[FN11]. Ernest Renan, What is a Nation?, in Nation and Narration 8 (Homi K. Bhabha ed., 1990).

[FN12]. See generally George Wilhelm Freidrich Hegel, The Philosophy of History (J Sibree trans., 1956) (being the most important foundation for understanding linear, and necessarily teleological, progressive history). I use "History" to designate the hegemonic linear, progressive, Eurocentric history, while "history" is taken as the branch of knowledge that records and explains past events. For Hegel, the telos of History--the structure governing its progress through time--is the unfolding self-awareness of Spirit that is Reason. See generally id. Hegel posits two moments of this self-awareness: that of Spirit embodied objectively in the rationality of religion, laws and the State, and that of the individual subject. See generally id. Progressive self-awareness of the individual subject involves not only the recognition of the freedom of the self from the hold of nature and ascriptive orders, but most importantly, the realization of his oneness with the Spirit. See generally id. For Hegel, this is true freedom, the end of History, and it culminates in the Prussian state where the real is the rational and the rational is the real. See generally id.; Michel de Certeau, The Writing of History (Tom Conley trans., 1988); Edward Soja, Postmodern Geographies: The Reassertion of Space in Critical Social Theory (1989); Robert Young, White Mythologies: Writing History and the West (1990).

[FN13]. See generally Bernard Cohn, Colonialism and Its Forms of Knowledge (1996); Johannes Fabian, Time and Its Other: How Anthropology Makes Its Object (1983).

[FN14]. See generally Eric R. Wolf, Europe and the People Without History (1982); Young, supra note 12.

[FN15]. See generally Samir Amin, Eurocentrism (1989); Aimé Césaire, Discourse on Colonialism (Joan Pinkham trans., 1972).

[FN16]. The consolidation of modern international law unfolded within this milieu and partook of the grammar and vocabularies of History, nation and civilization. See Antony Anghie, Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law, 40 Harv. Int'l L.J. 1, 1 (1999).

[FN17]. See Hobsbawm, supra note 1, at 108; see also Richard Hofstadter, Social Darwinism in American Thought 172 (1955); George Stocking, Victorian Anthropology 32, 66, 235 (1987).

[FN18]. See generally Emmanual Levinas, Totality and Infinity (Alphonso Lingis trans., 1969).

[FN19]. Rabindernath Tagore, Nationalism 18 (1985).

[FN20]. See Jens Bartelso, The Critique of State 38 (2001) (citing J.G.A Pocock, Virtue, Commerce, and History: Essays on Political Thought and History Chiefly in the Eighteenth Century 92-93 (1985)).

[FN21]. See generally Isiah Berlin, Vico and Herder: Two Studies in History of Ideas (1976); Georg G. Iggers, The German Conception of History: The National Tradition of Historical Thought From Herder to the Present (1968); J.G. Herder on Social and Political Culture (F.M. Barnard ed., 1969); The New Science of Giambattista Vico (Thomas Bergin & Max Fisch rev. trans., 3d ed. 1968) [hereinafter New Science of Vico].

[FN22]. New Science of Vico, supra note 21, at 147.

[FN23]. Id. at 349.

[FN24]. Max Horkheimer & Theodore Adorno, Dialectic of Enlightenment 24 (John Cumming trans., 1993).

[FN25]. Benedict Anderson, Imagined Communities: Reflections as the Origins of Nationalism 198 (rev. ed., 1991).

[FN26]. See generally Hegel, supra note 12; see also Shlomo Avineri, Hegel's Theory of the Modern State (1972); Fred R. Dellamayr, G.W.F. Hegel Modernity and Politics (1993).

[FN27]. See generally John S. Dryzek & David Schlosberg, Disciplining Darwin: Biology in the History of Political Science, in Political Science in History: Research Programs and Political Traditions (James Farr et al. eds., 1995).

[FN28]. See Maria Clara Dias, Moral Dimensions of Nationalism, 50 Vill. L. Rev. 1063 (2005).

[FN29]. See id. at 1063-64 (reviewing David Miller's analyses). See generally David Miller, On Nationality (1997).

[FN30]. Dias, supra note 28, at 1065.

[FN31]. Id.

[FN32]. Id.

[FN33]. Id.

[FN34]. Id.

[FN35]. Id.

[FN36]. Id. at 1066.

[FN37]. Id. at 1067.

[FN38]. Id.

[FN39]. Id. at 1069.

[FN40]. Id.

[FN41]. Id.

[FN42]. Id.

[FN43]. Id.

[FN44]. Id. at 1070.

[FN45]. Id.

[FN46]. Id. at 1070-71.

[FN47]. Id. at 1071.

[FN48]. Giorgio Agamben, Homo Sacer: Sovereign Power and Bare Life 80 (1998).

[FN49]. Fitzpatrick, supra note 10, at 111.

[FN50]. Hobsbawm, supra note 1, at 5.

[FN51]. Anthony Smith, The Ethnic Origins of Nations 17-18, 212-13 (1986).

[FN52]. Id. at 177-78.

[FN53]. Id. at 152.

[FN54]. Ernest Gellner, Nations and Nationalism 36-37, 55 (1983).

[FN55]. Id. at 56.

[FN56]. Id.

[FN57]. Anderson, supra note 25, at 15.

[FN58]. Id. at 6.

[FN59]. Fitzpatrick, supra note 10, at 111.

[FN60]. Id. at 130.

[FN61]. Robert Wokler, The Enlightenment and the French Revolutionary Birth Pangs of Modernity, in The Rise of the Social Sciences and the Formation of Modernity 48-49 (Johan Heilbron et al. eds., 1998); see also Robert Wokler, Contextualizing Hegel's Phenomenology of the French Revolution and the Terror, 26 Pol. Theory 33, 44-49 (1998) (critiquing Hegel's conceptual history of modernity).

[FN62]. See Louis Althusser, Ideology and Ideological State Apparatuses (Notes Towards an Investigation), in Lenin and Philosophy and Other Essays 127, 180-81 (Ben Brewster trans., 1971) (listing functions of ideology). As Foucault puts it:
This form of power applies itself to immediate everyday life which categorizes the individual, marks him by his own individuality, attaches him to his own identity, imposes a law of truth on him which he must recognize and which others have to recognize in him. It is a form of power which makes individuals subjects. There are two meanings of the word subject: subject to someone else by control and dependence, and tied to his own identity by a conscience or self-knowledge. Both meanings suggest a form of power which subjugates and makes subject to.

Michel Foucault, The Subject and Power, in Beyond Structuralism and Hermeneutics 212 (Hubert Dreyfus & Paul Rabinow eds., 1982).

[FN63]. Anderson, supra note 25, at 28.

[FN64]. Tagore, supra note 19, at 64.

[FN65]. See Wolfgang J. Mommsen, Ranke and the Neo-Rankean School in Imperial Germany: State-Oriented Historiography as a Stabilizing Force, in Leopold Von Ranke and the Shaping of the Historical Discipline 124, 129 (Georg G. Iggers & James M. Powell eds., 1990) (quoting Max Lenz, Die Großen Mächte. Ein Rückblick auf unser Jahrhindert 26 (1900)).

[FN66]. See generally Istvan Hont, The Permanent Crisis of a Divided Mankind: 'Contemporary Crisis of the Nation State' in Historical Perspective, 42 Pol. Stud. 166, 192-217 (1994) (describing and evaluating Sieyés's and Jacobins's models of French popular sovereignty).

[FN67]. Emmanuel Joseph Sieyés, What is the Third Estate? 124 (M. Blondel trans., 1963).

[FN68]. See generally Jens Bartelson, The Critique of the State (2001) (analyzing concept of state).

[FN69]. See generally Angel R. Oquendo, National Culture in Post-National Societies, 50 Vill. L. Rev. 963 (2005).

[FN70]. Id. at 964.

[FN71]. Id. at 965.

[FN72]. See id. (explaining idea of post-national state).

[FN73]. See id. (introducing paradigm that state should support single national culture in some circumstances).

[FN74]. See id. at 968-69 (arguing that state should ensure that all nationalities be treated as equal).

[FN75]. Id. at 969.

[FN76]. Id.

[FN77]. Id. at 972.

[FN78]. Id. at 971.

[FN79]. See id. at 972-75 (summarizing recent calls for post-nationalistic concept into Europe).

[FN80]. Id. at 974 n. 38 (quoting speech by Germany's Federal Minister of Interior, Otto Schily, before German Parliament).

[FN81]. Fitzpatrick, supra note 10, at 125.

[FN82]. Etienne Balibar, Is there a Neo-Racism in Etienne Balibar & Immanuel

Wallerstein, Race, Nation, Class: Ambiguous Identities 25 (Christ Turner trans., 1991) (explaining enduring relationship between nation and racism).

[FN83]. Paul Gilroy, There Ain't NO Black in the Union Jack: the Cultural Politics of Race and Nation 60 (1987).

[FN84]. See generally Verena Stolcke, Talking Culture: New Boundaries, New Rhetorics of Exclusion in Europe, 36 Current Anthropology 1 (1995) (discussing concepts).

[FN85]. See Oquendo, supra note 69, at 975 (describing pluralist model).

[FN86]. Id. at 976.

[FN87]. Id. at 977.

[FN88]. See id. at 979.

[FN89]. Id. at 982.

[FN90]. Id. at 983.

[FN91]. Id. at 985.

[FN92]. Id.

[FN93]. See id. at 965-66.

[FN94]. See id. at 1000.

[FN95]. See Hanna Arendt, The Origins of Totalitarianism 267-302 (1958).

[FN96]. Agamben, Homo Sacer: Sovereign Power and Bare Life 37 (Daniel Heller-Roazen trans., 1998).

[FN97]. Madan Sarup, Identity, Culture, and the Postmodern World 8 (1996).

[FN98]. See generally Eugene Weber, Peasants into Frenchmen (1976) (documenting modernization of rural France).

[FN99]. See Anderson, supra note 25.

[FN100]. Fitzpatrick, supra note 10, at 133.

[FN101]. See Richard T. Ford, Urban Space and the Color Line: The Consequences of Demarcation and Disorientation in the Postmodern Metropolis, 9 Harv. BlackLetter L.J. 117, 130 (1992) (discussing differences in context of inner city).

[FN102]. Fitzpatrick, supra note 10, at 119.

[FN103]. See generally Berta Esperanza Hernández-Truyol, Globalized Citizenship: Sovereignty, Security and Soul, 50 Vill. L. Rev. 1009 (2005).

[FN104]. See Berta Esperanza Hernández-Truyol & Mattew Hawk, Traveling the Boundaries of Statelessness: Global Passport and Citizenship, 52 Clev. St. L. Rev. 97, 107-18 (2005).

[FN105]. See Hernández-Truyol, supra note 103, at 1013.

[FN106]. See id. at 1027.

[FN107]. Id. at 1032.

[FN108]. Id.

[FN109]. See id. at 1033.

[FN110]. See Balibar & Wallerstein, supra note 82, at 24.

[FN111]. See Dipesh Chakrabarty, Provincialicizing Europe: Postcolonial Thought and Historical Difference (2000); see also Denise Ferreira da Silva, Homo Modernus: A Critique of Productive Reason (pre-publication manuscript 2004, on file with author).

[FN112]. See Gayatri Chakravorty Spivak, A Critique of Post Colonial Reason: Towards a History of the Vanishing Present 34 (1999).

[FN113]. See Joseph A. Camilleri, Rethinking Sovereignty in a Shrinking, Fragmented World, in Contending Sovereignties: Redefining Political Community 38 (R.B.J. Walker & Saul H. Mendlovitz eds., 1990).

[FN114]. See Balibar & Wallerstein, supra note 82, at 89.

[FN115]. Spivak, supra note 112, at 208.

[FN116]. See Tagore, supra note 19, at 18.

[FN117]. Id.

[FN118]. See generally Gil Gott, The Devil We Know: Racial Subordination and National Security Law, 50 Vill. L. Rev. 1073 (2005).

[FN119]. See id. at 1073.

[FN120]. See id. at 1077-1100.

[FN121]. See id. at 1100-27.

[FN122]. See id. at 1093-1100.

[FN123]. See id. at 1099-1100.

[FN124]. Gayatri Chakravorty Spivak, In a Word: Interview, 1 Differences 124, 127 (1989).

[FN125]. David Scott, Refashioning Futures: Criticism After Postcoloniality 96 (1999) (quoting Gilles Deleuze).

[FN126]. Jean-Luc Nancy, Finite History, in The States of 'Theory': History, Art, and Critical Discourse 161-2 (David Carroll ed., 1990).

[FN127]. Id. at 149.

[FN128]. Zygmunt Bauman, Living Without an Alternative, 62 Pol. Q. 35, 35- 44 (1991).

[FN129]. Raymond Williams, Marxism and Literature 112 (1977).

[FN130]. R. G. Collingwood, An Autobiography 31 (1964).

[FN131]. The Sense of Philosophy supra note 4, at 13.

[FN132]. Homi K. Bhabha, The Location of Culture 1 (1994).

[FN133]. See Selections from the Prison Notebooks of Antonio Gramsci 324 (Quintin Hoare & Geoffrey Nowell Smith eds. & trans., 1971) (describing "starting-point of critical elaboration").

[FN134]. See Slavoj Zizek, The Sublime Object of Ideology 3 (1989).

[FN135]. See Gilles Deleuze & Félix Guattari, Anti-Oedipus: Capitalism and Schizophrenia 9-16 (Robert Hurley et al. trans., 1989) (1972).

[FN136]. Gilles Deleuze & Félix Guattari, A Thousand Plateaus: Capitalism and Schizophrenia 94 (Brian Massumi trans., 1987).

[FN137]. Michel De Certeau, The Practice of Everyday Life 48 (Steven Rendall trans., 1984).

[FN138]. Thomas Keenan, Fables of Responsibility: Aberrations and Predicaments in Ethics and Politics 140 (1997) (quoting Michel Foucault).

[FN139]. Gayatri Chakravoty Spivak, Subaltern Studies: Deconstructing Historiography, in In Other Worlds: Essays in Cultural Politics 198 (1988) [hereinafter In Other Worlds].

[FN140]. See Gayatri Chakravoty Spivak, French Feminism in an International Frame, in In Other Worlds, supra note 139, at 145 (quoting Catherine Clément).