

September 2004

## LatCrit Goes International

Kevin R. Johnson

Follow this and additional works at: <https://scholarship.law.ufl.edu/fjil>

---

### Recommended Citation

Johnson, Kevin R. (2004) "LatCrit Goes International," *Florida Journal of International Law*: Vol. 16: Iss. 3, Article 1.

Available at: <https://scholarship.law.ufl.edu/fjil/vol16/iss3/1>

This Article is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Journal of International Law by an authorized editor of UF Law Scholarship Repository. For more information, please contact [kaleita@law.ufl.edu](mailto:kaleita@law.ufl.edu).

## FOREWORD

### LATCRIT GOES INTERNATIONAL

*Kevin R. Johnson\**

This LatCrit Theory Colloquium on International and Comparative Law is comprised of papers presented at the Facultad de Derecho de la Universidad de Buenos Aires in Buenos Aires, Argentina in August 2003. Titled “The Role of Constitutional and Legal Systems in Maintaining or Reforming Political, Social, Economic and Legal Arrangements,” the Colloquium continues an international series of events that began in Miami, Florida in 1996,<sup>1</sup> and in 2004, was held in Capetown, South Africa.<sup>2</sup>

Designed to literally take LatCrit international, the Colloquium series encourages LatCrit theorists to engage with scholars from around the world in the global antisubordination project.<sup>3</sup> In this way, LatCrit Theory has moved not only across disciplines, a trademark of Critical Race Theory,<sup>4</sup> but also across borders to analyze the linkages between and among subordinations in an era of much-heralded globalization.

The Critical Global Classroom, a summer program for law students, is another part of the effort to move LatCrit Theory prominently into the international realm.<sup>5</sup> Through coordinated classes for socially conscious law students in different countries each year, LatCrit scholars and students are exposed to the conditions of racial and economic subordination outside the United States, which informs their scholarship generally by allowing

---

\* Associate Dean for Academic Affairs, School of Law, University of California at Davis, Mabie/Apallas Professor of Public Interest Law and Chicana/o Studies; A.B., University of California, Berkeley; J.D., Harvard University. Thanks to Pedro Malavet for inviting me to author this foreword, as well as commenting on a draft, and for colloquium contributors for their inspiration.

1. See Colloquium, *International Law, Human Rights, and LatCrit Theory*, 28 U. MIAMI INTER.-AM. L. REV. 177 (1996-97).

2. See Colloquium on International and Comparative Law, *available at* <http://personal.law.miami.edu/~fvaldes/latcrit/latcrit/index.html> (last visited Sept. 10, 2004).

3. See Francisco Valdés, *Foreword: Under Construction — LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087, 1093-94 (1998), 10 LA RAZA L.J. 1, 7-8 (1997).

4. See, e.g., CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdés et al. eds., 2002).

5. See Critical Global Classroom, *available at* <http://personal.law.miami.edu/~fvaldes/latcrit/events/cgc/> (last visited Sept. 10, 2004).

them to consider the intricacies of the interrelationships between racial and other subordinations on an international scale. The overall international presence also allows LatCrit scholars to build intellectual community with scholars from different nations who share common interests in social justice.

Each colloquium hopes to build on past scholarly efforts, including the LatCrit annual symposium issues.<sup>6</sup> At this point in LatCrit's history as the tenth annual conference approaches, a substantial body of antisubordination scholarship has been developed.<sup>7</sup> Extensive thought, discussion, and, at times, conflict go into the planning of all LatCrit projects, especially the annual conferences. The organizers are open to new ideas and solicit proposals for panels, workshops, and other programs, as was the case with the 2003 Colloquium in Buenos Aires.

The contributions to the 2003 Colloquium are eclectic, bringing together scholars from many different disciplines, nations, perspectives, and analytical approaches. One senses a great intellectual energy and enthusiasm in reading the studies of subordination around the world. The methodologies and focal points of the papers vary dramatically. One of the articles aptly analyzes the difficulties in this type of transnational intellectual endeavor considering the world's most pressing social, political, and economic issues. At their core, all of the contributions share a common anti-subordination, social justice agenda.

This introduction first will generally describe the Colloquium on International and Comparative Law articles and then will offer observations about the direction of the scholarship. I then comment on the direction of LatCrit generally.

## I. THE CONTRIBUTIONS

The 2003 Colloquium papers are difficult to unify by identifying any but the broadest common themes. This section describes them with a broad brush and, when possible, attempts to link them to other LatCrit projects and scholarship.

---

6. See, e.g., Pedro A. Malavet, *Latcritical Encounters with Culture*, in *Northsouth Frameworks*, 55 U. FLA. L. REV. 1 (2003); Dean Rex Perschbacher, *LatCrit IV Symposium, Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. DAVIS L. REV. 751 (2000); Frank Valdes, Symposium, *LatCrit Theory: Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997).

7. For a partial list of the publications, including numerous symposia issues, see LatCrit Theory List of Publications, available at <http://personal.law.miami.edu/~fvaldes/latcrit/publications.html> (last visited Sept. 10, 2004).

### A. Argentina and Beyond

The contributions analyze subordination the world over, from Argentina to Latin America to North America, South America, and India. Like the Colloquium, they begin in Argentina.

In a contribution most appropriate for a conference set in Buenos Aires, Carina J. Miller analyzes the impacts on Jews of the economic crisis that currently grips Argentina.<sup>8</sup> This is but another example of the construction of different races<sup>9</sup> as well as on the intersection of race and class.<sup>10</sup> Jewish racial identity long has been analyzed in the United States,<sup>11</sup> as apparently is the case in Argentina. Similarly, the increasing study of conceptions of race and racial categories in Latin America in recent years has shed much light on the fluidity of race in those countries.<sup>12</sup> The economic crisis in Argentina and its linkage to globalization warrants sustained analysis and critique. Miller's article reveals how the economic crisis has had disparate impacts on one segment of Argentine society.

Becky Jacobs analyzes judicial reform in Latin America, a pressing public policy issue that unquestionably affects adherence to the rule of law.<sup>13</sup> The article builds on the work of Professor Elizabeth Iglesias,<sup>14</sup> one of the influential Critical Race Theory and LatCrit scholars who has

8. See Carina J. Miller, *Protecting the Argentine Jewish Community and Jewish Identity in Times of Crisis: Local Efforts, Global Community, and Foreign Support*, 16 FLA. J. INT'L L. 677-96 (2004).

9. See, e.g., MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S* (2d ed. 1994); Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1 (1994).

10. See, e.g., Symposium, *Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U. L. REV. 467 (2001).

11. See KAREN BRODKIN, *HOW JEWS BECAME WHITE FOLKS AND WHAT THAT SAYS ABOUT RACE IN AMERICA* (1998). This transformation has occurred with other "white" groups in the United States. See NOEL IGNATIEV, *HOW THE IRISH BECAME WHITE* (1995).

12. See, e.g., Robert J. Cottrol, *The Long, Lingering Shadow: Law, Liberalism, and Cultures of Racial Hierarchy and Identity in the Americas*, 76 TUL. L. REV. 11 (2001); Tanya Kateri Hernandez, *Multiracial Matrix: The Role of Race Ideology in the Enforcement of Antidiscrimination Laws, A United States—Latin America Comparison*, 87 CORNELL L. REV. 1093 (2002); Tanya Kateri Hernandez, *An Exploration of the Efficacy of Class-Based Approaches to Racial Justice: The Cuban Context*, 33 U.C. DAVIS L. REV. 1135 (2000); Estelle T. Lau, *Can Money Whiten? Exploring Race Practice in Colonial Venezuela and Its Implications for Contemporary Race Discourse*, 3 MICH. J. RACE & L. 417 (1998).

13. See Becky Jacobs, *Policy and Praxis: A Role for LatCrit "Institutional-Class Analysis" in Latin American Judicial Reform*, 16 FLA. J. INT'L L. 601-14 (2004).

14. See Elizabeth M. Iglesias, *Global Markets, Racial Spaces and the Role of Critical Race Theory in the Struggle for Community Control of Investments: An Institutional Class Analysis*, 45 VILL. L. REV. 1037 (2000).

focused on international linkages between racial and economic subordination in other countries.<sup>15</sup> LatCrit theorists have carefully scrutinized the global linkages that result in domestic subordination. Jacobs' contribution, as well as others in the Colloquium, fit well into this body of scholarship.<sup>16</sup>

Hugo Rojas shows us how much is similar across borders in considering new forms of discrimination against workers in Chile.<sup>17</sup> Workers in the global marketplace continue to suffer exploitation and limited legal recourse, which arguably has been worsened by globalization of the world economy.<sup>18</sup> We would expect to see this throughout the world.

---

15. See Elizabeth M. Iglesias, *Foreword: LatCrit Theory: Some Preliminary Notes Towards a Transatlantic Dialogue*, 9 U. MIAMI INT'L & COMP. L. REV. 1 (2000/01); Elizabeth M. Iglesias, *Foreword: Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community*, 53 U. MIAMI L. REV. 575 (1999); Elizabeth M. Iglesias, *Human Rights in International Economic Law*, 28 U. MIAMI INTER-AM. L. REV. 361 (1996-97).

16. See Sylvia R. Lazos Vargas, *Globalization or Global Subordination?: How LatCrit Links the Local to Global and the Global to the Local*, 33 U.C. DAVIS L. REV. 1429 (2000); Chantal Thomas, *Globalization and the Reproduction of Hierarchy*, 33 U.C. DAVIS L. REV. 1451 (2000); Timothy A. Canova, *Global Finance and the International Monetary Fund's Neoliberal Agenda: The Threat to the Employment, Ethnic Identity, and Cultural Pluralism of Latina/o Communities*, 33 U.C. DAVIS L. REV. 1547 (2000); Enrique Carrasco, *Global Money, the Good Life, and Understanding the Local Impact of International Financial Institutions*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 43 (1999); Enrique R. Carrasco, *Intersections Between LatCrit Theory and Law and Development Studies*, 28 U. MIAMI INTER-AM. L. REV. 313 (1996-97); Gil Gott, *Critical Race Globalism?: Global Political Economy, and the Intersection of Race, Nation, and Class*, 33 U.C. DAVIS L. REV. 1503 (2000); Ibrahim J. Gassama, *Transnational Critical Race Scholarship: Transcending Ethnic and National Chauvinism in the Era of Globalization*, 5. U. MICH. J. RACE & L. 133 (1999); Ediberto Roman, *A Race Approach to International Law (RAIL): Is There a Need for Yet Another Critique of International Law?*, 33 U.C. DAVIS L. REV. 1519 (2000). See generally MORAL IMPERIALISM: A CRITICAL ANTHOLOGY (Berta Esperanza Hernández-Truyol ed., 2002) (offering international human rights framework to analyze current international and national crises).

17. See Hugo Rojas, *Labor Law and Genetic Discrimination in Chile*, 16 FLA. J. INT'L L. 561-78 (2004).

18. See, e.g., Christopher David Ruiz Cameron, *Borderline Decisions: Hoffman Plastic Compounds, the New Bracero Program, and the Supreme Court's Role in Making Federal Labor Policy*, 51 UCLA L. REV. 1 (2003); Robert I. Correales, *Did Hoffman Plastic Compounds, Inc., Produce Disposable Workers?*, 14 LA RAZA L.J. 103 (2003); Ruben J. Garcia, *Across the Borders: Immigrant Status and Identity in Law and LatCrit Theory*, 55 U. FLA. L. REV. 511 (2003); Ruben J. Garcia, *Ghost Workers in an Interconnected World: Going Beyond the Dichotomies of Domestic Immigration and Labor Laws*, 36 U. MICH. J.L. REFORM 737 (2003); Sylvia R. Lazos Vargas, *"Latia/o-ization" of the Midwest: Cambio de Colores (Change of Colors) as Agromaquilas Expand into the Heartland*, 13 BERKELEY LA RAZA L.J. 343 (2002); Maria L. Ontiveros, *Lessons from the Fields: Female Farmworkers and the Law*, 55 ME. L. REV. 157 (2003).

Charles R. Venator Santiago continues his important analysis of racial and class subordination in the Caribbean.<sup>19</sup> Having previously studied Puerto Rico and the Dominican Republic,<sup>20</sup> he analyzes Haiti, the poorest nation in the Western Hemisphere and one that has suffered much-publicized violence and political tumult for decades. Venator Santiago considers the Constitution of Haiti and how it mediated and affected the rights of blacks and whites during a time in the early 1800s when Haiti and the Dominican Republic were united.<sup>21</sup>

Dominique Legros moves the Colloquium to the north of the United States with analysis of international issues raised by Canada's dealings with the Tutchone Indians of the Central Yukon Territory in Canada.<sup>22</sup> Some LatCrit scholarship has focused on the treatment of indigenous peoples,<sup>23</sup> although much work remains to be done. This inquiry has proven difficult given the racial mixture and the mestizaje of many Latina/os.<sup>24</sup> U.S. law is notoriously ambivalent about its native peoples, vacillating between treating Indian tribes as sovereign nations and as the equivalent of state and local municipalities.<sup>25</sup> Other nations no doubt face similar issues.

Showing the global reaches of LatCrit Theory, but tying it to real world needs, Deon Erasmus considers a land reform bill under consideration in

---

19. See Charles R. Venator Santiago, *Race, Nation-Building and Legal Transculturation During the Haitian Unification Project (1822-1844): Towards a Haitian Perspective*, 16 FLA. J. INT'L L. 667-76 (2004).

20. See Charles R. Venator Santiago, *Race, Nation-Building and Legal Transculturation During the Haitian Unification Period (1822-1843): Towards a Dominican Perspective*, 51 CLEV. ST. L. REV. (forthcoming 2004); Charles R. Venator Santiago, *The Uses and Abuses of the Notion of Legal Transculturation: The Puerto Rican Example?*, 13 BERKELEY LA RAZA L.J. 441 (2002); Charles R. Venator Santiago, *Race, Space, and the Puerto Rican Citizenship*, 78 DENV. U.L. REV. 907 (2001).

21. See Santiago, *supra* note 19.

22. See Dominique Legros, *Indigenous Peoples' Self-Determination and the Broken Tin Kettle Music of Human Rights and Liberal Democracy*, 16 FLA. J. INT'L L. 579-600 (2004).

23. See, e.g., Guadalupe T. Luna, *Gold, Souls, and Wandering Clerics: California Missions, Native Californians, and LatCrit Theory*, 33 U.C. DAVIS. L. REV. 921 (2000); Ofelia Schutte, *Indigenous Issues and the Ethics of Dialogue in LatCrit Theory*, 54 RUTGERS L. REV. 1021 (2002); Siegfried Weissner, *¡Esa India! LatCrit Theory and the Place of Indigenous Peoples Within Latina/o Communities*, 53 U. MIAMI L. REV. 831 (1999).

24. See George A. Martínez, *Latinos, Assimilation, and the Law, A Philosophical Perspective*, 20 CHICANO-LATINO L. REV. 1, 16-21 (1999); Margaret E. Montoya, *Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis*, 2 HARV. LATINO L. REV. 349 (1997).

25. See, e.g., *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831) (referring to Indian tribe as a "domestic dependent nation"). See generally S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* (1996) (analyzing international law protecting indigenous peoples).

South Africa.<sup>26</sup> Disputes over land are central to the grievances of subordinated peoples in nations around the world.<sup>27</sup> The South African proposal would allow communities to secure title to land that they already use.<sup>28</sup> The political movement for the land reform law appears to be part of the continuing effort to bring positive political change to South Africa in the post-apartheid era.<sup>29</sup> We can expect more scholarship on this general topic from the 2004 LatCrit Colloquium on International and Comparative Law in Capetown.

Karin van Marle also considers the future of race relations in South Africa.<sup>30</sup> She analyzes the limits of law in securing lasting social change, a topic of sustained scholarly inquiry in the United States,<sup>31</sup> and focuses on one significant effort to redress inequality — the South African Employment Equity Act, which defines blacks, women, and the disabled as its protected groups. Contending that white women have been the primary beneficiaries of the law, van Marle argues that the law has done precious little to promote racial equality in post-apartheid South Africa.<sup>32</sup> This problem harkens back to the influential Critical Race Theory analysis of the different treatment and experiences of black and white women.<sup>33</sup>

---

26. See Deon Erasmus, “Will She Speak, Or Won’t She? That is the Question”: *Comments on the Communal Land Rights Bill*, 16 FLA. J. INT’L L. 539-46 (2004).

27. See Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 NW. U. L. REV. 505 (2001); Guadalupe T. Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a “Naked Knife,”* 4 MICH. J. RACE & L. 39 (1998).

28. See Erasmus, *supra* note 26.

29. See Charles R. Lawrence III, *Foreword: Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819 (1995); Lisa R. Pruitt, *No Black Names on the Letterhead? Efficient Discrimination and the South African Legal Profession*, 23 MICH. J. INT’L L. 545 (2002); Adrien Katherine Wing, *Polygamy from Southern Africa to Black Britannia to Black America: Global Critical Race Feminism as Legal Reform for the Twenty-First Century*, 11 J. CONTEMP. LEGAL ISSUES 811 (2001).

30. See Karin van Marle, “Meeting the World Halfway?” — *The Limits of Legal Transformation*, 16 FLA. J. INT’L L. 651-66 (2004).

31. See, e.g., RICHARD DELGADO & JEAN STEFANCIC, *FAILED REVOLUTIONS: SOCIAL REFORM AND THE LIMITS OF LEGAL IMAGINATION* (1994); GERALD N. ROSENBERG, *RACE AGAINST THE COURT: THE SUPREME COURT AND MINORITIES IN CONTEMPORARY AMERICA* (1993); GIRARDEAU A. SPANN, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1991); Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA RAZA L.J. 42, 45-56 (1995); George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. DAVIS L. REV. 555 (1994).

32. See van Marle, *supra* note 30.

33. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990). See generally CRITICAL RACE

Van Marle sees the experience with the South African Employment Equity Act as an example of “legal fundamentalism” no different from the legal formalism criticized by, among many others, Duncan Kennedy.<sup>34</sup> In an interesting discussion, van Marle contends that aesthetic portrayals would make the impacts of the enforcement of the Employment Equity Act clearer for the world to see.<sup>35</sup>

Fred Evans looks at Salman Rushdie’s depiction of “hybrid voices” in India from a philosophical perspective.<sup>36</sup> India and Indians have been analyzed from a number of different critical perspectives.<sup>37</sup> This taps into the LatCrit commitment to antiessentialism and the recognition of heterogeneous communities of races.<sup>38</sup> As with other racial phenomena, this is a global, not just a local, pattern.

### B. Bridging the Gap

Two contributions bridge the gap between domestic and the global. These contributions address strategies to promote social change, which are relevant both domestically and globally.

A leading Critical Race Theory scholar,<sup>39</sup> John Calmore’s contribution to the Colloquium analyzes the complexities of a lawyer advocating for social change and integrating the voices of the disenfranchised into reform

---

FEMINISM: A READER (Adrien Katherine Wing ed., 2d ed. 2003) (collecting readings on gender and Critical Race Theory).

34. See DUNCAN KENNEDY, *SEXY DRESSING ETC.: ESSAYS ON THE POWER AND POLITICS OF CULTURAL IDENTITY* (1993). See generally *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* (David Kairys ed., 3d ed. 1998) (providing readings on Critical Legal Studies).

35. See van Marle, *supra* note 30.

36. See Fred Evans, *Multi-Voiced Society: Philosophical Nuances on Rushdie’s Midnight’s Children*, 16 FLA. J. INT’L L. 727-42 (2004).

37. See, e.g., Anupam Chander, *Diaspora Bonds*, 76 N.Y.U. L. REV. 1005 (2001); Ratna Kapur, *Post-Colonial Economies of Desire: Legal Representations of the Sexual Subaltern*, 78 DENV. U. L. REV. 855 (2001); Ratna Kapur & Tayyab Mahmud, *Foreword: Re-Orienting Law and Sexuality*, 48 CLEV. ST. L. REV. 1 (2000); Madhavi Sunder, *Intellectual Property and Identity Politics: Playing With Fire*, 4 J. GENDER RACE & JUST. 69 (2001); Tayyab Mahmud, *Genealogy of a State-Engineered “Model Minority”: “Not Quite/Not White” South Asian Americans*, 78 DENV. U. L. REV. 657 (2001); Tayyab Mahmud, *Race, Reason, and Representation*, 33 U.C. DAVIS L. REV. 1581 (2000).

38. See Elizabeth M. Iglesias & Francisco Valdés, *Expanding Directions, Exploding Parameters: Culture and Nation in LatCrit Coalitional Imagination*, 33 U. MICH. J.L. REFORM 203, 227-32 (2003).

39. See, e.g., John O. Calmore, *Race/ism Lost and Found: The Fair Housing Act at Thirty*, 52 U. MIAMI L. REV. 1067 (1998); John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129 (1992).



strategies.<sup>40</sup> This is important not just domestically but internationally as well. The growth of international human rights class actions in recent years reflects efforts to use domestic tools to bring about international reform.<sup>41</sup> Human rights activists have used the U.S. courts in attempts to seek redress for serious human rights abuses in other countries.<sup>42</sup> The litigation in which Holocaust victims sought damages from banks, insurance companies, and others in connection with the atrocities committed by Nazi Germany, is perhaps the most well-known litigation of this type.<sup>43</sup>

Domestically, African Americans have engaged in litigation seeking reparations for the atrocity of chattel slavery in the United States.<sup>44</sup> Litigation success is not the only goal of the litigation. As Professor Charles Ogletree has emphasized,

---

40. See John O. Calmore, *Social Justice Advocacy in the Third Dimension: Addressing the Problem of "Preservation-Through-Transformation,"* 16 FLA. J. INT'L L. 615-38 (2004).

41. See Kevin R. Johnson, *International Human Rights Class Actions: New Frontiers for Group Litigation*, 2004 MSU-DCL L. REV. (forthcoming 2004).

42. See, e.g., *Hwang Geum Joo v. Japan*, 332 F.3d 679 (D.C. Cir. 2003) (addressing challenge of sexual enslavement of "comfort women" by the Japanese military during World War II), *vacated and remanded*, 124 S. Ct. 2835 (2004); *Doe v. Unocal Corp.*, 248 F.3d 915 (9th Cir. 2001) (deciding claims of use of slave labor by U.S. company in Burma); *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000) (addressing dismissal of Alien Torts Claim Act case involving claim that corporations participated in human rights abuses in Nigeria), *cert. denied*, 532 U.S. 941 (2001); *Hilao v. Estate of Marcos*, 103 F.3d 767 (9th Cir. 1996) (seeking recovery of damages for human rights abuses of Ferdinand Marcos when he ruled the Philippines); *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995) (challenging under international law the genocide by Bosnian Serbs in the former Yugoslavia), *cert. denied*, 518 U.S. 1005 (1996); *Abebe-Jira v. Negewo*, 72 F.3d 844 (11th Cir. 1996) (reviewing Alien Torts Claim Act judgment resting on human rights abuses in Nigeria), *cert. denied*, 519 U.S. 830 (1996); *Sarei v. Rio Tinto P/C*, 221 F. Supp. 2d 1116 (C.D. Cal. 2002) (addressing class action claims against companies that allegedly incited civil war and crimes against humanity in Papua New Guinea); *Bao Ge v. Li Peng*, 201 F. Supp. 2d 14 (D.D.C. 2000) (reviewing class action claims involving forced labor camps in China), *aff'd*, 35 Fed. Appx. 1 (D.C. Cir. 2002).

43. See, e.g., *In re Holocaust Victims Assets Litig.*, 282 F.3d 103 (2d Cir. 2000); *In re Holocaust Victims Assets Litig.*, 225 F.3d 191 (2d Cir. 2000); *Goldstein v. United States*, 2003 U.S. Dist. LEXIS 19266 (D.D.C. 2003); *Rosner v. United States*, 231 F. Supp. 2d 1202 (S.D. Fla. 2002); *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424 (D.N.J. 1999); *Burger-Fischer v. Degussa AG*, 65 F. Supp. 2d 248 (D.N.J. 1999). See generally JOHN AUTHERS & RICHARD WOLFFE, *THE VICTIM'S FORTUNE: INSIDE THE EPIC BATTLE OVER THE DEBTS OF THE HOLOCAUST* (2002) (offering an "insider's" view of Holocaust litigation); MICHAEL J. BAZYLER, *HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA'S COURTS* (2003) (analyzing legally Holocaust litigation); STUART EIZENSTAT & ELIE WIESEL, *IMPERFECT JUSTICE: LOOTED ASSETS, SLAVE LABOR, AND THE UNFINISHED BUSINESS OF WORLD WAR II* (2003) (discussing diplomatic initiatives taken by United States on behalf of Holocaust victims).

44. See Adjoa A. Aiyetoro, *Formulating Reparations Litigation Through the Eyes of the Movement*, 58 N.Y.U. ANN. SURV. AM. L. 457 (2003); Charles J. Ogletree, Jr., *Repairing the Past: New Efforts in the Reparations Debate in America*, 38 HARV. C.R.-C.L. L. REV. 279 (2003).

[t]he reparations movement demands that all of American history be fully acknowledged, accounted for, and valued. Thus the movement must make one of its vital political and educational tasks the goal of combating the willed ignorance and ahistoricism exhibited by those who would deny the immediate and subsequent effects of slavery and Jim Crow.<sup>45</sup>

International human rights actions pursue similar goals.<sup>46</sup>

Progressive lawyering has been a much analyzed issue in recent years.<sup>47</sup> Calmore, the editor of a casebook on the subject,<sup>48</sup> considers social justice law practice and discusses his methods in a Social Justice Lawyering class that he teaches; student exercises in the course include the drafting of a complaint that offers voice to the client.<sup>49</sup>

With its global ambitions, LatCrit Theory is a natural place for taking the analysis of lawyering for social change international.<sup>50</sup> The International and Comparative Law Colloquium series would seem to be a natural place for law professors promoting social change to consider how lawyers might bring about that change. This is vitally important to LatCrit theorists, a group of scholars seriously committed to social change.

45. Ogletree, *supra* note 44, at 318 (footnote omitted); see Charles J. Ogletree, Jr., *The Current Reparations Debate*, 36 U.C. DAVIS L. REV. 1051 (2003); see, e.g., *Cato v. United States*, 70 F.3d 1103 (9th Cir. 1995); see also William Bradford, "With a Very Great Blame on Our Hearts": *Reparations, Reconciliation, and an American Indian Plea for Peace with Justice*, 27 AM. INDIAN L. REV. 1 (2002/03) (analyzing legal issues implicated by the struggle of Native Americans for reparations).

46. See Johnson, *supra* note 41.

47. See GERALD P. LÓPEZ, *REBELLIOUS LAWYERING* (1992); Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991); Bill Ong Hing, *In the Interest of Racial Harmony: Revisiting the Lawyer's Duty to Work for the Common Good*, 47 STAN. L. REV. 901 (1995); Kevin R. Johnson, *Lawyering for Social Change: What's a Lawyer to Do?*, 5 MICH. J. RACE & L. 201 (1999); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699; Eric K. Yamamoto, *Critical Race Practice: Race Theory and Political Lawyering Praxis in Post-Civil Rights America*, 95 MICH. L. REV. 821 (1997).

48. See MARTHA R. MAHONEY & JOHN O. CALMORE, *SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES AND LAW: CASES AND MATERIALS* (2003).

49. See Calmore, *supra* note 40. In this way, Calmore suggests a deeper issue of integrating race and social justice into the basic law curriculum. See Kevin R. Johnson, *Integrating Racial Justice into the Civil Procedure Survey Course*, 54 J. LEGAL EDUC. 242 (2004).

50. There is some, but relatively little, literature on this topic. See, e.g., William J. Aceves, *Actio Polularis? The Class Action in International Law*, 2003 U. CHI. LEGAL F. 353; Catherine A. MacKinnon, *Collective Harms Under the Alien Tort Statute: A Cautionary Note on Class Actions*, 6 ILSAJ. INT'L & COMP. L. 567 (2000); Catherine A. Rogers, *Proposals to Expel Palestinians from the Occupied Territories as Catalyst for a Civil Adjudication Campaign*, 7 IOWA J. GENDER, RACE & JUST. 167, 186 (2003); Beth Van Schaack, *Unfulfilled Promise: The Human Rights Class Action*, 2003 U. CHI. LEGAL F. 279.

Focusing on social change, Frances Olsen considers the successful, and much publicized, strategy to remove U.S. military testing from the island of Vieques in Puerto Rico.<sup>51</sup> This, in fact, is a domestic U.S. matter given that since 1898 Puerto Rico has been a U.S. territory.<sup>52</sup> An influential feminist scholar,<sup>53</sup> Olsen moves beyond that realm to consider social change movements generally, but begins with the military testing issue in Puerto Rico. She attributes the success to the solidarity of the Puerto Ricans directly affected as well as the Puerto Ricans on the mainland of the United States.<sup>54</sup> This shows the importance of collective political action, moving beyond the differences that separate us, and the need for continuing the study of coalitions in pursuit of social change.<sup>55</sup>

---

51. See Frances Olsen, *Civil Disobedience on Vieques: How Nonviolence Defeated the U.S. Military*, 16 FLA. J. INT'L L. 547-60 (2004). For other LatCrit perspectives on Vieques, see PEDRO A. MALAVET, *AMERICA'S COLONY: THE POLITICAL AND CULTURAL CONFLICT BETWEEN THE UNITED STATES AND PUERTO RICO* 147-61 (2004); Manuel Rodríguez Orellana, *Vieques: The Past, Present, and Future of the Puerto Rico-U.S. Colonial Relationship*, 13 BERKELEY LA RAZA L.J. 425 (2002).

52. See, e.g., José A. Cabranes, *Citizenship and the American Empire*, 127 U. PA. L. REV. 391 (1978); Sylvia R. Lazos Vargas, *History, Legal Scholarship, and LatCrit Theory: The Case of Racial Transformations Circa the Spanish American War, 1896-1900*, 78 DENV. U. L. REV. 921 (2001); Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 MICH. J. RACE & L. 1 (2000); Pedro A. Malavet, *The Past, Present and Future of the Puerto Rico-U.S. Colonial Relationship: Vieques, Transculturation, and Reparations: Reparations Theory and Postcolonial Puerto Rico: Some Preliminary Thoughts*, 13 LA RAZA L.J. 387 (2002); Ediberto Román, *Reparations and the Colonial Dilemma: The Insurmountable Hurdles and Yet Transformative Benefits*, 13 BERKELEY LA RAZA L.J. 425 (2002); Ediberto Roman & Theron Simmons, *Membership Denied: Subordination and Subjugation Under United States Expansionism*, 39 SAN DIEGO L. REV. 437 (2002).

53. See FRANCES OLSEN, *FEMINIST LEGAL THEORY I: FOUNDATIONS AND OUTLOOKS* (1995); FRANCES OLSEN, *FEMINIST LEGAL THEORY II: POSITIONING FEMINIST THEORY WITHIN THE LAW* (1995); Frances Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497 (1983).

54. See Olsen, *supra* note 51.

55. See, e.g., LANI GUINIER & GERALD TORRES, *THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* (2002); ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST CIVIL RIGHTS AMERICA* (1999); Charles R. Lawrence III, *Foreword: Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819 (1995); Mary Romero, *Afterword: Historicizing and Symbolizing a Racial Ethnic Identity: Lessons for Coalition Building with a Social Justice Agenda*, 33 U.C. DAVIS L. REV. 1599 (2000); Julie A. Su & Eric Yamamoto, *Critical Coalitions: Theory and Praxis*, in *CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY*, *supra* note 4, at 379; Robert A. Williams, Jr., *Linking Arms Together: Multicultural Constitutionalism in a North American Indigenous Vision of Law and Peace*, 82 CAL. L. REV. 981 (1994); see also George A. Martinez, *African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*, 19 UCLA CHICANO-LATINO L. REV. 213 (1998) (contending that intellectual coalition is necessary to fully appreciate racial subordination of all minority groups). *But see* Richard Delgado, *Linking Arms: Recent Books on Interracial Coalition as an Avenue of Social Reform*, 88 CORNELL L. REV. 855, 856 (2003) (criticizing the "preoccupation with interracial coalition"); Haunani-Kay Trask,

Both Calmore and Olsen offer important food for thought for social change. Their analyses have both domestic and international implications and, consequently, deserve careful study.

### C. *New Methodologies*

One of the exciting aspects of LatCrit Theory is the steady stream of new perspectives and methodologies brought to bear on old problems. These new ways of looking at the world are offered in concise articles. At times, the shortness of the pieces leaves much to be said. At least one influential critic has criticized “discourse about discourse,” and suggested that critical theorists need to focus critical scrutiny on concrete real world problems, especially those that focus on socioeconomic class.<sup>56</sup>

José María Monzón analyzes the impacts on images and the law.<sup>57</sup> This form of argument was analyzed specifically in the conception of the “alien” in the U.S. immigration laws in the first LatCrit International and Comparative Law symposium<sup>58</sup> and long has been an important element of Critical Race Theory.<sup>59</sup>

Emiliano J. Buis considers law and drama,<sup>60</sup> a variation of the burgeoning law and literature movement in the United States.<sup>61</sup> Analysis of culture generally has been considered in LatCrit scholarship as well

---

*Coalition-Building Between Natives and Non-Natives*, 43 STAN. L. REV. 1197 (1991) (contending that great care is required in forming political coalitions across racial lines).

56. See Richard Delgado, *Crossroads and Blind Alleys: A Critical Examination of Recent Writing About Race*, 82 TEX. L. REV. 121, 122-25 (2003) [hereinafter Delgado, *Crossroads*] (book review essay); Richard Delgado, *Two Ways to Think About Race: Reflections on the Id, the Ego, and Other Reformist Theories of Equal Protection*, 89 GEO. L.J. 2279 (2001).

57. See José María Monzón, *Let There Be Justice: The Double Standard of Application of Legal Norms*, 16 FLA. J. INT'L L. 639-50 (2004).

58. See Kevin R. Johnson, “*Aliens*” and the U.S. Immigration Laws: *The Social and Legal Construction of Nonpersons*, 28 U. MIAMI INTER-AM. L. REV. 263 (1996-97).

59. See Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258 (1992).

60. See Emiliano J. Buis, *How to Play Justice and Drama in Antiquity: Law and Theater in Athens as Performative Rituals*, 16 FLA. J. INT'L L. 697-726 (2004).

61. See GUYORA BINDER & ROBERT WESIBERG, *LITERARY CRITICISM OF LAW* (2000); JAMES BOYD WHITE, *HERCULES’ BOW* (1985); Sheila Foster, *Foreword: Law and Literature: Examining the Limited Legal Imagination in the Traditional Legal Canon*, 30 RUTGERS L.J. 569 (1999); Cynthia G. Hawkins-Leon, “*Literature as Law*”: *The History of the Insanity Plea and a Fictional Application Within the Law and Literature Canon*, 72 TEMP. L. REV. 381 (1999).

as Critical Race Theory literature.<sup>62</sup> Indeed, films have been the subject of critical inquiry.<sup>63</sup>

## II. LESSONS FROM THE COLLOQUIUM AND THE FUTURE OF LATCRIT THEORY

One of the strengths of LatCrit Theory has been its sustained creative energy and continuing devotion to scholarship. The contributions to this Colloquium demonstrate the vibrancy of intellectual discourse within the global LatCrit community, as well as its expanding frontiers. LatCrit has kept it interesting and exciting, exuding enthusiasm, collegiality, and ambition.

At the same time, however, after reading the contributions to the Colloquium, some cautionary observations are in order, especially because similar issues arise consistently in LatCrit symposia over the years. This body of scholarship has not received much attention outside of LatCrit circles, perhaps because many believe that the attacks on Critical Race Theory<sup>64</sup> apply with equal force to this scholarly offshoot. The variation in quality of LatCrit contributions also may explain why it has remained outside of the dominant gaze.

We must constructively criticize LatCrit scholarship if we want to truly consider ourselves to be in a scholarly, intellectually rigorous movement. It is a sensitive topic, however. LatCrit has, for the most part, been ignored

---

62. See Steven W. Bender, *Will The Wolf Survive?: Latina/o Pop Music in the Cultural Mainstream*, 78 DENV. U. L. REV. 719 (2001); Kevin R. Johnson, *Comparative Racialization: Culture and National Origin in the Latina/o Communities*, 78 DENV. U. L. REV. 633 (2001); Pedro A. Malavet, *The Accidental Crit II: Culture and the Looking Glass of Exile*, 78 DENV. U. L. REV. 753 (2001); Madhavi Sunder, *Cultural Dissent*, 54 STAN. L. REV. 495 (2001); Madhavi Sunder, *Piercing the Veil*, 112 YALE L.J. 1399 (2003).

63. See Lolita K. Buckner Inness, *Bicentennial Man — The New Millennium Assimilationism and the Foreigner Among Us*, 54 RUTGERS L. REV. 1101 (2002); Margaret E. Montoya, *Lines of Demarcation in a Town Called Frontera: A Review of John Sayles' Movie Lone Star*, 27 N.M. L. REV. 223 (1997); Juan Velasco, *Making Evil: Crime Thrillers and Chicano Cinema*, 78 DENV. U. L. REV. 1049 (2001). See generally STEVEN W. BENDER, *GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION* (2003) (analyzing the legal impact of stereotypical depictions of Latina/os in popular culture); LATINO/A POPULAR CULTURE (Michelle Habel-Pallán & Mary Romero eds., 2002) (studying stereotypical depictions of Latina/os in popular culture); PAUL BERGMAN & MICHAEL ASIMOW, *THE COURTROOM GOES TO THE MOVIES* (1996) (studying the portrayal of law and legal processes in film); LEGAL REELISM: MOVIES AS LEGAL TEXTS (John Denvir ed., 1996) (same).

64. For a sampling of criticism, see DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997); Richard A. Posner, *The Skin Trade*, NEW REP., Oct. 13, 1997, at 40; Jeffrey Rosen, *The Bloods and the Crits*, NEW REP., Dec. 9, 1996, at 27.

in mainstream scholarship and internal criticism must be careful in order to avoid giving fuel to the argument that LatCrit is intellectually bankrupt.<sup>65</sup>

The following thoughts are inchoate suggestions about the direction of LatCrit scholarship, with a specific emphasis on the symposia and colloquia.

#### A. *The Need to Build on LatCrit Scholarship*

Care must be taken to ensure that the full body of LatCrit Scholarship is considered and incorporated into later iterations of LatCrit Scholarship. This has been said on more than one occasion.<sup>66</sup> Many of the pieces in this Colloquium seem to be stand alone studies of particular questions without a serious effort to place the analysis into the larger context of LatCrit scholarship.

Building a body of intellectual discourse requires actual engagement with existing literature. New scholarship must analyze, critique, and credit extant literature. Otherwise, it is not, in fact, intellectual interchange or a true scholarly movement. One might think that certain scholarship warrants no comment because it is weak. It does no one any favors, however, to ignore scholarship and simply not acknowledge its existence. Indeed, this is one attempted rationalization for the approach of the “imperial scholar” identified by Richard Delgado.<sup>67</sup> Ignoring scholarship in its entirety marginalizes it and suggests that it is unworthy of recognition.

Although page limits exist to ensure inclusion of all submissions, there may be a need for more pages and fewer submissions to be published in the symposia and colloquia issues. More detailed scholarship in LatCrit Theory is essential, perhaps placed in mainstream law reviews that are not symposia issues so as to maximize exposure to the legal academy. The

---

65. See Kevin R. Johnson, *Roll Over Beethoven: “A Critical Examination of Recent Writing about Race,”* 82 TEX. L. REV. 717, 729-33 (2004) (analyzing Richard Delgado’s criticism of LatCrit Theory).

66. See Elizabeth M. Iglesias, *Foreword: Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community*, 53 U. MIAMI L. REV. 575, 672-82 (1999); Pedro Malavet, *Outsider Citizenships and Multidimensional Borders: The Power and Danger of Not Belonging*, 51 CLEV. ST. L. REV. (forthcoming 2004); Kevin R. Johnson, *Foreword: Celebrating LatCrit Theory: What Do We Do When the Music Stops?*, 33 U.C. DAVIS L. REV. 753, 784 (2000); Margaret E. Montoya, *Foreword: Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U. L. REV. 467, 470 (2001); Ediberto Román, *Afterword: LatCrit VI, Outsider Jurisprudence and Looking Beyond Imagined Borders*, 55 U. FLA. L. REV. 583, 600 (2003).

67. See Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984).

market of legal scholarship then could evaluate the quality of the scholarship.

In this vein, we must avoid the lure of a quick publication solely because of the publication opportunity presented by LatCrit symposia and colloquia. Quality scholarship is central to the LatCrit endeavor. It may be sacrificed if the focus is on meeting deadlines and publication for publication's sake. Excessive attention paid to meeting a deadline may take attention away from the development of scholarship of the highest quality. Smaller symposia contributions limit time available for more in-depth LatCrit inquiries.

International colloquia like this one pose special challenges in LatCrit scholarship. Joshua Price and María Lugones analyze the difficulties in having an interdisciplinary dialog across national boundaries.<sup>68</sup> Establishing a field of discourse such as LatCrit is fraught with difficulties when intellectuals come from so many different backgrounds, methodologies, and perspectives. Language alone can serve as a formidable barrier limiting communication between scholars.<sup>69</sup> As Price and Lugones demonstrate, cultural, national origin, and racial differences can also limit communication.<sup>70</sup> In addition, access to the LatCrit literature is more difficult for scholars outside the United States. One important effort in the international dissemination of LatCrit has been to ensure that past symposia are posted on the Internet, and thus are easily accessible to scholars all over the world.

To address these issues, structural and institutional responses may be in order. Indeed, some are in the works. Efforts should be made to plan panels and programs, consistent with the openness of the proceedings, to ensure that the scholarship produced by the symposia and colloquia in fact builds on past LatCrit scholarship. To ensure that the scholarship is rigorous, LatCrit theory may need selection procedures and the rejection of some contributions. This is not an easy endeavor and, in certain respects, is contrary to the egalitarianism of LatCrit as an intellectual endeavor.

The publication of LatCrit scholarship in mainstream journals outside of LatCrit symposia is also a possibility. To this point, this has been a rare occurrence. It may have, to a certain extent, isolated LatCrit within domestic U.S. legal scholarship.

A different, but possibly constructive, direction is signaled by the new LatCrit journal, tentatively known as *Clave*.<sup>71</sup> Movement from a student

---

68. See Joshua Price & María Lugones, *Encuentros and Desencuentros: Reflections on a LatCrit Colloquium in Latin America*, 16 FLA. J. INT'L L. 743-52 (2004).

69. See *id.*

70. See *id.*

71. See Spring 2004 Co-Chair Report, LatCrit, Inc., at 10 (Mar. 30, 2004).

reviewed to a peer reviewed editorial system offers much promise at ensuring quality as well as timely publication. Despite the benefits, the new journal probably will not mainstream LatCrit theory.

### B. *The Relevance of Latina/os to LatCrit Theory*

Latina/os are relevant to LatCrit Theory, and were the focal point of much early LatCrit scholarship.<sup>72</sup> Today, they at times seem to get lost in the shuffle. It is striking that a LatCrit scholar might pose the question, “where is the ‘Lat’ in LatCrit?” This can be alienating to some scholars who flocked to LatCrit Theory in hopes of analyzing the Latina/o condition in the domestic and international spheres.<sup>73</sup>

The need to refocus LatCrit on Latina/os makes the tentative plans to build links between LatCrit theorists and Chicana/o Studies scholars, which have been under consideration by the LatCrit Inc. Board of Directors for several years, all the more important. Chicana/o Studies scholars look at similar issues and consider common questions. They also have experienced divides between cultural studies and social scientists that resemble that which is ongoing in Critical Race Theory.

### C. *Missed Opportunities: The Need to Address Pressing Social Issues*

To be blunt, LatCrit Theory cannot avoid the pressing social problems plaguing the world. Richard Delgado has made this point emphatically,<sup>74</sup> and it is worth emphasizing that issues of economics should be of increasing concern to Critical Race and LatCrit theorists.<sup>75</sup>

Although the commitment to egalitarianism is important, it might be worthwhile for conference organizers to work on ensuring that conference

72. See, e.g., Rachel F. Moran, *Neither Black Nor White*, 2 HARV. LATINO L. REV. 61 (1997); Berta Esperanza Hernández-Truyol, *Borders (En)gendered: Normativities, Latinas, and a LatCrit Paradigm*, 72 N.Y.U. L. REV. 882 (1997); Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997); George A. Martínez, *Legal Indeterminacy, Judicial Discretion, and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. DAVIS L. REV. 555 (1994); Margaret E. Montoya, *Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185; 15 CHICANO-LATINO L. REV. 1 (1994); Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. REV. 965 (1995).

73. See THE LATINO/A CONDITION: A CRITICAL READER (Richard Delgado & Jean Stefancic eds., 1998).

74. See *supra* note 56 (citing authorities).

75. See, e.g., Margaret E. Montoya, *Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U. L. REV. 467 (2001); Charles R.P. Pouncy, *Institutional Economics and Critical Race/LatCrit Theory: The Need for a Critical “Raced” Economics*, 54 RUTGERS L. REV. 841 (2002); Alice G. Abreu, *Tax Counts: Bringing Money-Law to LatCrit*, 78 DENV. U. L. REV. 575 (2001).



participants also plan to submit publishable papers addressing critical social justice issues. The LatCrit symposia frequently have failed to include contributions on timely, and important, issues. It is difficult to predict the pressing issues of tomorrow. But even when a presentation is made on a timely issue, a paper may not be submitted by the panelist for publication. LatCrit symposia often include papers not presented at the live event as well as papers that were. Some of the concerns with coverage and quality have become voiced regularly, in informal conversations if not so much in print. Efforts must be made to ensure high quality scholarship in all LatCrit symposia and that the articles cover important new questions of law, policy, and theory.

One surprising aspect of the series of papers in this Colloquium on International and Comparative Law is the pressing issues *not* addressed or raised in them. Two issues that immediately come to mind are the impacts of globalization on Latin America, as well as the effects of the “war on terror” on the region. In certain respects, their omission is a lost opportunity.

### 1. Impacts of Globalization on Latin America

Much attention has been paid to the impacts of globalization and the specific impacts of trade expansion, including the World Trade Organization, the European Union, the North American Free Trade Agreement, on developing nations and the poor in the developed world. This is an ongoing process with global trade blocs in formation in Latin America,<sup>76</sup> which makes the failure to discuss them in more detail in this International and Comparative Law Colloquium all the more striking. There has been a great deal of concern with the impacts of the North American Free Trade Agreement, for example, on poverty in Mexico.<sup>77</sup> Those developments have, in the estimation of some informed observers, injured workers in the developing world and restructured economies to benefit the economically privileged.<sup>78</sup> In contrast, other commentators

---

76. See Mark B. Baker, *Integration of the Americas: A Latin Renaissance or a Prescription for Disaster?*, 11 TEMP. INT'L & COMP. L.J. 309 (1997); Christopher M. Bruner, *Hemispheric Integration and the Politics of Regionalism: The Free Trade Area of the Americas (FTAA)*, 33 U. MIAMI INTER-AM. L. REV. 1 (2002); Frank J. Garcia, *Trade and Inequality: Economic Justice and the Developing World*, 21 MICH. J. INT'L L. 975 (2000); Rafael A. Porrata-Doria Jr., *The Common Market of the Twenty-First Century?*, 32 GA. J. INT'L & COMP. L. 1 (2004).

77. See SARAH ANDERSON & JOHN CAVANAGH, *GLOBALIZATION AND POVERTY* (1999); Michael E. Conroy & Sarah Elizabeth West, *The Impact of NAFTA and the WTO on Chiapas and Southern Mexico*, in *POVERTY AND DEVELOPMENT* 43 (Richard Tradanico & Mark B. Rosenberg eds., 2000); Paul Rich, *NAFTA and Chiapas*, 550 ANNALS 42 (1997).

78. See, e.g., Fran Ansley, *Inclusive Boundaries and Other Impossible Paths Toward Community Development in a Global World*, 150 U. PA. L. REV. 353 (2001); Ibrahim J. Gassama,

contend that the negative impacts are outweighed by potential positive economic impacts, such as the reduction of migration controls within the new emerging trade blocs<sup>79</sup> and growing economies that benefit all.

One is left to wonder from this international and comparative law colloquium held in Latin America what caused the economic woes that have hit the region. The omission is all the more surprising because the event was held in Argentina, which has been particularly hard hit by the economic downturn. Two papers discuss Argentina, one touching on the disparate impacts of the poor economy.<sup>80</sup> There is general literature on the subject, but, to this point, not the LatCrit analysis that is necessary.<sup>81</sup> Globalization of the world economy, the development of free trade in the region, International Monetary Fund policy, as well as other economic factors, warrant inquiry.<sup>82</sup>

It also would seem important to build on the efforts to link the global with the local and to consider the impact of global policies on Latina/os in the United States. At times, the past scholarship seems to get lost in the shuffle.<sup>83</sup> LatCrit theory at its best has considered local phenomena and race relations, within the context of global economic and political developments. For example, Bob Chang and Keith Aoki thoughtfully scrutinized the impacts of global developments on relations between Asian Americans and Latina/os in the small Los Angeles suburb of Monterey Park.<sup>84</sup>

Consider as another example the background offered for a comprehensive study of another small Latina/o working class community on the outskirts of Los Angeles; a Chicana/o Studies scholar, Gilda Ochoa

---

*Confronting Globalization: Lessons from the Banana Wars and the Seattle Protests*, 81 OR. L. REV. 707 (2002); Carmen G. Gonzales, *Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade*, 78 DENV. U. L. REV. 979 (2001); Berta Esperanza Hernández-Truyol, *The Rule of Law and Human Rights*, 16 FLA. J. INT'L L. 167 (2004).

79. See John A. Scanlan, *A View From the United States — Social, Economic, and Legal Change, the Persistence of the State, and Immigration Policy in the Coming Century*, 2 IND. J. GLOBAL LEGAL STUD. 79 (1994); see also Kevin R. Johnson, *Open Borders?*, 51 UCLA L. REV. 193, 240-43 (2003) (suggesting that freer migration among NAFTA member nations might be an appropriate measure).

80. See *supra* text accompanying notes 8-12.

81. See Celeste Boeri, *How to Solve Argentina's Debt Crisis: Will the IMF's Plan Work?*, 4 CHI. J. INT'L L. 245 (2003); Mario E. Carranza, *MERCOSUR, the Free Trade Area of the Americas, and the Future of U.S. Hegemony in Latin America*, 27 FORDHAM INT'L L.J. 1029 (2004).

82. See *supra* note 77 (citing authorities discussing some of these issues).

83. See *supra* note 15-16 (citing authority).

84. See Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395 (1998), 10 LA RAZA L.J. 309 (1997).

steps back to place the local relations as part of larger economic relationships between the United States and Mexico and beyond:

In the final decades of the twentieth century, U.S. transnational corporations, with the support of governmental policies, deindustrialized the United States and moved many of their manufacturing plants to destinations including “free trade zones.” These free trade zones, numbering two hundred in Mexico in 1992, are industrial regions where minimal or no tariffs are paid to export materials and where environmental and child labor laws are routinely violated. The U.S. Congress approved the . . . [North American Free Trade Agreement (NAFTA)] . . . , which went into effect in 1994. NAFTA’s aim is to remove tariff barriers between Mexico, Canada, and the United States. While supporters of such neo-liberal policies argue that they will benefit U.S. residents and will limit emigration from Mexico, these policies have spurred internal migration as subsistence farmers have been pushed off their land and have not been able to compete with U.S. agriculturalists. Likewise, increases in international migration have been positively correlated with the increases in U.S. factories and businesses in Mexico. Part of this international movement of people may be attributed to the fact that international migration from the countryside to free trade zones often exposes individuals to the English language and to television images of the United States as the land of opportunity where they might earn higher wages for similar work. Despite the reduction of barriers for corporations and capital to move across borders, the movement of Mexicans into the United States continues to be restricted, and more expensive surveillance technology has forced some migrants to seek other, more dangerous routes to enter the United States.<sup>85</sup>

Professor Ochoa may not be correct on all counts; her analysis, however, is precisely the type that Chicana/o Studies scholars ordinarily engage in.<sup>86</sup> We must look globally as well as locally. LatCrit theorists should look to Chicana/o Studies, one of the precursors of LatCrit theory,<sup>87</sup> as a guide to analyzing the pressing social issues of our times.

---

85. GILDA L. OCHOA, *BECOMING NEIGHBORS IN A MEXICAN AMERICAN COMMUNITY: POWER, CONFLICT, AND SOLIDARITY* 32 (2004) (citation omitted).

86. See, e.g., RODOLFO ACUÑA, *OCCUPIED AMERICA; A HISTORY OF CHICANOS* (3d ed. 1988); VICTOR M. VALLE & RODOLFO D. TORRES, *LATINO METROPOLIS* (2000).

87. See Kevin R. Johnson & George A. Martínez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship*, 53 U. MIAMI L. REV. 1143 (1999).

## 2. Impacts of the U.S. “War on Terror” on Latin America

Somewhat surprisingly, the so-called war on terror, including but not limited to the war in Iraq, conducted by the United States is not discussed in the Colloquium papers. The events of September 11, 2001 have had impacts far beyond the United States. Security controls have had immigration consequences for many other groups besides Arab and Muslim noncitizens, the initial group focused upon in the heightened national security measures.<sup>88</sup> Moreover, the United States, and a coalition of nations, waged war in Afghanistan and Iraq. The terrorism that hit Spain in 2004, and the subsequent withdrawal of Spanish (as well as Honduran and Dominican) troops from Iraq, shows the international reverberations of the U.S. government’s war on terror.<sup>89</sup>

The war, ongoing for several years, implicates political and economic, as well as foreign relations concerns. The continuing conflict has had a dramatic impact on the view of the United States in the world community, particularly in the Arab and Muslim world. At this time, it is uncertain what long term impacts this will have on racial subordination in the United States, Latin America, and other countries.

The revelations in spring 2004 about the mistreatment of Iraqi prisoners by U.S. forces and its global impacts occurred too recently to have been

---

88. See, e.g., Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295 (2002); Raquel Aldana-Pindell, *The 9/11 “National Security” Cases: Three Principles Guiding Judges’ Decision-Making*, 81 OR. L. REV. 985 (2002); Steve W. Bender, *Sight, Sound, and Stereotype: The War on Terrorism and Its Consequences for Latina/os*, 81 OR. L. REV. 1153 (2002); David Cole, *Enemy Aliens*, 54 STAN. L. REV. 953, 953-54 (2002); Berta E. Hernández-Truyol, *Glocalizing Terror*, 81 OR. L. REV. 941 (2002); Bill Ong Hing, *Vigilante Racism: The De-Americanization of Immigrant America*, 7 MICH. J. RACE & L. 441 (2002); Kevin R. Johnson, *September 11 and Mexican Immigrants: Collateral Damage Comes Home*, 52 DEPAUL L. REV. 849 (2003); Thomas W. Joo, *Presumed Disloyal: Executive Power, Judicial Deference, and the Construction of Race Before and After September 11*, 34 COLUM. HUM. RTS. L. REV. 1 (2002); Sylvia R. Lazos Vargas, *Missouri, the “War on Terrorism,” and Immigrants: Legal Challenges Post 9/11*, 67 MO. L. REV. 775 (2002); Peggy Nagae, *Justice and Equity for Whom? A Personal Journey for Local Perspective on Community Justice and Struggles for Dignity*, 81 OR. L. REV. 1133 (2002); Natsu Taylor Saito, *Whose Liberty? Whose Security? The USA PATRIOT Act in the Context of COINTELPRO and the Unlawful Repression of Political Dissent*, 81 OR. L. REV. 1051 (2002); Adrienne Katherine Wing, *Civil Rights in the Post 9-11 World: Critical Race Praxis, Coalition Building, and the War on Terrorism*, 63 LA. L. REV. 717 (2003); Eric K. Yamamoto et al., *American Racial Justice on Trial — Again: African American Reparations, Human Rights, and the War on Terror*, 101 MICH. L. REV. 1269 (2003).

89. See Nancy Gibbs, *Digging In for a Fight*, TIME, May 3, 2004, at 26 (reporting that Spain, as well as Honduras and the Dominican Republic, had decided to pull out of the war in Iraq).

discussed at a 2003 colloquium.<sup>90</sup> However, the wars in Afghanistan and Iraq have dragged on, thus affording LatCrit theorists the opportunity for the sustained analysis of the wars' impacts on the world.<sup>91</sup>

#### CONCLUSION

The contributions to the LatCrit 2004 Colloquium on International and Comparative Law in Buenos Aires, Argentina in August 2003 offer much food for thought about the racisms and classisms of our times. At the same time, we must keep our eye on the scholarly ball. Efforts should be made to consider critical economic, social, and political issues and to not re-invent the wheel.

To maximize the utility of the LatCrit International and Comparative Law Colloquia in the future, steps should be taken that ensure that important, and pressing, issues of the day are discussed in the event. Moreover, care should be taken to ensure that publishable papers are submitted on those issues as well. A number of possibilities have been mentioned in this Foreword. It also may well be that, as in other disciplines of academic discourse, it is time for a general editor to be assigned to each symposium issue, with power to make selection and editorial decisions for each of the symposia and colloquia.

---

90. See Seymour M. Hersh, *The Gray Zone: How a Secret Pentagon Program Came to Abu Ghraib*, NEW YORKER, May 24, 2004, at 38; Douglas Jehl & Eric Schmitt, *Officer Says Army Tried to Curb Red Cross Visits to Prison in Iraq*, N.Y. TIMES, May 19, 2004, at A1.

91. See Delgado, *Crossroads*, *supra* note 56, at 137-42, 146.

