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Space Invaders: Critical Geography, the Third World in International Law and Critical Race Theory

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SPACE INVADERS: CRITICAL GEOGRAPHY, THE "THIRD WORLD" IN INTERNATIONAL LAW AND CRITICAL RACE THEORY*

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In Eudoxia, which spreads both upward and down, with winding alleys, steps, dead ends, hovels, a carpet is preserved in which you can observe the city’s true form. At first sight nothing seems to resemble Eudoxia less than the design of that carpet, laid out in symmetrical motives whose patterns are repeated along straight and circular lines, interwoven with brilliantly colored spires, in a repetition that can be followed through the whole woof. But if you pause and examine it carefully, you become convinced that each place in the carpet corresponds to a place in the city and all the things contained in the city are included in the design, arranged according to their true relationship, which escapes your eye distracted by the bustle, the throngs, the shoving . . .

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For some time the augurs had been sure that the carpet's harmonious pattern was of divine origin. The oracle was interpreted in this sense, arousing no controversy. But you could, similarly, come to the opposite conclusion: that the true map of the universe is the city of Eudoxia, just as it is, a stain that spreads out shapelessly, with crooked streets, houses that crumble one upon the other amid clouds of dust, fires, screams in the darkness.¹

A whole history remains to be written of spaces—which would at the same time be the history of powers (both these terms in the plural)—from the great strategies of geo-politics to the little tactics of the habitat... passing via economic and political installations.²

I. Introduction: Why "Space" Matters: A Paradox and a Question

I would like to begin this Essay by stating a paradox and asking a question. The answer to the question has much to do with how we resolve the paradox. The paradox has two parts. The first stems from the observation that at the end of the twentieth century the world seems increasingly the same. The second part of the paradox is that simultaneously the world seems increasingly full of difference. The loose but patterned political, social and economic forces that we refer to as “globalization” have been at work for over four centuries, reshaping our understandings of ourselves and the world. In particular, since the end of World War II, trends that have been in play since the dawn of the age of colonialism have leapt into fast forward mode. Rapidly advancing communications and transportation technologies are drastically restructuring our sense of time and space—promoting a massive move toward “flexible accumulation” of hyperliquid capital. The borders of nations and regions have become increasingly porous to goods, services and, above all, information. Anxiety over the impending homogenization of commerce and culture is evoked by the title of William Grieder’s book, One World, Ready or Not.³ The world is increasingly the same.

Nevertheless, the very same forces that seem to be pushing mightily toward global homogenization seem also to be simultaneously shaking things apart, fragmenting communities, regions and nations. In nations such as the United States, the sharp and growing disparities between the “haves” and “have-nots” are the mirror image of disparities between a glob-

1. ITALO CALVINO, INVISIBLE CITIES 96-97 (William Weaver trans., 1974). In using quotes from Calvino to frame this essay, I pay homage to Gerald Frug, who uses an abundance of quotes from Calvino to great effect in illuminating his excellent casebook, GERALD E. FRUG, LOCAL GOVERNMENT LAW (2d ed. 1994).


ally connected, cosmopolitan, information class separated by Internet/fax/cellular/satellite hookups from the vast majority of people in areas such as Latin and Central America, sub-Saharan Africa and Central Asia. These sharp disparities in access to wealth raise serious questions about differences in resources and the distribution of access to those resources. One may be disturbed by the global spread between the haves and have-nots and the ways that spread is exploited by members of the information elite, so as to arbitrage labor and environmental regimes to their advantage in a global "race to the bottom." Looking at struggles within nations such as the United States between different groups for a seat at the imperial American banquet table as the rest of the world is carved up, one cannot help but be struck by the observation that the world is increasingly filled with difference. That is the paradox: The world is increasingly the same, yet the world is increasingly filled with difference.

The question is: What might Critical Race Theory ("CRT") have to tell us about the way we conceive of the "Third World," or put conversely: What might the way we think of the Third World have to tell us about CRT? By posing these questions I do not mean to reify CRT into a univocal, unitary subject possessing agency as in, "My, but isn't CRT hungry this morning," or "CRT took some time off of work and went on a vacation trip to California." Instead, I refer to a very broad range of methodologies and analyses undertaken by a multivocal and diverse group of scholars that have sought to examine the salience of race to the structure of U.S. law. That being said, CRT may in some respects seem parochially American, and one might ask: What do critical observations of the historically contingent and idiosyncratic U.S. experience of race have to do with equally contingent conflicts in the so-called Third World, with its drastically different markers of tribe, race, nation, class, religion and, for lack of a better word, culture? Or to put it slightly differently, what lessons might we draw from the nations of the Third World, in which notions of tribe, race, nation, class, religion and culture collide and mix in terms of U.S. inter- and intra-racial group relations, as such groups jockey for comparative advantage within the borders of the United States?

On one hand, one might say very little. One may argue that CRT is a localism (granted an important localism if you're within the United States, but a localism nonetheless) and its lessons on a global level may be somewhat limited. The concerns addressed by CRT are rooted in the painful particulars of U.S. history and bounded by geography. At first glance, international law may be the proper place to search for answers regarding the relations with and within the Third World. International law's self-purported universalist aspirations, its claim to a higher moral purpose and its promises of order, stability and prosperity provide hope. As Makau

Mutua has pointed out, however, that international law is not universal, but has been and continues to be an instrumental tool for advancing the interests of particular peoples, nations and regions at the expense of others. Furthermore, CRT may be a potent tool for reconstructing international law, with the emancipatory goal of alleviating human suffering by broadening the analysis to include all the variables that produce powerlessness and subordination.

This Essay briefly surveys how legal scholars have begun incorporating insights from political geography, and insights derived from the international law critique of development, to refine and deepen the ongoing critical re-examination of race and its interaction with law. In particular, I focus on the important recent work of Richard Thompson Ford, John O. Calmore, Chantal Thomas, Elizabeth M. Iglesias, Audrey G. MacFarlane and Anthony Paul Farley as indicative of the salience and utility of spatial analysis to legal scholarship on both the domestic and international levels. These scholars might be thought of as “space invaders,” who are working to contest and politicize our formerly “neutral” conceptions of space. They work from perspectives that have been strongly influenced by looking at the “Third World” within the United States and its theoretical and material links with the Third World outside the United States. Like Italo Calvino, all of these scholars look at the world and see visions of “Invisible Cities,” possible cartographies that are latent potentials in the spaces of the world. An important part of those visions turns on defining and representing ideas about “race,” “space” and “place.” How did questions of race, space and place come to intersect with the issues raised by CRT? A related question is: “Where” (if anywhere) is the so-called Third World? Finally, what is the connection between domestic constructions of race, space and place—the Third World within and without the United States—in the international condition of globalization?

First, I’ll discuss the constellation of ideas raised by Critical Geographers about the politics of space. I will then discuss how the Third World is constructed in the international law imaginary, and then, finally, I will discuss a particular post-modern nationalist strand of CRT as it relates to how the Third World is constructed in international law.

5. See generally Makau Wa Mutua, Critical Race Theory and International Law: The View of an Insider- Outsider, 45 VILL. L. REV. __ (forthcoming 2001) (“[I]nternational law has largely been developed and deployed as a vehicle for advancing particular interests, for the benefit of specific peoples, cultures and regions . . . .”).

6. See generally id. (outlining CRT’s potential to “re-characterize” international law).
II. THE POLITICS OF "PLACE" AND "SPACE" IN THE CONDITION OF POSTMODERNITY

Critical geographers ask: "Where do the poor and working class people go; where are their spaces; what is their lived experience of place in the brave new world of the new world economic order?" Edward Soja argues,

"[A]ll social relations become real and concrete, a part of our lived social existence, only when they are spatially "inscribed"—that is, concretely represented—in the social production of social space. Social reality is not just coincidentally spatial, existing "in" space, it is presuppositionally and ontologically spatial. There is..."

7. I use the word postmodernity in a sense similar to that used by Rosemary J. Coombe. See Rosemary J. Coombe, Objects of Property and Subjects of Politics: Intellectual Property Laws and Democratic Dialogue, 69 Tex. L. Rev. 1853, 1862 (1991) ("To simplify things, I will refer to the historical period as the condition of postmodernity, to the era's cultural qualities as postmodernism, and to the practices situated in these contexts as postmodern or postmodernist"); see also David Harvey, The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change 39-65 (1989) [hereinafter Harvey, Condition of Post-Modernity] (introducing post-modern theory as set of analytical concepts that cannot be ignored); Jean-François Lyotard, The Postmodern Condition: A Report on Knowledge at xxiv (Geoff Bennington & Brian Massumi trans., Univ. of Minn. 1984) (1979) (defining postmodernity as "incredulity toward metanarratives").


"[W]e are... seeing the formation of a transnational centre constituted via digital highways and intense economic transactions... New York, London and Tokyo could be seen as constituting such a transnational terrain of centrality... And at the limit we may see terrains of centrality that are disembodied, that lack any territorial correlate, that are in the electronically generated space we call cyberspace... One question here is whether the type of spatial organization characterized by dense strategic nodes spread over the broader region does or does not constitute a new form of organizing the territory of the centre, rather than, as in the more conventional view, an instance of urbanization or geographic dispersal.

Id. at 71, see David Harvey, From Space to Place and Back Again: Reflections on the Condition of Postmodernity, in Mapping the Futures: Local Cultures, Global Change 3, 4 (Jon Bird et al. eds., 1993) (noting that territorial place-based identity is one basis for progressive political mobilization and reactionary exclusionary politics); Saskia Sassen, The Global City: New York, London, Tokyo 22-35 (1991) [hereinafter Sassen, The Global City] (discussing changes in global flow of production in terms of new definition of spatial expression); Saskia Sassen, Growth and Information at the Core: A Preliminary Report on New York City, in The Capitalist City: Global Restructuring and Community Politics 138, 140 (Michael Peter Smith & Joe R. Feagin eds., 1987) (noting that income polarization assumes distinct forms in spatial organization, social reproduction and labor processes)."
no unspatialized social reality. There are no aspatial social processes. 9

Over the past two decades, critical geographers have been transforming our understanding of how geographic “space” and experiences of “place,” on both the individual and community level, are strongly influenced by and, in turn, strongly influence dynamic social processes. Traditionally, geography was devoted to studying cultural descriptions of places and given to technical, economic analyses. New geographers writing from a critical perspective, those such as David Harvey, Edward Soja, James Duncan, Yi-Fu Tuan and Alexander Murphy, have been examining the role of space in political economy and culture. 10 These critical geographers have been looking at how spatial distribution in our neighborhoods, towns, cities and regions has been consciously shaped by both local governments and private businesses. These organizations create, circulate and maintain new levels of profits within our late capitalist economy, determining what effects such spaces have on people’s sense of place. Spatial distance or proximity can be used to create affinities among people as well as to create and maintain social distance, such as the distance between those living in decaying areas of our inner cities and those in the posh suburbs ringing those cities. 11 In turn, posh suburbs, high-tech office parks, deteriorated inner cities and dense urban centers produce a sense of place for their inhabitants that are often extremely divergent.

Spaces are produced and maintained by a dynamic set of factors. For example, critical geographers show how investment capital may be distrib-

9. Edward Soja, Thirdspace: Journeys to Los Angeles and Other Real-and-IrIagined Places 46 (1996) (arguing that all social relations and processes contain spatial dimensions, becoming real only when concretely represented in social space).

10. See Harvey, supra note 7, at 329-30 (describing voodoo economics and how Ronald Reagan used it as political tool); see also Mike Davis, City of Quartz: Excavating the Future in Los Angeles 7 (1990) (describing intense growth in population and social polarization in Los Angeles, California over last 40 years); James Duncan & David Ley, Introduction: Representing the Place in Culture, in Place/Culture/Representation 11 (James Duncan & David Ley eds., 1993) (interpreting physical landscapes as interlocking cultural, political and economic processes); Alexander B. Murphy, The Sovereign State System as Political-Territorial Ideal: Historical and Contemporary Considerations, in State Sovereignty as Social Construct 81, 82 (Thomas J. Biersteker & Cynthia Weber eds., 1996) (noting that modern state system is based on medieval European political-territorial order); Yi-Fu Tuan, Space and Place: The Perspectives of Experience 5 (1977) (noting that culture is used to attach meaning to space and place); Yi-Fu Tuan, Topophilia 92-128 (1974) (discussing importance of environment and search for environment in urban, suburban, rural and wilderness settings). But cf. Doreen Massey, Space, Place and Gender 120 (1994) (arguing that fortunes of places must be viewed in terms of locality); Edward Soja, Postmodern Geographies: The Reassertion of Space in Critical Social Theory 158 (1989) (reasserting that critical spatial perspective is necessary in contemporary social theory and analysis).

uted very unevenly to certain neighborhoods of cities, regions of the nation or throughout the global market. New configurations of public and private partnerships, either express or implicit, emerge to reconfigure former industrial cities of factories and working-class neighborhoods into global administrative and information centers with gentrified, but historical, “yuppie" demographic residential and work districts. Critical geographers argue that chronic underdevelopment of regions or nations is not merely accidental, but follows a certain logic. As the economies of the developed nations of the North shift from an industrial to a post-industrial economy, centered around the provision of financial services and information moving swiftly across increasingly porous borders, new types of spaces are created and older understandings of place are transformed. The development of certain regions is dependent on the underdevelopment of others. Particular nations, regions, cities and areas within cities prosper and thrive, while others decline and wither.

Critical geographers have also engaged in a dialogue with postmodernism, approaching postmodernism as simultaneously a cultural expression of the lived experience of daily life (place) and as an analysis of the social and economic effects of an advanced form of late capitalism (space). Aesthetic theory—in particular, postmodern architectural theory—provided the main thrust of the critical geographers' analysis of the politics of everyday life: what might the ways that the spaces we live and recreate in, and traverse daily from the home to the workplace, tell us about our sense of self and our place in social hierarchies of nation, class, race and gender? Universalist and formalist architectural theory held that there was an ascertainable upward trajectory to the development of human society, and that by reducing architecture (and society) to these certain essential principles, and then organizing architecture (and social processes of production and labor) around them, “progress" was achieved. Architectural postmodernism was a movement that self-consciously sought to negate earlier modernist understandings of society and was self-premised on values of formalism and universalism (as shaped by hyper-rational, efficiency-maximizing capitalism earlier in the twentieth century).

Mid-twentieth century postmodernist architects tried challenging early twentieth-century architecture's “illusion of progress" and “modernity" by employing an anarchy of fragmentation of architectural elements filtered through a stylistic and historic eclecticism in new buildings they designed in the late 1960s and early 1970s. Ironically, but perhaps un-

12. See Michel De Certeau, The Politics of Everyday Life at xxiii (Steven F. Rendall trans., Univ. of Ca. Press 1984) (noting how work focuses on futurology and individual subject in public life because space is not "accessible" through traditional economic and political analyses); Frederic Jameson, Postmodernism, or, The Cultural Logic of Late Capitalism ix (1991) (noting that culture has become second nature in postmodernist world).

13. See Harvey, supra note 7, at 66 (noting that postmodern architecture cultivates conception that urban design is fragmented because of differing spatial design conceptions).
surprisingly, what began as a movement designed to resist corporate stylistic hegemony became the epitome of such hegemony. Architectural postmodernism proved incredibly easy to co-opt and defang, as postmodern "signature buildings" became the sine qua non of corporate headquarters and ubiquitous malls in the 1980s and 1990s. The critical geographers realized that what was at stake was more than mere quibbles about styles of buildings, but very deep struggles for economic and social control of the spaces in which we live and work. By connecting the lived experiences of place with the larger dynamics of capital flows and demographic shifts, the political content of the spaces of suburbs, strip malls, industrial parks, deteriorated inner-city neighborhoods and revitalized urban centers became disturbingly apparent.

Beginning in the 1980s, many critical geographers began “reading” the cultural narratives of space (which required thinking of urban and suburban spaces as “texts”) to uncover hidden underlying power relationships between macro decisions about space and micro understandings of experiential place. Cities, as the sites where major corporate and governmental decisions are made, were particularly important places in which to analyze how culture and power are produced, represented and circulated. Critical geographic analysis might look at ways in which the building styles used in earlier historical periods, for example, turn of the century cast-iron building fronts in the SoHo area of New York City, were commodified, repackaged and resold as desirable and possessing historic “ambiance.” Soon these areas became filled with pricey lofts for galleries, boutiques and upscale bohemians, driving the SoHo real estate market sky-high. Such gentrification also meant that the inhabitants of a former trucking district of Manhattan, like SoHo, were displaced as their revalued spaces were sold out from beneath them. Who were these displaced people? Where did they go? What effects did gentrification in one area have on neighboring property values and demographics? How does this spatial reordering use proximity or distance to embody “progress” and simultaneously, through use of exclusion, segregation and enclosure, create areas where “others” (defined as “other” on class, racial, ethnic, linguistic bases, etc.) live or work? Although race was one of the identifiable axes that urban demographic change turned on, note that the critical geographers’ main focus was not on race per se, but on the operations of capital moving people around. What were the politics of such transformed spaces and places?

The second analytical move among critical geographers has been to connect mappings and understandings of these newly-transformed urban and suburban places and spaces with the political and economic configurations of the post-industrial economic order that have been referred to as

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the processes of globalization. 15 This new world, post-industrial order may be characterized by the dissolution of large, centralized factory systems ("Fordism") 16 in favor of hyper-mobile capital engaged in exploiting cost differences among and between different regions, or even between different nations in terms of lower environmental or regulatory burdens. Rapid advances in communications and transportation technologies make planning and allocation decisions by corporate CEOs and top-level managers able to be implemented among manufacturing sites located throughout the world. Part of the labor in the new global workforce involves subcontracting and temporary labor regimes such as sweatshops and homework and piecework (particularly in the garment industry), which exist outside the traditional collective bargaining framework of the developed world. These new and pervasive regimes are underwritten by neoliberal ideology that promotes deregulation and privatization, which benefits the swift investment and disinvestment of capital across increasingly porous borders. This creates environmental and labor regulation "races-to-the-bottom," 17 in which capital flight is driven elsewhere (or enticed) by the presence of ever cheaper labor and low or nonexistent regulation. 18


16. Fordism was a fairly stable period during which relatively high wages paid to assembly line workers enabled mass production to balance against mass consumption. As prevailing modes of production become more flexible and specialized, and threats of capital flight place downward pressure on wages, a new mode of social regulation is emerging that has been described simply as post-Fordism. See MICHEL AGLIETTA, A THEORY OF CAPITALIST REGULATION: THE U.S. EXPERIENCE 116, 122-29 (David Fernbach trans., N.L.B. 1979) (1976) (discussing transition from Fordism to post-Fordism and problems posed by automation in labor process); see also ROBERT BOYER, THE REGULATION SCHOOL: A CRITICAL INTRODUCTION 73-75 (Craig Charney trans., Columbia Univ. Press 1990) (describing postwar development of Fordism); Peter Marcuse, The Enclave, the Citadel, and the Ghetto: What Has Changed in the Post-Fordist U.S. City, 33 URB. AFF. REV. 228, 229 (1997) (defining post-Fordist city as any major city in any technologically advanced country).

17. See AGLIETTA, supra note 16, at 218 (defining concentration and centralization and describing effects of regulation on capital centralization and labor processes); HARVEY, supra note 7, at 185 (noting that trade and investment barriers have been steadily reduced allowing an increase in capital accumulation); Charles F. Sabel, Flexible Specialisation and the Re-emergence of Regional Economies, in REVERSING INDUSTRIAL DECLINE?: INDUSTRIAL STRUCTURE AND POLICY IN BRITAIN AND HER COMPETITORS 17-19 (Paul Hirst & Jonathan Zeitlin eds., 1989) (describing five developments that led to reconsolidation of region as integrated unit of production).

The consequences of this increased flexibility of capital include increasing competition among cities, regions and nations for private investment. The flows of capital and investment follow political concessions by competing regions or nations, such as lower wages and taxes, and lower or nonexistent labor or environmental regulation. Capital flight also works to drive down wages within the United States and to significantly hinder environmental regulation, labor regulation and union organizing. Uneven economic development between regions within nations, and between nations and global regions, becomes increasingly pronounced—opening up a widening gap between newly-gentrified areas and economically depressed inner-city neighborhoods, between city centers and suburbs, and, on the international level, between the nations of the developed and developing world. The idea that the world is increasingly the same, yet increasingly filled with difference, begins to capture a sense of this paradox of uneven development.


Soja insists that space is not merely an inert residue left in the wake of decisions governing capital accumulation by top-level managers or a tabula rasa on which investment decisions are made, but that spatial outcomes possess a strikingly political meaning. Space defines political boundaries as well as private property—constructing, ratifying and reproducing community and individual identities as well as pre-existing distributive inequities—and then, importantly, making those outcomes seem "natural." Wall Street thrives and South Central Los Angeles seethes—that's just the way things are.

Residences, neighborhoods, cities and regions are also control centers of power, places or sites for what Michel Foucault has referred to as "the little tactics of the habitat," embodied by geographies of confinement, partitioning, enclosure and spatial differentiation. If white middle-class suburbanites are able to relocate work and residence to outlying areas, they may completely avoid inner-city neighborhoods occupied by racialized others, except as presented by the mass media, who are themselves an important part of the contemporary political economy of spatial differentiation.

Another critical geographer, David Harvey, notes that "[t]hose who have the power to command and produce space possess a vital instrumentality for the reproduction and enhancement of their own power—they can create material space, the representation of space and the spaces of representation." However, Harvey also notes that although the poor may have little power over space, they are capable of producing place. Examples of place are homes, neighborhoods and communities, which acquire a special relevance as political sites for promoting localism. Localism may be thought of as "use" value to the inhabitants of a neighborhood, the lived sense and knowledge of a street and the people who reside there—this is distinct from the logic regarding the "exchange" value of property as seen by real estate speculators and developers. Localism is one axis along which opposition to spatial change, driven by the logic of capital, may be politically articulated. Oppositional political action may take the form of tenants in a low-income inner-city neighborhood in a U.S. city declaring an eviction-free zone to oppose an owner who wants to clear low-income tenants out so the building can be converted to condos. Or, it may take the form articulated by Subcommandante Marcos and the Zapatistas in the Chiapas uprising in Southeast Mexico that was declared on January 1, 1994, the day the North American Free Trade Agreement ("NAFTA") went into effect. Or, it may take the form of a mass political event, such as in 1993, when 500,000 farmers gath-

20. Foucault, supra note 2, at 149.
21. HARVEY, supra note 7, at 233.
22. See id. at 100 (defining capital in terms of use value and exchange value).
ered in Bangladesh, India on Gandhi’s birthday to protest the patenting by a U.S. pharmaceutical company of the genes of the Neem tree, which had been a local insecticide for generations, but now was the intellectual property of a transnational corporation. 24

David Harvey observes that unfortunately, many “[o]ppositional moments [organized around a politics of place] become part of the very fragmentation which mobile capital and flexible accumulation can feed upon.” 25 Harvey points out that it is unclear whether a geocultural localist politic may be articulated coherently enough so as to be sufficient for social transformation. 26 However, the critical geographers have importantly shown how distributive inequities “out there” in the real world are not “natural,” that the unevenness of development and access to resources within nations, as well as between nations on a North/South axis, possess a chilling logic. One area to which the critical geographers have given relatively little attention is construction of “race.” Before discussing race, however, I will look at how the Third World is constructed in the international imaginary, which has certain resemblance to how racialized space is constructed in the U.S. domestic imaginary.

III. THE CRITIQUE OF DEVELOPMENT IN INTERNATIONAL LAW: WHERE EXACTLY IS THE “THIRD WORLD”?

This section briefly interrogates notions of the Third World as the concept has been used (and misused) in the context of international law and finds that although the concept may no longer have much coherence in a strict geographic sense, it may have significant use in conceptualizing an anti-subordination politics and, as such, may have great salience to link the domestic U.S. CRT discourse with the critique of development that has emerged over the past two decades contemporaneously with critical geography.

As Balakrishnan Rajagopal has incisively asked: Where exactly is the Third World after the collapse of centralized bureaucratic communism and the end of the Cold War in the late twentieth century? What kinds of boundaries are we (or should we be) discussing when we use the term

24. See Sandy Tolan, Against the Grain: Multinational Corporations Peddling Patented Seeds and Chemicals Are Poised to Revolutionize India’s Ancient Agricultural System, L.A. TIMES, July 10, 1994, Magazine, at 18 (describing Dec. 29, 1992 protest against Cargill Seeds, India, for patenting natural insecticide found in Neem tree); see also Vandanna Shiva & Radha Holla-Bhar, Piracy by Patent: The Case of the Neem Tree, in THE CASE AGAINST THE GLOBAL ECONOMY, supra note 18, at 146, 151 (stating that Indian scientists, farmers and political activists feel multinational corporations “have no right to expropriate the fruit of centuries of indigenous experimentation”).

25. HARVEY, supra note 7, at 303.

26. See id. at 209 (commenting that changes in political ideology pose immense problems for social progress).
Third World\textsuperscript{27} David Slater has written, in the context of histories of international law, that "the tendency to erase theory from the history of the non-West can be seen as a pivotal strategy in the West's construction of an international division of intellectual labor, and the turn towards a global agenda has been marked by a continued reflection of the same construction."\textsuperscript{28} In an important way, identifying the Third World as existing in the spaces of the periphery as opposed to the core is a continuation of this marginalization process.

Rajagopal asks us to consider the Third World as an ideological category in the sense that President Sukarno of Indonesia used the term at the 1956 Bandung Conference; the Third World was a political strategy of engagement with the dominant Cold War geopolitical powers—that of nonalignment with either the "First" or "Second" World.\textsuperscript{29} The term Third World also has a political geographic content—describing certain spaces or regions of the world possessing distinctive demographic, economic and political characteristics in comparison with the First or Second Worlds.\textsuperscript{30} Yet another understanding of the Third World consists of identifying the term in connection with those nations and regions of the world that were historically subject to the centuries-long trauma of colonialism.\textsuperscript{31} Finally, Rajagopal defines Third World in terms of the popular representation model, referring to a "certain set of images: of poverty, of squalor, corruption, violence, calamities and disasters, irrational local fundamentalisms, bad smell, garbage, filth, technological 'backwardness' or simply lack of modernity."\textsuperscript{32} Rajagopal points out that the first three conceptions of the idea of the Third World are closely linked to and premised upon the idea of "nation"—sovereign political entities constructed from former colonies that struggled and achieved political independence. The fourth conception—of atavistic backwardness—seems unconnected to the theme of national sovereignty and independence.\textsuperscript{33} Rajagopal argues that in the conditions of late capitalism and rapid globalization, it is the fourth conception that is the most useful for describing the spaces of the Third

\textsuperscript{27} Balakrishnan Rajagopal, \textit{Locating the Third World in Cultural Geography}, in \textit{Third World Legal Studies—1998-99}, at 1, 15-19 (describing "Third World" in terms of one of three models).

\textsuperscript{28} Slater, \textit{supra} note 18, at 113.

\textsuperscript{29} See Rajagopal, \textit{supra} note 27, at 1 (noting that "Third World" is defined as ideology of nonalignment toward dominant polar bloc countries); \textit{see also} A. APPADORAI, \textit{THE BANDUNG CONFERENCE 22} (1955) (stating that 29 African and Asian nations participated in conference to try to forge non-alignment as third option in international geo-politics); CARLOS ROMULO, \textit{THE MEANING OF BANDUNG 7} (1956) (noting that neutralist states attempted to secure policy statements on peaceful coexistence and universal disarmament).

\textsuperscript{30} See Rajagopal, \textit{supra} note 27, at 1 (describing geopolitical model for defining Third World).

\textsuperscript{31} \textit{Id.} (defining Third World in terms of historical-deterministic model).

\textsuperscript{32} \textit{Id.} at 1-2.

\textsuperscript{33} \textit{Id.} at 2 (noting that common thread in the first three conceptions resulted from the national entity's struggle to achieve political independence).
World. By comparison, the prior three conceptions miss something important by over-emphasizing the idea of the "sovereign nation-state." By de-centering the Third World from the idea of the sovereign nation-state, Rajagopal argues that the concept of Third World is relevant in the post-Cold War era. For one, it allows us to critique the strictly hierarchical ordering of the global community on both state and, importantly, non-state levels. The concept of the Third World also locates the origins of this hierarchical ordering of states and regions in the direct experience of subordination occurring under colonialism and imperialism.

Antony Anghie has critiqued how the doctrines of sovereignty were formulated in the seventeenth century by Francisco de Vitoria, when Spanish conquerors first encountered Indians. This was a crucial moment because our entire structure for thinking about international law is premised on sovereignty. To Vitoria, Indians were seen as child-like savages that needed to be redeemed and civilized by the Spanish. The initial construction of Indians as equivalent to children, or minors suffering a legal disability, was crucial to justifying conquest because the Indians were conceived of as lacking sovereignty. Geographer David Sibley discusses how the construction of the uncivilized Other was an essential feature in the colonial encounter: "[T]he expansion of European empires and the development of the capitalist world economy required fitting dependent territories and dependent peoples into the cosmic order of the dominant powers," delineating a spatial boundary between civilized "selves" and grotesque uncivilized "Others" and leading to the understanding of a civilized "core" and an uncivilized periphery. These ideas continue to underwrite much of the contemporary international order. Cultural and economic elites that came to power in politically independent former colonies in the twentieth century refused to critically interrogate the colonial-era assumptions about "progress" and "bringing the benefits of civilization to the uncivilized" that undergird the notion of "development." By adopting the

34. See id. (arguing that popular representational model is essential to understanding other Third World definitions).


36. Antony Anghie, Francisco de Vitoria and the Colonial Origins of International Law, 5 Soc. & Legal Stud. 321, 333 (1996) (concluding that colonialism may have taken different path had early international legal scholars felt that existing international law adequately handled situation of "discovering" native peoples on new continents).

37. David Sibley, Geographies of Exclusion: Society and Difference in the West 10 (1995) (noting that use of an "Other" de-humanizes minorities and results in their persecution).

assumptions, Third World elites replicated the core-periphery within their newly independent nations as they sought to become modern, developed states: they industrialized and promoted order by cracking down on and marginalizing the poor and working class through slum clearance and other urban planning strategies. Here is where Rajogopal’s fourth definition of Third World is relevant. By dislocating the Third World from its seeming congruence with national sovereignty and locating it in a set of associations that describe atavistic backwardness, we may begin to understand how the First World instantiates itself within the political space of the Third World via the agency of local elites, as well as how the same imagery that drives the “progress” narrative of colonialism creates ways that Third World spaces are produced in the First World. Thus, we should approach with caution a definition of the Third World that depends too heavily on ex-colonial nationalism.

When the notion of the Third World emerged following World War II, development discourse began in part as a response to the then-newly recognized “problem” of poverty—development was seen as an instrument, a set of scientific techniques to ensure economic and social improvement along a unilinear European and American model. Areas with a colonial history were seen under this approach to be underdeveloped and culturally backward. These “regions were defined in terms of what they lacked with regard to the developed First World,” the West. What the West was, they were not; what they were, the West was not. The analytical watchwords were modern, wealthy and industrialized. Slum clearance (a.k.a. urban renewal) was a global postwar trend. Ethnocentric metrics

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39. See Rajagopal, supra note 27, at 10-11 (commenting that Third World elites consolidated their rule through images of progress, order, cleanliness and programs such as slum removal and urban planning initiatives).

40. Where is the Third World in India? India’s gross national product is twice that of Great Britain and it has had a Parliamentary tradition longer than Spain or Portugal. See Rajagopal, supra note 27, at 13 (noting that India resembles First World country due to large gross national product, long parliamentary tradition and significant number of highly educated persons).


such as per capita income and gross national product were deployed to give the analysis a veneer of technocratic expertise. From the 1940s onward, development was embodied as a series of methodical interventions implemented by Western teams of experts that proposed and supervised scores of economic programs ranging from local-based village projects to large scale macroeconomic interventions aimed at enhancing the wealth of local elites and involving massive industrialization.  

For a variety of reasons, the development schemes of the 1960s and 1970s came under much criticism. Large-scale development projects tended to enrich local elites at the expense of the people and ignored or destroyed local cultures and knowledge systems; the assumption that development occurred unilinearly and was measured by a universal economic efficiency was flawed. As Rajagopal and others point out, development schemas failed to consider how the world economic system, dominated by countries of the North, operates in many ways to subordinate segments of the populations in the countries and regions of the Third World by perpetuating conditions of poverty and economic and political instability.

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43. See Richard Warren Perry, Rethinking the Right to Development: After the Critique of Development, After the Critique of Rights, 18 Law & Pol’y 225, 236-38 (1996) (noting that numerous armed conflicts and other anti-colonial struggles took place in developing nations in the 1940s and 1950s). Perry states:  

[F]rom the late 1940’s . . . paleo-colonial nations of development underwent a paradigm shift as the Truman-era development agenda engendered its logical counterpart, a new conceptualization of underdevelopment . . . . The Truman-era development agenda would set the conceptual framework, the ground-rules, according to which the First and Second Worlds would contend for hegemony over the newly christened Third . . . . The dualist model of development/modernization theory depicts the “problem” of underdevelopment as a matter to be remedied by a benign process through which the “modern world,” together with the “advanced” (“Westernized,” “modernized”) elite sectors of “backward” societies collaborate to “overcome” those societies’ recalcitrant “traditionalism” that stood as a barrier to their progress. One implication of this conceptual framing was that persevering resistance to Western hegemony—in either its classically colonialist or neocolonialist forms—now could be marginalized not simply as anti-Western, but also as anti-Modern, as a stubborn obstacle in the one-way street of progress, as anti-development.

44. Id. at 237-38. See ESCOBAR, supra note 41, at 102-13 (discussing developmental policies powerful enough to shape thinking and create a Third World); McAFEE, STORM SIGNALS: STRUCTURAL ADJUSTMENT AND DEVELOPMENT ALTERNATIVES IN THE CARIBBEAN 68 (1991) (noting that economic structural adjustment programs have severe negative consequences for poor Caribbean countries); Enrique R. CARRASCO & M. AYHAN ROSE, INCOME DISTRIBUTION AND THE BRETON WOODS INSTITUTIONS: PROMOTING AN ENABLING ENVIRONMENT FOR SOCIAL DEVELOPMENT, 6 Transnat’l. L. & Contemp. Probs. 1, 19-22 (1996) (summarizing identified flaws of growth-versus-equity, growth-with-equity and basic-needs development strategies).

45. See Tariq Banuri, Development and the Politics of Knowledge: A Critical Interpretation of the Social Role of Modernization Theories in the Development of the Third World, in
For example, the Trade Related Aspects of Intellectual Property ("TRIPS") component of the General Agreement on Tariffs and Trade ("GATT") and the World Trade Organization ("WTO") raise serious questions as to which nations, regions and classes of persons benefit from "free trade in intellectual property," whether it be in scientific textbooks, databased information bestsellers, bytes, germ plasm, computer programs or CDs. On issues as far-ranging as the impact on scientific research of restrictive database protection laws or patents in genomic materials and medical techniques, to the impact on democratic dialogic participation, questions about the international political economy of intellectual property are impossible to avoid. As between the developed nations of the North and the less-developed countries of the South, increasing numbers of scholars have been questioning whether the flow of benefits of the whole free trade package promoted by the WTO may be troubingly skewed to advantage the economies, cultures and nations of the North.

DOMINATING KNOWLEDGE: DEVELOPMENT, CULTURE AND RESISTANCE 29, 30 (Frederique Apffel Marglin & Stephen A. Marglin eds., 1990) (describing crisis in modernization theory resulting from uneven development record and various ecological disasters); COMMUNITY DEVELOPMENT AROUND THE WORLD: PRACTICE, THEORY, RESEARCH AND TRAINING 17 (Hubert Campfens ed., 1997) (describing Third World community development programs as unequivocal failures); ESCOBAR, supra note 41, at 212 (stating that development technologies succeeded in part as mechanisms of social production); John Foster-Bey, Bridging Communities: Making the Link Between Regional Economies and Local Community Development, 8 STAN. L & POL'Y REV. 25, 26 (1997) (noting that community development programs in over 60 nations in Africa, Asia and Latin America have been largely abandoned).


48. See, e.g., Carlos Alberto Primo Braga, The Economics of Intellectual Property Rights and the GATT: A View from the South, 22 VAND. J. TRANSNAT'L L. 243, 264 (1989) ("There is no a priori strong evidence that [Third World] countries will necessarily benefit or lose from a reform of their intellectual property systems."); Alan S. Gutterman, The North-South Debate Regarding the Protection of Intellectual Property Rights, 28 WAKE FOREST L. REV. 89, 136-37 (1993) (concluding that evidentiary link between intellectual property rights and development is missing; expanded protection of intellectual property rights is not advantageous to some countries); J.H. Reichman, Intellectual Property in International Trade: Opportunities and Risks of a GATT Connection, 22 VAND. J. TRANSNAT'L L. 747, 855 (1989) (stating that transnational intellectual property law could "trigger countervailing inefficiencies whenever standards frozen into transnational law actually [foster] conditions of under- or-overprotection not foreseen at the time the relevant decisions were made").

49. See Neil Netanel, Copyright and a Democratic Civil Society, 106 YALE L.J. 283, 292-305 (1996) (discussing potentially debilitating effects that digital age could have on copyright law).

50. See, e.g., JACK R. KLOPPENBERG, JR., FIRST THE SEED: THE POLITICAL ECONOMY OF PLANT BIOTECHNOLOGY 287 (1988) ("There is no indication that the ad-
To the extent that the countries of the North have developed bifurcated economies, with large wealth gaps between rich and poor, the concerns of the nations of the South fold into pockets of Third World—like immiserization within the First World.

In particular, disparities between North and South are most pronounced as to the question of free trade and its relationship with the idea of development. The question facing the postwar architects of the world economic order was: Now that colonialization has ended, how do we move on? In the 1960s, development of the Third World was seen as crucial, and technology transfers were the means whereby development would occur. An explicit assumption of development theories of this period was that the United States and Western European nations achieved their high level of development because their intellectual property systems supposedly fostered innovation and economic growth; therefore, what worked for the West should work for the rest. One main push during this period was for the countries of the developing world to adopt national intellectual property regimes based on transplanted U.S. and European models and, purportedly, technological advancement would take care of itself. Unfortunately, development did not occur on this unilinear model, and during the 1970s, development of the sort that aimed to make the Third World “look” like the First World received increasing criticisms as its unevenness persisted. 51 During the 1980s and 1990s, structural adjustment policies

51. See Gana, The Myth of Development, supra note 50, at 349 (discussing Darwinian theory of development). Gana asserts:

The theory that development is unilinear is an outgrowth of Darwinian thought which holds that progress is inevitable. According to this theory,
advanced by the International Monetary Fund ("IMF") and the World Bank tended to encourage privatized development. Under the ideological banner of free trade, the intellectual property regimes of the developed nations were given expanded reach—in other words, rules that purportedly meant to encourage and protect creative expression and scientific innovation were put in place, giving owners the legal means to reach extraterritorially into Third World countries to prevent unauthorized use, thereby perpetuating what might have been thought of in the 1960s as dependence and underdevelopment. 52 TRIPS also placed important constraints on the sovereignty of nations of the developing world to implement schemes based on, and tailored to, local and regional considerations—factors which may differ drastically from country to country, region to region and industry to industry.

IV. LIBERAL V. “CULTURAL NATIONALIST” VISIONS OF “RACE”

At least one tendency shared by the critical geographers, the critique of development theorists and the RaceCrits, is a commitment to demystification, whether of traditional concepts of space, place or race. Specific political and ideological commitments make each group of thinkers “critical.” The critical geographers’ commitment is to the question, “How are we to understand and define ‘space’ and its relation to understandings of ‘place’?” The RaceCrits’ commitment is to the question: “How should ‘racism’ and its relationship with political, legal, economic and social power be understood, defined and dealt with?”

As Gary Peller has shown, 1960s liberal integrationists and Black Nationalists painted two distinct and perhaps irreconcilable pictures of the world with regard to the problem of racism. 53 Under the traditional “civil rights” picture of the world associated with the integrationists, racism is seen as a problem because: (1) it is defined as being aberrational and irrational; and (2) it is produced by “bad,” or non-enlightened thinking.

poor countries of the world are simply replicas of developed countries at earlier stages in their development. With time, developing countries would go through their own industrial revolution and eventually achieve a level of development comparable to developed countries.

Id.; see also Braga, supra note 48, at 252 (criticizing industrialized nations’ concern with intellectual property rights as an “attempt to control the diffusion of new technologies”); Gana, Has Creativity Died, at 131 (“[L]ocal values which shape a system of protection for . . . goods have never been seriously considered in the context of the North-South debate over intellectual property protection.”).

52. See generally Saladin Al-Jurf, Good Governance and Transparency: Their Impact on Development, 9 TRANSNAT’L L. & CONTEMP. PROBS. 193, 206 (1999) (“[C]ritics believe that the World Bank and IMF are perpetuating new colonialism where Western economic and cultural values are imposed upon emerging economies at the price of their sovereignty.”).

Under this picture of the world, racism exists as a problem within people’s heads. Bias based on skin color is viewed as having no sound basis in logic or history and, as such, is viewed as illogical and arbitrary. The remedy for the troubling “irrationality” of “racism” is, of course, “colorblindness,” which is viewed as “rationality.”

Nevertheless, this traditional liberal integrationist vision of racism reveals a deep instability because the means whereby one attains “colorblindness as rationality” are to varying degrees troublingly “color-conscious” (e.g., integration and weak forms of affirmative action, etc.). This instability is a major problem because the means (color-consciousness) do not match up with the ends (colorblindness) in a satisfying fashion—a point that conservative opponents of affirmative action have had no difficulty in exploiting. An alternative vision to the liberal integrationist account of racism’s etiology and cure might come in part from the counter-tradition of Black Nationalist politics that stretches over a century, from writers such as W.E.B. Du Bois to the Black Panthers to Malcolm X.

For Black Nationalists, the solution is not to reach colorblindness as rationality or to correct aberrational bad thinking within the minds of renegade racists. Rather, the solution is the redistribution of power. Such redistribution may involve public hearings like those undertaken by the South African Truth & Reconciliation Commission, reparations and redress or very strong affirmative action programs premised on an explicitly remedial basis. Gary Peller has suggested that this type of Black Nationalist politics might be premised on the idea of race as giving rise to a “quasi-nation” based on shared experiences of oppression within a particular historical context. That is, perhaps the idea of race may be used as a

54. See id. at 131 (“The familiar ‘dilemma’ surrounding affirmative action is that it requires the use of race as a socially significant category, despite the fact that the deepest aims of integrationist ideology point toward the transcendence of race consciousness.”).


56. See Peller, supra note 53, at 136 (arguing that Black Nationalists believed that power, not merit, would determine distribution of social resources and opportunities).

57. See id. at 150-51 (discussing various methods of race reform).

site of political and ideological contestation and may be thought of as an
type of localism, an oppositional site to resist the manic global logic
of flexible capital accumulation that the critical geographers attack. Additionally, there are reasons to re-associate race with the logic of capital-
ism—after all, Wall Street was a premiere market for trade in slaves long
before stocks and bonds were being traded there.

Under the 1960s Black Nationalist picture of the world, racism is also
a grave problem, but racism is defined as a mal-distribution of power. Racism is defined as power that is exercised on a racial basis out in the
actual world, manifested in the material conditions of everyday life; for
example, who lives where, who gets what jobs, who gets into what schools,
etc. In contrast to the liberal integrationist account, racism is not seen
as irrational under this analysis; in fact, racism might be seen as the epit-
ome of cold-blooded hyper-rationality, constantly evolving and remaining
state-of-the-art, so as to keep the dominant group in control and the
subordinate group subordinate. Racism also seeks to maintain the cur-
rent distribution of scarce resources such as quality housing, good jobs,
education and political power, and to make this distribution appear to be
the “neutral” and “natural” product of non-political colorblind forces such
as the market.

This Nationalist strand involves a critical approach to the idea of race
and racism that clearly predates both Critical Legal Studies and CRT by at
least a century and has its roots in the nineteenth century work of writers
such as Wilhelm Amo, Quono Cugoano, Frederick Douglass, Rufus Lewis
Perry and W.E.B. Du Bois, who addressed the diasporic condition wrought
on blacks within the United States by conquest, colonialism and slavery.

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59. See Peller, supra note 53, at 136 (discussing Black Nationalists’ assumption
that power was distributed on racial basis between two discrete communities: white
community and black community).

60. See id. at 137 (arguing that racism leads to disproportionate levels of opportunity
because racism is maldistribution of power and power determines distribution of
opportunities).

61. See id. at 137 (“[R]acial identity was seen as a central basis for compreh-
ending the significance of various social [experiences] . . . ”).

62. See John O. Calmore, Random Notes of an Integration Warrior, 81 MINN. L.
REV. 1441, 1467 (1997) [hereinafter Calmore, Random Notes] (“[W]hite-skin privi-
lege . . . sets the stage for continued success and achievement as individuals. The
stage set for black success and achievement lacks these associated props of privi-
lege that Jews, as with most other whites, often take for granted as neutral . . . ”).

63. See, e.g., QUOBNO OTABA CUGOANAO, THOUGHTS AND SENTIMENTS ON
THE EVIL OF SLAVERY AND OTHER WRITINGS 115, 135 (Vincent Carretta ed., Penguin
Books 1999) (“[T]here are also [men] that set out . . . opposing all the obligations
of civilization among men, and breaking through all the laws of justice and equity
to them, and making even the very things which are analogous to the obligations
. . . a pretence for their iniquity and injustice.”); W.E.B. Du Bois, THE PHILADEL-
PHIA NEGRO: A SOCIAL STUDY (1973) (studying detailed social problems affecting

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While emancipation of "Negroes" or "blacks" was a central idea in their work, by the end of the nineteenth century writers such as Rufus Lewis Perry began critically interrogating the concept of race, and the processes whereby a group becomes racialized.64 Against the turn-of-the-century prevailing ideology of Manifest Destiny that had reduced the Indian population of the North American continent from fifteen million to around one hundred thousand, W.E.B. Du Bois feared that other non-white populations in the United States and elsewhere faced a similar fate.65 While Du Bois struggled unsuccessfully to cut through erroneous biologistic criteria for making racial classifications, he understood that to prevent racial genocide as undertaken by the U.S. and European governments, it was necessary to be able to form and articulate racial identities.66 Du Bois also critically addressed the supposedly rational and objective eye of white social scientists studying non-white subjects.67 Du Bois challenged the epistemological foundations of "race scientists"—arguing that many who studied the problems of racialized subjects focused the problem onto the racialized people themselves.68


66. See Du Bois, Dusk of Dawn, supra note 55, at 200-09 (arguing Negro must engage in group art, education, health, literature and religious movements in order to raise social status); Du Bois, The Study of the Negro Problems, supra note 63, at 2 ("A social problem is the failure of an organized social group to realize its group ideals, through the inability to adapt a certain desired line of action to given conditions of life.").

67. See, e.g., W.E.B. Du Bois, The Study of the Negro Problems, supra note 63, at 14-15 ("Americans are born in many cases with deep, fierce convictions on the Negro question, and in other cases imbibe them from their environment. When such men come to write on the subject . . . their testimony . . . [is] worthless as science.").

68. See id. at 14 ("The most baneful cause of uncritical study of the Negro is the manifest and far-reaching bias of writers."). Some scholars who might be
In his 1952 book *Black Skins, White Masks*, Frantz Fanon focused on popular textual resources, cultural etiologies and, most importantly, on the constructed nature of racial formation. Fanon described the tension between structural identities and lived identities as they are mediated by sociogenic forces subject to human intervention or agency. Fanon focused on failure, that is, situations where the assumptions of our social systems and their modes of rationalization break down. Fanon critiqued the way that cultural norms lent a degree of rationality to racism, creating a racist logic—a racist in a racist society is normal. Fanon posited that in such situations, traditional discourses of systemic adjustment, or “progress,” fail us profoundly.

Lucius Outlaw has tried fusing aspects of Fanon and Du Bois by advancing Du Bois’ idea of “blackness as dual consciousness” and Fanon’s phenomenology of “alienated embodiment” in considering the problem of moving beyond race in a pluralistic society such as the contemporary United States:

[There is still to be explored the “other side” of “race”: namely, the lived experiences of those within racial groups (e.g., Blacks for whom Black Nationalism, in many ways, is fundamental). That “race” is without a scientific basis in biological terms does not mean, thereby, that it is without any social value, racism notwithstanding. The exploration of “race” from this “other side” is required before we will have an adequate critical theory, one that truly contributes to enlightenment and emancipation, in part by appreciating the integrity of those who see themselves through the prism of “race.” We must not err yet again in thinking that “race thinking” must be completely eliminated on the way to emancipated society.

Thought of as working in a qualifiedly Du Bois-ian vein are Lucius T. Outlaw, Tommy Lott, Robert Gooding-Williams and Josiah Young.

69. Frantz Fanon, *Black Skin, White Masks* (Charles Lam Markmann trans., 1967).

70. See id. at 30 (“What I want to do is help the black man to free himself of the arsenal of complexes that has been developed by the colonial environment.”).

71. See id. at 30-38 (discussing instances of break-downs in assumptions about black’s educational and language standards).

72. See id. at 31-32 (discussing “normal” behavior).

73. See id. at 219 (noting that traditional discourse has resulted in the Negro becoming “a slave who has been allowed to assume the attitude of a master” and “[t]he white man . . . a master who has allowed his slaves to eat at his table”). Scholars working in a qualifiedly Fanon-ian vein are Kwame Anthony Appiah, Naomi Zack, Charles Mills and Victor Anderson—these scholars analyze “failures” and incorporate Fanon’s idea of constructivity. Other scholars pick up on Fanon’s “racist culture” strand, for example, David Theo Goldberg, Michael Omi and Howard Winant, Cornel West, Paul Gilroy and Stuart Hall, to name a few.

A strand within CRT converges with the Black Nationalist analysis—the structural strand that seeks to locate and articulate ways that race and racism are structurally hard-wired into American social, economic and legal life. This also entails a rejection of the ideas that racism consists of the irrational acts of a few “bad actors” at the fringe of society, and, but for the despicable acts of renegade lone racists, American society generally works well and fairly for all of its members. CRT has difficulty grappling with how to interpret and shape some of the 1960s Black Nationalist solutions, such as calls for separatism and literal nationhood (a territorially demarcated sovereign national space) in the postmodernist climate of the 1990s, which tends to look critically on essentialized or romanticized visions of human subjectivity, racial or otherwise. There are also unanswered questions involving pluralism, multiculturalism, coalition and complicity (both inter-group and intra-group) that remain to be worked out, not in the abstract world of theory, but in specific sites in the world where such issues arise daily. However, the value of the Black Nationalist critique is that it works to demystify racial power in the more nuanced, but distinctly complementary, way that the critical geographers have been analyzing the ties between space and place.

Remember that the key to salvaging the usefulness of the idea of the Third World was to challenge the tendency of former colonies to reify and valorize an uncritical “nationalism” because the very idea of a sovereign nation-state reproduces colonial structures on a deep level. Here, the key to salvaging the usefulness of the idea of race may lie in our ability to de-naturalize the idea while still acknowledging the salience of the lived experience of race in order to contest racism.

V. RACE, PLACE AND SPACE MATTER

Pursuing both the critical component of CRT and the critical component of critical geography, legal scholars such as Richard Thompson Ford, Gerald Frug, John O. Calmore, Chantal Thomas, Elizabeth M. Iglesias, Audrey G. MacFarlane, Anthony Paul Farley and many others de-naturalize

75. See id. at 59 (“A primary concern will be to question ‘race’ as an obvious . . . reality—to challenge the presumptions . . . that, when socially shared, become common sense . . .”).

76. See id. at 66-68 (arguing that race is product of social, cultural and geographic factors, not simply genetic homogeneity).

77. See, e.g., Troy Duster, Individual Fairness, Group Preferences and the California Strategy, 55 REPRESENTATIONS 41, 42-45 (1996) (examining caste system in India and apartheid in South Africa as basis from which to study affirmative action in United States); Gerald Torres, Critical Race Theory: The Decline of the Universalist Ideal and the Hope of Plural Justice—Some Observations and Questions of an Emerging Phenomenon, 75 MINN. L. REV. 993, 997 (1991) (posing question: How do concepts of cultural and political pluralism differ from mere interest-group pluralism?).

78. See Rajagopal, supra note 27, at 2 (arguing that former colonies utilize an idea of nation that results from their struggle to gain independence from colonial empire).
and contest our received notions of legally demarcated space. These scholars challenge us to: (1) rethink the ubiquitous public/private distinction that is endemic to liberal legal thought; (2) address the public loss of faith in political institutions and ideals on virtually every level; and (3) ask, as do the critical geographers, what the multiplication of spaces and the simultaneous loss of place in the contemporary world means for assertion of a localism like race against transnational globalism. By weaving an element of spatial analysis into legal critique, a heretofore obscured linkage between the macro realm of transglobal capital flows and investment decisions, and the micro realm of inner-city redlining, gentrification, displacement and residential racial segregation, become readily apparent. In legal analysis, at least, these connections were obscured by a focus on national, state, county and municipal boundaries. These boundaries often reduced complex questions about distribution and access to resources like housing, education and electoral power into mere formalistic exercises in identifying boundaries.

Why should space matter to legal scholars in the late-twentieth century? As Richard Thompson Ford has pointed out, traditional legal consciousness has viewed space as either an inert backdrop against which legal actors play out their disputes, or as the “deadened material over which, legal disputes take place.”79 Ford has written:

[Our] tacit understanding of political space as “opaque”—inert, primordial, natural, and therefore having a natural or prepolitical meaning—stands in contrast to the opposite misconception of space as “transparent”: we “see through” political geography, failing to see its political salience . . . . Transparent space is understood to be irrelevant[,] . . . insignificant and without consequences of its own.80

The project that Ford and others have embarked on is to show how “[s]pace is not a scientific object removed from ideology and politics[,] . . . [but rather space] has been shaped and molded from historical and natu-
ral elements . . . [and] is a product literally filled with [politics and] ideologies." The amazing degree of residential racial segregation prevailing in the United States today, which Douglas Massey and Nancy Denton have called "American Apartheid," cannot be explained away by resorting to formalist "colorblind" rules or analyses. By centering the spatial, these scholars are able to build links between transnational constructions of race and space that are masked by more traditional (and generally more formalist) accounts of the workings of the law and its institutions. Factors such as wars, international trade disputes and environmental catastrophes all exert pressure on migrations of people, which then have complex but important effects on dynamic notions of race within nations.

Some work being done by legal scholars using spatial analysis involves mapping out the spatial (and often cross-boundary, whether national or local governmental) consequences for communities of color of injuries to a community's "right" to a clean environment or to electoral representation. An important additional aspect of some of this new spatial/legal work is the recognition of the complexity and contingency of political boundaries—the very units of political representation that may have arisen in response to earlier overt racial segregation. Imagining and articulating what might be the preconditions for democratic empowerment and process of people and communities that have been historically disempowered by imposition of dominant understandings of race, space and place is yet

83. See Robert S. Chang & Keith Aoki, Centering the Immigrant in the Inter/National Imagination, 85 CAL. L. Rev. 1395, 1398 n.7 (1997) ("The developed world ... extracts resources from the rest of the world, which disrupts the economies and cultures of the developing world, sending people whose societies have been disrupted by war, inflation, or environmental degradation to developed nations in the form of immigration.").
84. See Luke W. Cole, The Struggle of Kettleman City: Lessons for the Movement, 5 MD. J. CONTEMP. LEGAL ISSUES 67, 77-80 (1993-94) (arguing that environmental problems are political, not legal, and that legal approaches are "disempowering to community residents because they take the struggle out of the community . . . \).
another link in the project of forcing the articulation of a coherent link between events occurring on the local level and events occurring on the global level. 85

In terms of legal articulations of place and analyses of the contemporary political economy of space, legal scholars have two things to add. First, critical legal scholars such as Ford, Calmore, Thomas, Iglesias, MacFarlane and Farley bring a sense of the nuance of the law, how there are places of unexpected indeterminacy and "give" in legal doctrine that may be exploited. 86 This corrects and supplements the project of critical geography, which tends to overestimate the fixedness of legal doctrine, considering the legal rules in force as another input to the creation and shaping of space.

Second, critical legal scholars bring a consciousness of how race within the United States occupies an important, but contentious, social place. 87 This critical awareness of the fluidity of race, when combined with the emerging critique of the macro and micro global political economies of space, challenges us to analyze both maps of the globe and maps of urban regions within the United States. Through revealing new lenses in areas such as local government law, access to housing, investment patterns in urban areas and redevelopment within and without the United States, the means whereby "race-ed" bodies are produced in segregated spaces in turn become manufactories for the media spectacle of "black criminality."

A. Geography and Sovereignty: Richard Thompson Ford

Richard Ford's work focuses on the tie between geography and sovereignty. 88 Ford asks why courts insist that race-based classifications are presumptively illegitimate when it comes to redistricting electoral districts, when there is great judicial solicitude for racialized spaces produced by residential real estate markets and facially neutral zoning ordinances. 89 For example, Ford examines the case of Kiryas Joel, 90 in which the United States Supreme Court upheld local government power to create a special education district that consisted solely of members of one religious

85. See Chang & Aoki, supra note 83, at 1405 ("Once we escape the confines of a national imagination, it becomes easier to . . . link . . . the struggles of those who have been in the United States for generations with . . . those who have arrived more recently.").
86. See Ford, Boundaries of Race, supra note 79, at 1864-68 (giving detailed analysis of relationship between notion of local sovereignty and geographical segregation).
87. See id. at 1866-78 (discussing hypocrisy of judicial district creation).
88. See id. at 1921 (charting relationship between concepts of geography and sovereignty).
89. See id. at 1874 (showing how courts are often willing to uphold exclusionary district boundaries based on private desires of citizens).
Ford ventures that the local government body at issue in *Kiryas Joel* was viewed by the Court as merely ratifying and carrying out the wishes of "private" members of the community, much as a local municipal government might be likewise ratifying and protecting the private market decisions of residents when passing a zoning ordinance with exclusionary effects. In contrast, Ford looks at the attitude courts take when approaching redistricting cases. In these cases, the state legislature is seen as a pre-eminently public body illegitimately interfering with private preferences when it uses race as an element in creating or redrawing electoral districts.

Ford points out the indeterminacy of categorizing institutions as either public or private. For example, one might just as easily find that in *Kiryas Joel* the school board was illegitimately interfering with the preferences of non-religious members of the community by allowing a religiously segregated-special education district to be drawn; arguably, a public entity should not intervene in such matters. Conversely, one might look at redistricting cases and say that because voting is a uniquely public right—legislatures are uniquely suited to make assessments that may include elements of redressing past or present racial discrimination—a racial gerrymander to correct racial segregation is entirely different than a racial gerrymander designed to exclude an entire group from political representation on a racial basis. Similarly, one might look at a situation that involves residential racial segregation and find that, although the private preferences of buyers was manifested by the market, those very market values are under-

91. See id. at 709-10 (stating holding); Ford, Geography and Sovereignty, supra note 79, at 1383 (discussing *Kiryas Joel*).

92. See Ford, Geography and Sovereignty, supra note 79, at 1383-85 (arguing that legislature acted with no more religious motivations in establishing school district than it did in establishing village).

93. See id. (discussing judicial attitudes toward redistricting). See, e.g., Bush v. Vera, 517 U.S. 952, 957 (1996) (holding that breaking voting districts into primarily race-based categories by government was improper under Equal Protection Clause); Shaw v. Hunt, 517 U.S. 899, 901-02 (1996) (holding that redistricting plan violated Fourteenth Amendment because race was primary consideration and no compelling state interest was served); Miller v. Johnson, 515 U.S. 900, 927-28 (1995) (holding that racially based redistricting by state government is unconstitutional); Shaw v. Reno, 509 U.S. 630, 642 (1993) (holding that allegation of government redistricting based on race was sufficient to constitute statement of claim); see also, e.g., Lani Guinier, The Tyranny of the Majority: Fundamental Fairness in Representative Democracy 135-37 (1994) (discussing the inherent unfairness of race-based government redistricting); Ford, Boundaries of Race, supra note 79, at 1905-09 (discussing courts' unwillingness to allow exclusionary redistricting based solely on government action); Lani Guinier, (E)racing Democracy: The Voting Rights Cases, The Supreme Court 1993 Term, 108 Harv. L. Rev. 109, 114-18 (1994) (giving overview of several Supreme Court cases that analyzed race-based districting).

94. See Ford, Boundaries of Race, supra note 79, at 1866-78 (discussing Supreme Court cases that focus on shifting foundation of public and private institutions).
written by a city's zoning practices and are public, or produced by state action.\footnote{A complex mix of public/private initiatives has produced our current mix of city/suburb. See \textit{Kenneth T. Jackson}, \textit{Crabgrass Frontier: The Suburbanization of the United States} 135 (1985) (discussing the processes that led to movement of population to suburbs). Others argue that public bodies are/should be driven by private preferences. See \textit{Robert Nozick}, \textit{Anarchy, State and Utopia} 28-30 (1974) (theorizing that state's purpose must be to seek goals of people while maintaining popular constraints); Charles Tiebout, \textit{A Pure Theory of Local Expenditures}, 64 J. Pol. Econ. 416, 416 (1956) (arguing that citizens choose to locate in community that best satisfies their preferences). \textit{But cf. Shelly v. Kraemer}, 334 U.S. 1, 18 (1948) (finding that judicial enforcement of a racially restrictive covenant's terms constitutes state action for the purposes of equal protection).}

Ford next examines how the disparate treatment of racially defined electoral districts and similarly situated local governments reflects a deeper tension in normative political thought between the desire for subgroup integration and the desire for subgroup representation through political solidarity.\footnote{See \textit{id.} at 1866-78 (discussing underlying tensions behind judicial inconsistency involving public and private segregating mandates).} Ford argues that because both goals are important, the goal should not be "consistency," but rather a more informed effort at mediating the tensions between the two.\footnote{See \textit{id.} (discussing setting goals for local and state governments).} Ford suggests that the courts allow racially defined electoral districts, in which the dominant group must still negotiate with a broader community at the legislative level in order to wield political power, and severely scrutinize racially defined local governments, in which the dominant group exercises state power directly without the tempering influence of a broader political conversation.\footnote{See \textit{id.} at 1870-74 (describing political dynamic of local governments).}

When reading Ford's work, one is struck by the "now-you-see-it, now-you-don't" quality of judicial encounters with racialized space. Ford incorporates a sophisticated understanding of how the public/private distinction may be easily manipulated, yet still be persuasive because of the deep visions of social life the public/private dichotomy represents.\footnote{See \textit{id.} (discussing some intricacies of public/private dichotomy).} Nevertheless, Ford is not merely content to make a point about the indeterminacy of legal argument. With a fully textured understanding of how real estate markets work hand-in-hand with local governments to produce racialized spaces, Ford grapples with the difficult question of how to implement localisms in the political process.\footnote{See \textit{id.} at 1880-81 (analyzing problems with alleviating inconsistencies in local and state governments).} Taking the work of local government scholar Gerald Frug and combining it with insights from Edward Soja produces a hybrid scholarship that brings together critical geography and legal insights from CRT and sketches a theory of democratic
representation. In this sense, Ford is a constitutionalist: he wants to see a type of reform built into the system that reproduces itself by its own terms. It is this commitment to searching for an institutional solution to achieve the balance between integration and solidarity that animates Ford's work and makes it valuable in sorting through the racial politics of urban and suburban spaces of late twentieth century America.

B. Spatial and Geographic Marginalization at the Intersection of Race and Class

1. John O. Calmore

Working from a background in housing law and urban work, John O. Calmore focuses on what the spatial and geographic marginalization of African Americans means to the relationship between race and class. Within the context of the geography of racism, Calmore considers what Michael Harrington has called the "new poverty." In the past, the poor suffered deprivation and exploitation as part of a dual labor system that used them as a buffer: employers hired them in boom times and laid them off in bust times. By contrast, a significant segment of today's poor are superfluous not only to the economy, but also to the nation's societal organization. Thus, Calmore notes that we have moved from an urban poor that is exploited to one that is marginalized. This marginalization is primarily constituted by spatial concentration and exclusion from access to a safe, immediate environment, as well as from a viable economic opportunity structure.

This new poverty is racialized and urban. Its flip side is the booming industrial parks and new high-tech offices in America's core cities and prosperous suburbs. Moreover, except for heavily-mediated sound bytes highlighting urban violence on the six o'clock news, the spatial segregation that produces these very different spaces is both pervasive and hidden. Calmore points out that hypersegregated African Americans are the paradigm group representing the newly marginalized urban poor. Poverty in this case is spatialized because concentrated poverty and social isolation link an individual's poverty inextricably to the community's

101. See id. at 1861-63 (presenting a series of theories on democratic representative systems).
102. See id. at 1902-03 (giving several goals and potentially effective means of reform).
103. See Calmore, Random Notes, supra note 62, at 1474-76 (discussing in depth the structure of segregation and process of multicultural integration as opposed to assimilation).
104. See Calmore, Racialized Space, supra note 82, at 1269 (discussing how modern poor are in danger of becoming superfluous).
105. See id. (discussing how poor have been increasingly expelled from useful participation in society).
106. See MASSEY & DENTON, supra note 82, at 184 (theorizing about how segregation of African Americans has resulted in socio-economically marginalized culture).
Local government zoning ordinances work to limit housing opportunities and educational opportunities, finally translating into limited employment opportunities. Furthermore, they produce a demoralizing, politically and economically disempowering sense of place in such communities. Calmore uses a spatial analysis to show how the marginalization of the black poor is a function of the triple intersection of race, class and space/geography.  

Calmore helps us see that spatial and geographic marginalization is a much deeper problem than housing discrimination, residential segregation or exclusionary suburban local government home rule; he shows us how those subject to spatial marginalization are enclosed within their inner-city zones, trapped. Once dominant society attracts non-poor blacks to its opportunity structure and spatially isolates poor blacks, it becomes easier to simply write the poor people off and subject them to other forms of oppression: exploitation, violence and harassment. Calmore discusses how segregation and exclusion set the stage for spatial marginalization—placing people within geographic constraints not only enables society to write these people off, but also facilitates a “common sense” explanation and justification for writing them off. Calmore is also keenly aware that the economic and social marginalization of the largely black, new urban poor is inextricably tied into the larger economic processes related to flexible capital accumulation, and how the places of the deteriorated inner cities of America are linked to the political economy of space,


109. See Calmore, Racialized Space, supra note 82, at 1243-46 (demonstrating current desperate state of many inner-city citizens and communities); Oh, supra note 82, at 402 (discussing racial segregation in inner cities).

110. See Calmore, Racialized Space, supra note 82, at 1269 (discussing how economic structure of inner-city core facilitates marginalization).
which also produces sweatshops in Vietnam, Silicon Valley dot-com billionaires and a stock market that tops 12,000.111

Like Ford, Calmore is caught between conflicting impulses toward integration and separatism/nationalism.112 In contrast with Ford, Calmore is more of an anti-constitutionalist—perhaps rightly skeptical of interventions in racialized housing markets, premised either on the individualist vision of marketplace conservatives or more communitarian visions of a romanticized community.113 As an anti-constitutionalist, Calmore doubts whether self-reproducing meaningful reform can be built, on a deep level, into our institutions. Sometimes, market-type initiatives may work to jump-start local pockets of economic depression. Other times, government intervention on a national level may be required.114 At the very least, Calmore’s skepticism calls for us to assess what tools may be at hand to attack particular problems. What is clear in Calmore’s body of work is that he has been willing to take questions of the production of space and region very seriously, and then connect them to pressing issues of locality, place and race.115

2. Chantal Thomas

With a background in private international law, Chantal Thomas analyzes how pre-existing racial conditions within the United States intersect with globalization, concentrating costs on populations that are already socio-economically disadvantaged; populations which, in the United States, tend overwhelmingly to be communities of color.116 Professor Thomas looks at the disproportionate, but differential, vulnerability to the costs of globalization between Latina/o and African-American communities.117 Thomas argues that, contrary to contemporary laissez faire ideology, the economic processes of globalization are not autonomous and independent phenomena such that government decision makers should

111. Id. at 1251 (demonstrating effect of urban infrastructure on segregation).
112. See Calmore, Random Notes, supra note 62, at 1470-80 (discussing goal of integrating without assimilating); see also Ford, Boundaries of Race, supra note 79, at 1880-81 (discussing process of integration).
113. See Calmore, Random Notes, supra note 62, at 1470-80 (discussing hope of integration reform).
114. See id. (discussing what is necessary to achieve such reform).
115. See Calmore, Racialized Space, supra note 82, at 1234-35 (discussing connections between space and racial segregation).
stay out of the way. She argues instead that government decision makers are unavoidably involved in the distribution of the costs and benefits of the globalization phenomenon.\textsuperscript{118}

Professor Thomas makes a structuralist argument that legal rules facilitated globalization and, furthermore, that such rules also helped construct the socioeconomic (and racial) hierarchy that provides the backdrop for globalization.\textsuperscript{119} Within the United States, racial minorities are clustered on the low end of this race/class hierarchy. If economic globalization exacerbates disparities in this hierarchy, then legal decision-makers are implicated in the outcomes and, thus, should be accountable for the costs that globalization imposes on poor urban minorities. In contrast with the predominant liberal view of the economy as fluid and flexible, Thomas argues that the economy is pervaded by inegalitarian rigidities such as racial hierarchy, which will not change absent our exogenous force.\textsuperscript{120}

Thomas describes the growth of U.S. suburbs and the concomitant deterioration of U.S. inner cities during the last half of the twentieth century. The U.S. postwar migration to the suburbs involved a vast expansion of the American middle class.\textsuperscript{121} The effects of this predominantly white migration were to concentrate African Americans, as well as recent immigrants of African, Asian, Caribbean, Latina/o and Middle Eastern extraction, in the core of the city. Thomas details how, through initiatives like the home mortgage tax deduction, federal loan and housing regulations that denied mortgage insurance to urban areas and areas that were racially mixed, and the massive federal investment in the interstate highway system, U.S. law was explicitly implicated both in the racial homogeneity of the suburbs and the deterioration of urban areas.\textsuperscript{122} Thomas points out how federal policy stood by while private market actors, institutions and local

\textsuperscript{118}. See id. (discussing role of government officials in globalization).

\textsuperscript{119}. See id. (discussing how legal rules facilitated globalization).

\textsuperscript{120}. See id. (explaining economic motivations in maintaining racial hierarchy).

\textsuperscript{121}. See id. (describing simultaneous growth of suburbs and deterioration of inner cities). See generally Jackson, supra note 95 (giving extensive analysis of the process of suburbanization); Peter Mieszkowski & Edwin S. Mills, The Causes of Metropolitan Suburbanization, 7 Econ. Perspectives 135 (1993) (outlining various elements of white suburbanization).

\textsuperscript{122}. For a discussion of mortgage tax deductions, see Thomas, Hierarchy, supra note 116; and Daniel Q. Posin, Federal Income Taxation of Individuals 457 (3d. ed. 1993).

governments pursued racial segregation through exclusionary zoning, housing and lending and federal public housing in the inner cities—segregating and concentrating their poor minority populations away from the white suburbs. Thomas also discusses how municipal sovereignty underwrites the spatial separation of city and suburb, which, when coupled with federal law permitting disparities in spending on infrastructure, is a major factor in urban housing stock deterioration, under-funded educational systems and business tax bases in inner-city areas. This produces a jurisdictional patchwork quilt of “separate and unequal” local governments.

Thomas shows how these phenomena are linked to the scale of transnational flows of goods and services, as well as how investment and finance


have increased at a staggering rate over the past three decades.\textsuperscript{126} The trade and finance vectors of globalization have become increasingly transnational—a syndicate of foreign and domestic banks might finance production coming from a foreign subsidiary of a U.S. company—and the traditional role of national markets has acquired a superimposition of intra-industry and intra-firm multinational companies.

Parallel to the U.S. government's implication (both expressly and implicitly) in the racial dimensions of the postwar city/suburb division, Professor Thomas shows how the U.S. government has spurred globalization by promoting international agreements such as GATT in 1948. GATT proceeded through six rounds of negotiation between 1948 and 1979, reducing by over half the average tariffs charged by member nations.\textsuperscript{127} The United States also entered into NAFTA with Canada and Mexico and was an active party in the GATT negotiations leading to the establishment of the WTO in 1995.\textsuperscript{128}

Two aspects of globalization are relevant to Thomas' analysis: (1) the global dispersion of the manufacture of goods, and (2) the shift in the United States from exporting to importing goods and the rising importance of the export of services.\textsuperscript{129} These trends are mutually reinforcing—as manufacturing disperses to areas with the lowest wages, information and coordinating services become increasingly important for communicating between dispersed production facilities. As technology increases the ease of communication, the dispersal of manufacturing becomes easier, and so on. Professor Thomas connects deindustrialization


\textsuperscript{128} See Thomas, Hierarchy, supra note 116 (discussing aspects of globalization); \textit{see also} Sassen, The Global City, supra note 8, at 131 (discussing globalization and trade relations).

and the emergence of global markets with urban deterioration and racial concentration in U.S. cities over the past twenty-five years. While traditional manufacturing jobs fled U.S. cities, those very same cities became centers for the high-end provision of professional services.

The decline of manufacturing in U.S. cities disproportionately impacts African-American populations vulnerable to the flight of lower-skill jobs made possible by NAFTA. Another trend has been what Thomas calls the “informalization” of work, so that employers use more non-union, part-time or temporary workers at lower wages and with fewer benefits. Other employers have used a combination of homework and subcontractors to avoid compliance with federal labor and wage laws—the workers in these sweatshop industries are frequently recent immigrants (from countries in Asia, Africa, the Caribbean or Latin America) who are often poor, minority and female.

The shift to export, high-end, service-sector jobs has stratified the U.S. work force, reinforcing economic hierarchies that feed into the ability to pay for housing and resulting in further concentration of racial minorities and recent immigrants in the core cities of the United States. Gentrification exacerbates low-income housing shortages as service-sector professionals working at high-paying jobs in the core city seek to move back and recapture older housing stock, bidding up its price and creating incentives for property owners to convert properties to expensive condos or co-ops. The benefits and costs of globalization are distributed in a strikingly uneven fashion, with those at the bottom of the hierarchy defined by race, class and geography. Professor Thomas seems to be an anti-constitutionalist in that she doubts the ability of institutions, left to their own devices, to be self-correcting in the absence of some strong exogenous

130. For a discussion of housing and lenders, see Thomas, Hierarchy, supra note 116, JACKSON, supra note 95, at 208; and MASSEY & DENTON, supra note 82, at 53-54.


133. See Thomas, Hierarchy, supra note 116 (discussing negative effects of gentrification); see also Aoki, supra note 42, at 816-17 (discussing phenomenon wherein young professionals seek inner-city residences because of their architectural attractiveness and commuting convenience, displacing inner-city poor and reducing available low-income housing).
intervention. By showing these linkages, Professor Thomas makes it possible to begin considering solutions—difficult as that task may be.

C. Global Markets, Racial Spaces and the Legal Struggle for Community Control of Investment

1. Elizabeth M. Iglesias

Elizabeth M. Iglesias uses the political economy of space differentiation to show how racially subordinated communities share common structural problems throughout the world. Sharing the common theme of interpreting localism with Ford, Calmore and Farley, Iglesias begins defining localism in terms of economic self-determination. In particular, Professor Iglesias examines how these communities face a common and growing need to gain control over their economic livelihood and, indeed, over their very existence as a community. Iglesias describes how racial discrimination becomes institutionalized in banking and mortgage lending practices that, at first blush, appear neutral. Property values are just lower in some areas than others, and a "rational" banker confronting a person requesting a loan in a distressed urban area wants increased compensation for increased risk. If people cannot afford to pay, then that is their choice—the banker did not force them to live or do business in that area. These institutionalized practices then contribute to the production of geographic segregation. The reproduction of such areas also requires a strong component of continuing financial disinvestment. Lack of community control over banks and sources of capital have locked numerous urban areas into vicious downward spirals of deterioration and premature abandonment of potentially viable low-income rental and commercial properties.

Iglesias cites the ongoing struggle against red-lining as an example of a community battle against the discretionary decisions through which banking institutions have channeled investment capital away from minority communities and into "higher profit, lower risk" areas of white suburbia. The spectacle of Detroit—a tax-strapped, majority black city, ringed by wealthy white suburbs—is an example of the production of spatialized distance linked with the experience of racialized place, whether black or white, that can happen when investment is diverted.

Linking the domestic with the transnational, Iglesias then discusses how in the Third World, investment decisions have been guided by so-called development objectives set by the IMF and the World Bank as part of their "structural adjustment" policies that have resulted in the destruction or disruption of numerous indigenous communities. Iglesias points out how, on the global level, the struggle against forced resettlement.

ments, dispossession and cultural elimination has been a struggle for participation, representation and effective power over the discretionary decisions through which the World Bank has influenced the design and implementation of development projects.

There are important parallels in these struggles with the struggles of communities of color in the United States to gain some measure of control over and participation in investment decisions that affect their communities. Professor Iglesias has suggested that the Community Reinvestment Act of 1977 may hold untapped potential to facilitate such struggles. By drawing this parallel, Iglesias makes an important link between the Third World and the First. In both situations, assertions of locality and the desire for local economic control of resources vital to the community are being made in the face of the imposition of certain types of space (distressed, urban, valueless, etc.) on local communities' sense of place.

Using political economy and geography to see beyond the formal artifice of nation-state sovereignty, Iglesias establishes important analytical links between work like Calmore's and Ford's, which focuses on understanding of race and space within the nation-state, as well as the important body of work that looks critically at globalization and its discontents. Like Calmore, Iglesias is an anti-constitutionalist. She sees institutions such as mortgage banks or even the IMF and the World Bank as curiously indeterminate institutions; that is, their agendas may be capable of being highjacked and used for multiple agendas. Additionally, Iglesias seeks to recover some elements of the formerly discredited idea of the postwar "Right to Development" for Third World nations. Rejecting both an essentialist or nationalist reading of race and nation, Iglesias partially inverts the right to development to ask what might this "right" mean to disempowered African-American or Latina/o communities within urban areas of the United States—yet another link between the spaces of the global and the places of the local.

135. See The Community Reinvestment Act of 1977, Pub. L. No. 95-125, Title VIII, 12 U.S.C. §§ 1901-1905, § 2901(b) (1988 & Supp. 1995) (requiring "each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions"); see also A. Brooke Overby, The Community Reinvestment Act Reconsidered, 143 U. Pa. L. Rev. 1431, 1435 (1995) (discussing need to develop more efficient Community Reinvestment Act enforcement mechanisms to motivate certain financial institutions to meet community credit needs).

136. See Iglesias, supra note 134, at 364 (discussing different positions Latinos/as occupy in society).

137. See id. at 365 (discussing enforcement of international human rights).

138. See id. at 374-77 (discussing World Bank and IMF).

139. See id. at 375-77 (discussing right to development).

140. See id. (same).
2. Audrey G. MacFarlane

While Professor Thomas approaches globalization from the perspective of an international lawyer analyzing repercussions within the United States, Audrey G. MacFarlane uses the lens of local government law to examine the problematic nature of globalization's effects on urban minority communities. Specifically, Professor MacFarlane critically interrogates the theory and practice of the Federal Empowerment Zones Program that targets federal financial aid to distressed areas and communities of color in inner cities. MacFarlane shows how "economic development is not a neutral policy that government can always advance without addressing significant structural issues that externally impact inner-city communities." To begin with, Professor MacFarlane stresses the striking similarities between international development discourse and domestic empowerment zone discourse—in the abstract, both ideas do not seem objectionable, depending on values like progress and improvement. Nevertheless, on closer examination, development appears to have a marked conservative spin:

[Development] only seeks that change which is in harmony with a set of existing rules and relationships, and assumes that new value and wealth can only be created within these boundaries . . . [and] prioritizes or addresses social problems only to the extent the problem can be transformed into one with an exchange value . . . [with] the potential for private profit.

141. See Audrey G. MacFarlane, Race, Space and Place: The Geography of Economic Development, 36 San Diego L. Rev. 295, 301 (1999) [hereinafter Race, Space and Place] (advancing dialectical perspective to conceptualize declining inner cities, MacFarlane perceives the local community as both a totality in itself and as part of a larger global totality). See generally Audrey G. MacFarlane, Empowerment Zones: Urban Revitalization Through Collaborative Enterprise, 5 Affordable Housing & Community Dev. 35 (1995) (discussing utility of empowerment zone initiatives in urban America).

142. See The Empowerment Zone and Enterprise Cities Demonstration Program, 26 U.S.C. §§ 1391-1397(d) (1994) (providing eligible and designated "empowerment" communities with various financial incentives, such as tax exemption and employment credits to facilitate community development); see also Peter K. Eisinger, The Rise of the Entrepreneurial State and Local Economic Policy in the United States 123 (1998) (criticizing federal economic development programs that channel assistance to distressed areas as "thinly spread and widely distributed").

143. MacFarlane, Race, Space and Place, supra note 141, at 299.

144. See id. at 300 (stating that development, as social ideal, envisions communities actively determining their condition and invoking images of improvement, progress and social justice).

145. Id. at 300.
MacFarlane makes four points about the similarity between postwar international development and empowerment zone discourses. First, MacFarlane points out that the areas targeted for empowerment zones are functionally equivalent to the Third World because they are dramatically out of alignment with the levels of wealth in surrounding urban and suburban regions with upper-middle class affluence, and thus are represented in policy discourse as a dysfunctional other. As described earlier, the development discourse posits such areas and communities as dysfunctional, backward and obsolescent—out of step with middle-class (and generally) white/Anglo norms. Second, both discourses are heavily dependent on experts possessing techniques who descend upon the distressed community to "save the day"—the specialized knowledge and expertise (financing, organization, legal services) wielded is generally inaccessible to the community itself. Third, economic development is backed up by a sanguine, "a rising tide lifts all boats," rhetoric that fails to consider external constraints. Finally, development is focused inward rather than aimed at the external structural constraints that drag such communities downward.

MacFarlane argues for expanding and complexifying the analysis of the empowerment zone beyond the relatively one-dimensional approach that views the solution to the "problem" of distressed inner-city communities as one of job creation. Such a solution insufficiently addresses the problem of racialized space:

146. See id. at 303-04 (describing how development in poor communities of United States is closely related in principle and application to discredited international development techniques).

147. See id. at 303 (comparing general perception of Third World and inner-city poverty).

148. See id. at 303 (regarding the images of U.S. inner cities as "culturally perverted and not in keeping with Western, middle-class norms"); see also Massey & Denton, supra note 82, at 172 (discussing how racial isolation and acutely concentrated poverty have contributed to exacerbate certain inner-city values and ideals that are progressively less connected to those prevailing elsewhere in middle-class and white United States). See generally Hubert Campens, Community Development Around the World: Practice, Theory, Research, Training (1997) (discussing how empowering and respecting the concerns of poor and marginalized are essential to effective community development).

149. See MacFarlane, Race, Space and Place, supra note 141, at 303-04 (proposing that both Third World and inner city are largely viewed as incapable of guiding their own development). For a discussion of various theories of economic development, see generally Robert A. Beauregard, Constituting Economic Development: A Theoretical Perspective, in Theories of Local Economic Development: Perspectives from Across the Disciplines 267 (Richard D. Bingman & Robert Mier eds., 1993).

150. See MacFarlane, Race, Space and Place, supra note 141, at 304 (arguing that structural and relational constraints such as economic marginalization and social isolation of low-income, inner-city communities are not considered).

151. See id. (implying that external structural forces contribute more to condition of marginalized communities than do internal development issues).
Black racialized space is regarded as extremely poor, overcrowded, dangerous, dilapidated, and threatening to property values unless contained . . . . The process of racializing space is distinct from the fact that a neighborhood or area might be inhabited by people of one race. Racializing space effectively demarcates particular areas not only based on racial identity but also imposes popular stereotypes, anxieties, and concerns on these places. The role of these places in the popular imagination justifies their subordination and oppression. The ghetto is a place that makes the places outside of it (whether affluent central-city neighborhoods, the suburbs or the exurbs) a desirable refuge and a safe haven . . . . Places that have been racialized black and classified poor suffer devaluation to such an extent that they are significantly marginalized . . . . This marginalization is perhaps the most dangerous form of oppression because it subjects an entire category of people to severe material deprivation, or possibly extermination, because it banishes them from productive participation in social life.\(^{152}\)

While MacFarlane is critical of the empowerment zone concept, she doesn’t completely reject the concept, but rather strongly suggests that empowerment zones need to be rethought.\(^{153}\) First, the problems experienced by communities of color living in urban racialized space are not all internal, but stem from external structural forces as well, occurring on global and national levels such as deindustrialization and globalization. MacFarlane also argues that economic development should not be regarded as a job development process, but needs to be understood as a capital development process—as with development in the Third World, elites may reap benefits, but little may trickle down to the members of the actual community.\(^{154}\) The question MacFarlane confronts is how do we transcend existing geographic boundaries? If we do not find a way to transform our legal and ideological understanding of such boundaries, an empowerment zone “implicitly affirms existing configurations of poverty segregated by race or ethnicity . . . [and] [t]hreatens to harden those boundaries beyond all hope of remedy because the program ignores current structural and historical policies that have shaped and configured our racialized landscape.”\(^{155}\) In some ways, MacFarlane is a constitutionalist, believing that self-correcting programs may be constructed if we can only imaginatively empower ourselves to find a broad enough frame of refer-

\(^{152}\) Id. at 339-41.

\(^{153}\) See id. at 314 (criticizing tax incentives provided under empowerment zone programs as “modest” and in need of improvement).

\(^{154}\) See id. at 344 (suggesting that employment development is not synonymous with economic development, the program’s ultimate goal).

\(^{155}\) Id. at 351.
ence.\textsuperscript{156} Rising to that challenge may be fraught with difficulty. Professor MacFarlane quotes Richard Peet: "[R]ather than being abandoned, as with most poststructural theory, development must be analyzed in terms of contradiction, indeed ransacked, to liberate its potentially emancipatory intentions, technologies, and practices."\textsuperscript{157}

D. Global Racism and the Black Body as Fetish Object: Anthony Paul Farley

Anthony Paul Farley returns us to a concern that drove much of the early work on space and geography—a concern with the actual human body in tangible space.\textsuperscript{158} Farley asks us to consider the lived experience of "colorlined space" as inhabited by a "Black body."\textsuperscript{159} Farley asks us to consider the spaces and the bodies that are produced by the type of space that John Calmore has referred to as marginalized or expendable.\textsuperscript{160}

By shifting the focus to the body within space—to the lived experience of place—Farley allows us to see how the Black body is fetishized; how it comes to be seen as the reification of subordination both by whites and by blacks themselves.\textsuperscript{161} Farley describes how the projects of creating colorlined space and the Black body are entirely dependent on the degree to which they could be seen to be natural or pre-political. Nevertheless, Farley also observes that these phenomena are anything but natural. Farley moves from the micro world of individual experience of the black body to the macro world of the media spectacle. He shows how hypersegregation and marginalization are used as "manufactories of criminality" and how the Black body is the raw material for the manufacture of the spectacle of black criminality.\textsuperscript{162} Media space thus intersects with geographic physical space, colliding on the terrain of race relations. Whites' sense of place is defined as the absence of black others, primarily encountered through the media's distorting lens. Blacks' sense of place thus diverges

\textsuperscript{156} See id. (discussing need for new post-civil rights era paradigms to conceive of alternate ways to address current structural and historical policies that racialize the geography of economic development).

\textsuperscript{157} Id. at 350 (quoting Richard Peet, \textit{Power of Development}, 73 \textit{ECON. GEOGRAPHY} 257 (1997)).

\textsuperscript{158} See Anthony Paul Farley, \textit{The Black Body as Fetish Object}, 76 \textit{Or. L. Rev.} 457, 459 (1997) (examining how degradation of the black body is capable of producing fetishized pleasure in \textit{both} white and black subjects).

\textsuperscript{159} See id. at 464 (stating that the "colorline," a complex problem in the twentieth century, constructs people as white or black).

\textsuperscript{160} See id. at 467 (arguing that marginalized racial minorities experience race as subordination and humiliation, which are forms of masochistic pleasure, while whites experience race as domination, a form of sadist pleasure).

\textsuperscript{161} See id. at 506 (comparing the "colorline" to forms of ritual abuse like sexual molestation, where victim's humiliation is experienced as pleasure by the victimizer).

\textsuperscript{162} See id. at 518-19 (commenting on black-on-black crime, ubiquitous in media representations and emblematic of the "race pleasure" derived from the spectacle of supposed black pathology and criminality).
drastically from that of whites as physical distance becomes magnified by media distance and so on in an infernal feedback loop.

Thus, Farley is linked to the work that Ford, Calmore, Thomas, Iglesias and MacFarlane are doing in that he is also bent on excavating the subtle but pernicious mechanisms whereby subordination is hard-wired into our legal system in seemingly innocuous and neutral ways. Of these four scholars, Farley examines the micro economies of racialized space in the most detail. In part, because he introduces the idea of eros into the analysis of race and space, Farley challenges us to forgo abstract spaces of nations and conceptual boundaries and look closely at the Fanonian lived experience of race as one walks down the street—how does it f-e-e-l? In many ways, this insight explains how the flexible capital regimes manage to insinuate their agendas globally, by making race and sex commodities through increasingly pervasive media representations, by turning a walk down the street, a day at the office, or a trip to the mall into an intensely fetishized, seductive and commodified series of spectacles. It is on the micro level that race is at its most salient, and it is in those places where race is lived that there exists possible sites of resistance to the "society of the spectacle."

Thus, each of these "space invaders" produces work that draws on critical geography but moves on in crucial ways: Ford, by thinking through the political process to attempt to mediate the tensions between integration and group solidarity; Calmore, by analyzing the move from exploitation of black communities to their marginalization; Thomas, by delineating the links between racial marginalization, postwar suburbanization, urban deterioration and globalization, and showing how international financial policy intimately effects the shape and design of the segregated spaces of our country; Iglesias, by examining what the international discourse of the right to development applied within the United States might mean; MacFarlane, by making inescapably clear the flaws and intimate connections between both domestic empowerment zone schemes and international development; and Farley, by tightly focusing in on the lived experience of "colorlined space" and the production of the "race-ed" spectacle of black criminality.

To return to the question posed at the beginning of this Essay: What might CRT have to tell us about the way we conceive of the Third World, or put conversely: What might the way we think of the Third World have to tell us about CRT? The answer is: quite a lot. By looking at the construction of both domestic spaces and international spaces, one is made aware of many parallels. First, the similarities between the domestic empowerment zone discourse and the international development discourse—both are premised on a backward, dysfunctional "other" in need of development/modernization/economic empowerment. Second, there are lessons to be learned from considering how racialized spaces are produced within the United States by some of the forces driving globalization,
and thus understandings of race in the United States, while historically contingent, have deep structural ties to the global experience arising out of colonialism and imperialism and their aftermath. Finally, realizing these convergences and divergences between the international and the domestic underlines that any transformative agenda that ignores or discounts the salience of the global will fall short, or conversely any set of international transformative agendas that fail to grapple with important localisms such as race in a sophisticated fashion will likewise fall short. A crucial link between the national and the international is an understanding of the political economy of space.

VI. Conclusion: Why There Is a “There” There

This essay has tried to explain why space and place should matter to legal scholars, particularly to “outsider” scholars and international law scholars, many of whom are themselves space invaders of legal academia at large. By contesting our received notions about the inertness and apparent neutrality of space, these space invaders create intellectual room to consider the links between: (1) how the micro-politics of the daily lived experience of place relate to (2) the macro phenomenon such as wars, trade deficits, investment decisions and transnational capital flows that produce spaces which are marked by their unevenness and masked by their seeming naturalness, even while they are driven by the manic logic of flexible capital accumulation; (3) dynamic constructions of race within U.S. borders and ways that an analysis of spatial outcomes within the United States may give empirical support to arguments that racism in this country is not aberrant, it is pervasive and rational, that it is not a problem in people’s heads, but may be seen by anyone who takes a look at the demographics of major American cities and suburbs; and that the solution to racism may involve some serious redistribution of power—political, economic and otherwise.

Ford, Calmore, Thomas, Iglesias, MacFarlane and Farley raise questions about how to move beyond liberal individualism, communitarianism or nostalgic images of romanticized organic community; how to rethink, critique (but not necessarily abandon) and transform received ideas about sovereignty, autonomy, democracy and community, and how to inhabit a world of multiplied, splintered, mutating, overlapping and conflicting spaces and places. As Italo Calvino points out, each “invisible city” holds its opposite within itself. Hopefully, some of the dystopian features of the currently racially and spatially segregated cities of this country hold within themselves potential for their opposites as well.

I should not tell you of Berenice, the unjust city, which crowns with triglyphs, abaci, metopes the gears of its meat-grinding machines . . . . Instead, I should tell you of the hidden Berenice, the city of the just, handling makeshift materials in the shadowy rooms behind the shops and behind the stairs, linking a network
of wires and pulleys and pistons and counterweights that infiltrates like a climbing plant among the great cogged wheels . . . .

In the seed of the city of the just, a malignant seed is hidden, in its turn: the certainty and pride of being in the right—and of being more just than many others who call themselves more just than just . . . . Another unjust city, though different from the first, is digging out its space within the double sheath of the unjust and just Berenices . . . . From my words you will have reached the conclusion that the real Berenice is a temporal succession of different cities, alternately just and unjust. But what I wanted to warn you about is something else: all the future Berenices are already present in this instant, wrapped one within the other, confined, crammed, inextricable.163

163. CALVINO, supra note 1, at 161-63.