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CRITICAL APPROACHES TO LEGAL REFORM: TOWARD SOCIAL JUSTICE?

POLICY AND PRAXIS: A ROLE FOR LATCRIT "INSTITUTIONAL-CLASS ANALYSIS" IN LATIN AMERICAN JUDICIAL REFORM

*Becky L. Jacobs**

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I. INTRODUCTION

As a relatively new member of the academy, I still am discovering the various conceptual jurisprudential perspectives. LatCrit came to my attention when I received a program for this convocation, the fifth meeting of the LatCrit Colloquium on International and Comparative Law.¹ Intrigued by both the LatCrit project and the program’s five key thematic clusters,² I began to explore the LatCrit field of scholarship in more detail.

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1. Program and Schedule, the LatCrit Colloquium on International and Comparative Law, Salon Rojo, Facultad de Derecho, Universidad de Buenos Aires, Buenos Aires, Argentina, Aug. 12-15, 2003, Sponsored By: Center for Hispanic and Caribbean Legal Studies, University of Miami, School of Law; University of Baltimore, School of Law; Facultad de Derecho, Universidad Alberto Hurtado, Santiago de Chile; Area de Estudios Queer, Universidad de Buenos Aires; Co-Sponsored By: University of Florida Journal of International Law and Presented By: LatCrit (Latina and Latino Critical Legal Theory, Inc.) [hereinafter the LatCrit V Program].

2. The LatCrit V Program states:

The fifth meeting of this Colloquium convenes at the Universidad de Buenos Aires Facultad de Derecho in Argentina from August 12-15, 2003. The program is organized around five key themes of special importance to law and policy

What I found regarding the project was appealing, even to a non-LatCrit newcomer.³ LatCrit theory's four bedrock functions:⁴ the production of knowledge, substantive transformation, coalitional social struggle, and a commitment to collaboration and community;⁵ transcend jurisprudential boundaries, and its "critical, cross-cultural, and interdisciplinary"⁶ examination of issues of global concern will provide richer and more contextual insights to the search for solutions to universal problems.⁷

LatCrit V's key thematic clusters demonstrate the project's commitment to global challenges, particularly the "Role of Constitutional and Legal Systems in Maintaining or Reforming the Socioeconomic Status Quo under the 'Rule of Law'" and the "Effects and Prospects of Corporate Globalization on the Local and Regional Political, Social, Economic and Legal Arrangements" themes.⁸ It is exciting as a researcher to discover that your interests converge or intersect with those of others, and it is particularly rewarding when the subject will be scrutinized in a venue where scholars with theoretically distinct voices can "explore their differences, imagine their commonalities, and collectively theorize"⁹ new sociolegal regimes.

All of which explains why this panel, "Justice Systems at Work: Comparative Critiques and Accounts," and why my particular interest, judicial reform, advance the evolving substantive agenda of the LatCrit movement. The reform of judicial institutions is certainly a matter of

throughout the Americas: Pre-Colonial Arrangements and Colonial or Post-Colonial Histories and Legacies; Historic and Contemporary "Minority" Issues and Inter-Group Power Relations; Economic Control of Society and Wealth-Identity Hierarchies and Distributions; The Role of Constitutional and Legal Systems in Maintaining or Reforming the Socioeconomic Status Quo under the "Rule of Law"; and The Effects and Prospects of Corporate Globalization on the Local and Regional Political, Social, Economic and Legal Arrangements.

Id.

3. Individuals self-identified with the LatCrit project "describe themselves as LatCrits or more whimsically, LatCritters." Ediberto Román, *LatCrit VI, Outsider Jurisprudence and Looking Beyond Imagined Borders*, 55 FLA. L. REV. 583 (2003).

4. See Francisco Valdés, *Under Construction: LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087, 1092-93 (1997).

5. *Id.* at 1092-96.

6. See LatCrit V Program, *supra* note 1.

7. Elizabeth M. Iglesias, *Identity, Democracy, Communicative Power, International Labor Rights and the Evolution of LatCrit Theory and Community*, 53 U. MIAMI L. REV. 575 (1999).

8. See *supra* text accompanying note 2.

9. See Elizabeth M. Iglesias & Francisco Valdés, *LatCrit at Five: Institutionalizing a Postsubordination Future*, 78 DENV. U. L. REV. 1249, 1275 (2001).

universal concern, and much has been written on the topic generally¹⁰ and on Latin American legal systems in particular.¹¹ The LatCrit voice/perspective is virtually absent from the literature on Latin American judicial reform. Much of what has been written represents the non-Latina/o perspective of this aspect of the Latin American condition.¹² Judicial reform, both globally and in Latin America, implicates fundamental questions about the role of judicial institutional arrangements in the continued reproduction of social and legal injustice. LatCrit's theoretical approach is uniquely situated to critically examine embedded power structures that potentially perpetuate inequality and subordinate minority populations and to carefully design structural reforms to effect transformative social and legal emancipation.

This Essay advocates the application of Elizabeth Iglesias's institutional-class analysis¹³ to the Latin American judiciary and argues

10. See, e.g., AM. BAR ASS'N/CENT. EUROPEAN & EURASIAN LAW INITIATIVE, JUDICIAL REFORM INDEX FOR KOSOVO (Apr. 2002) at 16, available at http://www.abanet.org/ceeli/publications/jri/jri_kosovo.pdf (last visited Apr. 21, 2004); Setsuo Miyazawa, *Reform in Japanese Legal Education: The Politics of Judicial Reform in Japan: The Rule of Law at Last?*, 2 ASIAN-PAC. L. & POL'Y J. 89 (2001); Maria Dakolias & Kim Thachuk, *Attacking Corruption in the Judiciary: A Critical Process in Judicial Reform*, 18 WIS. INT'L L.J. 353 (2000); Scott P. Boylan, *The Status of Judicial Reform in Russia*, 13 AM. U. INT'L L. REV. 1327 (1998); Charles E. Rice, *The Role of Legal Education in Judicial Reform*, in A BLUEPRINT FOR JUDICIAL REFORM (1981).

11. See, e.g., Edgardo Buscaglia, *Corruption and Judicial Reform in Latin America*, 17 POL'Y STUD. J. 273 (1996); JUDICIAL REFORM IN LATIN AMERICA (Malcom Rowat et al. eds., 1995); Edgardo Buscaglia et al., *Judicial Reform in Latin America: A Framework for National Development*, in ESSAY IN PUBLIC POLICY 21 (1995); Edgardo Buscaglia, *An Analysis of Corrupt Practices Within the Judiciary in Latin America*, in IV ESSAYS IN LAW AND ECONOMICS 223 (Claus Ott & George Von Wangenheim eds., 1998); LINN HAMMERGREN, THE POLITICS OF JUSTICE AND JUSTICE REFORM IN LATIN AMERICA (1998); HUGO FRUHLING, JUDICIAL REFORM AND DEMOCRATIZATION IN LATIN AMERICA (Felipe Aguero & Jeffrey Starks eds., 1998).

12. See *supra* note 10. But see JUSTICE DELAYED: JUDICIAL REFORM IN LATIN AMERICA chs. 8-11 (Edmundo Jarquín & Fernando Carillo eds., 1998); Felipe Sáez García, *The Nature of Judicial Reform in Latin America and Some Strategic Considerations*, 13 AM. U. INT'L L. REV. 1267 (1998). Two caveats are necessary here. First, references to the Latina/o condition or to Latina/o culture and/or experience clearly are superficial and ignore the richness and variety of these communities' multicultural character. LatCrit theory rejects single-axis or unidimensional conceptions of Latina/o identity that ignore intra-Latina/o diversities. See, e.g., Valdés, *supra* note 4, at 1093-94 (exploring questions of intra-group hierarchy and inter-group justice); see Iglesias, *supra* note 7, at 575-76. Also, just as it would be inaccurate to attempt to define a single Latina/o identity, it also is a gross generalization to use the phrase "the Latin American judiciary." While commentators frequently utilize this shorthand construct, the expression fails to convey the distinct national character of the individual state systems, their derivation, and their unique strengths and weaknesses. The author apologizes for using this same superficial terminology.

13. See Elizabeth M. Iglesias, *Global Markets, Racial Space 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) (discussing Hernando De Soto's seminal work, *The Other Path: The*

that the results of such an analysis not only will improve the quality of any judicial restructuring efforts in the region, but also will advance LatCrit's aspirations to dedicate theory to praxis.¹⁴

Racial spaces, according to Professor Iglesias, are "visible artifacts of both racial segregation and the relations of investment, production and exchange that are reflected in the export of capital; monopolies of political and economic power; and the restricted circulation of goods, services and capital within racially subordinated communities."¹⁵ Her alternative institutional-class analysis locates the production of racial spaces in the manner in which law, defined broadly to include its substantive norms, procedures, and institutions, configures relations of differential power and organizes institutional class structures.¹⁶ To the extent that the organization of Latin American judicial systems implicates the production of institutionalized powerlessness and marginalization, Professor Iglesias's framework provides a vehicle for LatCrit: (1) to explore how the judiciary constructs institutional-class structures; (2) to assess how subordinated groups interact with and are impacted by judicial institutions; and (3) to help determine how best to reform these institutional arrangements.¹⁷

II. ASSESSING THE STATUS QUO

With regard to the assessment of existing judicial structures in Latin America, LatCrit scholars would offer a unique perspective. The judicial reform literature is replete with analyses that focus, for example, on the economic costs of a poorly functioning judicial system.¹⁸ Indeed, one can

Invisible Revolution in the Third World and offering an alternative framework for institutional-class analysis); see also HERNANDO DE SOTO, *THE OTHER PATH: THE INVISIBLE REVOLUTION IN THE THIRD WORLD* (June Abbott trans., Harper & Row 1989). In this article, Professor Iglesias examines the role of law in the production of "racial spaces," a term that she uses to refer to "a social reality created by and experienced through patterns of mobility and immobility that have been organized around historical practices and logic of white supremacy[.]" *Id.* at 1037-38. The Professor explores the theoretical approach for which Hernando De Soto named his popular book, *The Other Path*, and offers an alternative institutional-class analysis for understanding the role of law in producing relations of poverty and marginalization. Iglesias, *supra*, at 1040. This Essay does not presume to undertake this analysis; it seeks only to attract the attention of the LatCrit project to the task.

14. See Valdés, *supra* note 4, at 1093.

15. Iglesias, *supra* note 13, at 1039.

16. *Id.* at 1040.

17. See *id.* at 1051.

18. See JUDICIAL REFORM IN LATIN AMERICA AND THE CARIBBEAN — PROCEEDINGS OF A WORLD BANK CONFERENCE, WORLD BANK TECHNICAL PAPER NO. 280 (Malcolm Rowat et al. eds., 1995); see also Symposium, *The Role of Legal Institutions in the Economic Development of the Americas*, 30 LAW & POL'Y INT'L BUS. 1 (1999).

find numerous reasoned articles promoting judicial reform in Latin America as a means to implement development strategies, to expand the role of the private sector, and to foster economic growth and stability.¹⁹

These pro-development reformers generally correlate the profound political transformations that occurred in Latin America in the aftermath of the 1980s debt crisis with a failure of existing public institutions.²⁰ As a result of these failures, Latin American courts suffer from increasing backlogs, delays, and corruption, and the quality and quantity of court services are deteriorating.²¹

The region's colonial heritage also is credited with rendering the judiciary largely incapable of exerting judicial independence.²² Within the stratified society of colonial Latin America, a fragile judiciary ultimately depended on the monarch's authority, and courts and judges were perceived mostly as enforcers of an enormous body of statutory and administrative directives.²³

As Latin American nations more aggressively pursue entry into the global marketplace, pro-development reformers vigorously cultivate institutional judicial changes by emphasizing the widely cited association between an independent and capable judiciary and economic performance.²⁴ Legal and judicial reform is essential to attracting foreign investment as private investors and their financiers carefully analyze the degree of legal risk associated with a potential investment. The concept of legal risk encompasses not only the content of a nation's laws, but also their enforcement.²⁵

LatCrit scholars likely would offer alternative analyses of the causes of the perceived weakness of Latin American judiciaries, and, while doing so, they might express reservations regarding the success of the region's democratic restructurings. LatCrit critiques demonstrate how traditional scholars and policymakers parochially use Western constructions to

19. Waleed Haider Malik, *Overview*, WORLD BANK TECHNICAL PAPER NO. 280, *supra* note 18, at 1-2.

20. Shahid Javed Burki, *Economic Development and Judicial Reform*, WORLD BANK TECHNICAL PAPER NO. 280, *supra* note 18, at 11-12.

21. Edgardo Buscaglia, *A Quantitative Assessment of the Efficiency of the Judicial Sector in Latin America*, 17 INT'L REV. L. & ECON. 275, 276-77 (1997).

22. See Luz E. Nagle, *The Cinderella Of Government: Judicial Reform in Latin America*, 30 CAL. W. INT'L L.J. 345, 349-55 (2000) (discussing the historical development of the Latin American judiciary).

23. *Id.*

24. See, e.g., WORLD BANK TECHNICAL PAPER NO. 280, *supra* note 18.

25. See Frank C. Shaw, *Reconciling Two Legal Cultures in Privatizations and Large-Scale Capital Projects in Latin America*, 30 LAW & POL'Y INT'L BUS. 147, 155-56 (1999).

explain shortcomings in Latin American legal and economic development, critiques potentially applicable in this context.²⁶ LatCrit discourse pertaining to judicial reform would inject a “vigorous skepticism toward the assimilationist pressures”²⁷ of the pro-development view.

LatCritters potentially would locate the construction of existing Latin American judicial structures in the “western intervention policies . . . that have tended to prioritize the institutionalization of transnational capitalist economic relations over the consolidation of democratic accountability and the self-determination of peoples.”²⁸ Latin America is a “region where white supremacy is mediated through the political apparatuses and economic structures of neo-colonial dependency, state corporatism, military bureaucratism and authoritarian repression.”²⁹ Thus, “Latin America’s dependence on neoliberal market reform projects”³⁰ should be considered as a causative factor in the decline of Latin American institutions. Because the courts interpret doctrine that long has been captive to the neoliberal ideology and rhetoric, they are constituted so as to enable institutionally dominant classes to reproduce subordination and powerlessness.³¹ LatCrit passionately would advocate critical dismantlement of any judicial structure that subordinates disenfranchised communities for the purpose of reinvigorating equality law.³² Without a dissemination of such a LatCrit analysis, newly formed judicial systems could remain “profoundly unstable”³³ and potentially will perpetuate neoliberal constructions that marginalize dispossessed groups.

III. EXPLORING SUBORDINATED GROUP/JUDICIAL INTERACTION

LatCrit also would provide a singular view of the way in which judicial institutional structures impact subordinated groups and the method by which these groups might seek to transform the political economy. There are, of course, numerous surveys that report group opinion on the region’s judiciary. For example, one study that rates world judicial systems on the basis of efficiency and on the opinions of users and public confidence

26. Román, *supra* note 3, at 593.

27. Valdés, *supra* note 4, at 1100.

28. Iglesias, *supra* note 7, at 640.

29. Iglesias, *supra* note 13, at 1038.

30. Iglesias, *supra* note 7, at 640.

31. Iglesias, *supra* note 13, at 1050-59.

32. Valdés, *supra* note 4, at 1139.

33. Iglesias, *supra* note 13, at 1051.

ranks all Latin American systems except Chile's in the bottom 20%.³⁴ Similarly, Latin Americans relate that they "view the administration of justice as slow, tending to favor those in power, and corrupt."³⁵ To cite specific data, in Argentina, a mere 13% of the public expressed confidence in the administration of justice, and only 16% manifested confidence in that country's judges.³⁶ Similarly, in Brazil, 63% of the public regarded the administration of justice as "average" or "poor or substandard."³⁷ Peru's citizens appear to be the most dissatisfied, with 96% of the population confiding a lack of confidence in judges and 86% reporting little or no confidence in the overall administration of justice.³⁸ These data offer a compelling challenge to the status quo.

What these data fail to reveal or to explore from a LatCrit perspective are the underlying causes of this profound dissatisfaction. While research does proffer explanations for the current state of affairs,³⁹ they do not deconstruct the power dynamics that influence the interactions between judicial institutions and subordinated groups. Indeed, the very premise upon which much of these data are collected and analyzed prevents a critically theoretical presentation.

Consider the pro-development literature on judicial reform. These analyses presume that economic and social development are mutually reinforcing. One commentator asserts that, "[a]n effective government requires functioning legal and judicial institutions to accomplish the interrelated goals of promoting private sector development, encouraging development of all other societal institutions, alleviating poverty and consolidating democracy."⁴⁰ These researchers strongly believe that judicial reform benefits all "users" of judicial institutions. "It benefits the private sector by making business transactions more predictable, and it benefits the public sector by establishing better regulation and accountability. Finally, it benefits the people by increasing access to legal aid programs and services."⁴¹

34. EDGARDO BUSCAGLIA JR. ET AL., JUDICIAL REFORM IN LATIN AMERICA: A FRAMEWORK FOR NATIONAL DEVELOPMENT 2, 3 (1995).

35. Luis Pásara, *Judicial Reform and Civil Society*, in JUSTICE DELAYED: JUDICIAL REFORM IN LATIN AMERICA 83, 83 (Edmundo Jarquin & Fernando Carrillo eds., 1997).

36. Maria Dakolias, *A Strategy for Judicial Reform: The Experience in Latin America*, 36 VA. J. INT'L L. 167, 173 (1985).

37. *Id.*

38. *Id.*

39. See, e.g., Buscaglia, *supra* note 21.

40. MARIA DAKOLIAS, THE JUDICIAL SECTOR IN LATIN AMERICA AND THE CARIBBEAN — ELEMENTS OF REFORM, WORLD BANK TECHNICAL NOTE 319, at 1 (1996).

41. Ibrahim F.I. Shihata, *Legal Framework for Development: The World Bank's Role in Legal and Judicial Reform*, WORLD BANK TECHNICAL PAPER NO. 280, *supra* note 18, at 13.

One might expect the LatCrit project to take issue with these assumptions and to propose contradistinctive analyses. LatCrit philosophy stations racial segregation within intervention ventures that have subordinated democratic reform to the imperatives of transnational capitalism.⁴² Conceptualized in this fashion, LatCrit likely would question whether a pro-development judicial reform effort that produced institutional arrangements favoring a neoliberal political economy would effectively address or eliminate subordination.

Because of its lucid and credible voice, LatCrit is well placed to influence the research into the causes of the negative public perceptions of the Latin American judiciary. "By critically examining [any possible] disjuncture between [pro-development] rhetoric and the trans/national power structures that coopt and subvert the self-determination struggles of so many peoples in so many different contexts,"⁴³ LatCrit participation in the judicial reform undertaking would assure that the Latina/o aspect will be accorded priority in the process. The project's scholarship offers a Latina/o panorama and an interdisciplinary examination of identity directed at unmasking systematic bias and proposing reform geared towards social justice.⁴⁴

IV. IMAGINING REPLACEMENT INSTITUTIONS

Finally, LatCrit's articulation of alternative institutional orders, enlightened by its theoretical analysis of the way legally constructed Latin American judicial arrangements allocate power across the different classes and political identities,⁴⁵ certainly increases the potential for an improved and higher quality reform process and for more effective and enduring solutions. Universal objectives such as judicial independence require "the kind of structural and conceptual reforms that are generated only in and through the production of theory[,]"⁴⁶ and the LatCrit project would interject a distinctive and credible viewpoint into the reform debate.

While judicial reformers agree that improvements are necessary, there appears to be little consensus on how best to restructure existing institutions. Pro-development reformers postulate that Latin American judicial reform should be designed to sustain democracy, to promote economic growth, and to address inadequacies in such components of the

42. Iglesias, *supra* note 7, at 640.

43. *Id.* at 631.

44. *Cf.* Román, *supra* note 3, at 591.

45. Iglesias, *supra* note 13, at 1050-51.

46. *Id.*

justice system as judicial independence, judicial administration, procedural codes, access to justice, legal education and training, and bar associations.⁴⁷ These analysts suggest that rights and values recognized by the international community provide important standards for reform.⁴⁸

Because several LatCrit scholars have advanced the view that globalization and development institutionalize relations of subordination in the order of knowledge and power,⁴⁹ the project presumably would adopt a different approach. While much of the judicial reform literature presupposes that universally articulated international values, rights, or norms exist and that they represent neutral concepts potentially applicable to all nations, LatCrit likely would challenge this assumption.⁵⁰ LatCrit writers seek to unearth the "hegemonic underpinnings of international norms"⁵¹ and to reveal that these purported universal standards are rarely, if ever, discussed in the context of the advanced industrial states.⁵² In practice, these concepts are principally applied to so-called Third World states, and they provide the "moral and intellectual foundation for the development of a set of doctrines, policies and principles, formulated and implemented by various international actors to manage, specifically, the Third World state and Third World peoples."⁵³

LatCrit condemns attempts by "Anglocentric"⁵⁴ societies to promote reforms in the developing world focused on reproducing a set of principles and institutions which are seen as having been perfected in the Western world and which the non-Western world must adopt if it is to make progress and achieve stability.⁵⁵ While these pro-development reform initiatives purport to advance dual goals that are often characterized as inseparable, the furtherance of commerce and of social advancement,⁵⁶ LatCrit likely would offer a different assessment. "In short, international law has sought to create non-[Western] governments which facilitate [Western] commercial expansion."⁵⁷ Thus, because Anglocentric constructions dominate and define ostensible international norms, they do

47. Dakolias, *supra* note 36, at 171.

48. *Id.* at 230-31.

49. Iglesias, *supra* note 13, at 1050.

50. Antony Anghie, *Civilization and Commerce: The Concept of Governance in Historical Perspective*, 45 VILL. L. REV. 887, 893 (2000).

51. Berta Esperanza Hernández-Truyol, *Latinas, Culture and Human Rights: A Model for Making Change, Saving Soul*, 23 WOMEN'S RTS. L. REP. 21, 23 (2001).

52. Anghie, *supra* note 50, at 893.

53. *Id.*

54. *Cf.* Valdes, *supra* note 4, at 1096.

55. Anghie, *supra* note 50, at 894.

56. *Id.*

57. *Id.* at 896.

not provide reliable standards for reform efforts addressing the problem of non-Western peoples, and, more specifically in this context, their judicial institutions. In stark contrast to the LatCrit agenda, the international norms rhetoric propounded by pro-development and other scholars to create the political and economic conditions that further globalization could, far from promoting human rights, undermine them.⁵⁸

LatCrit theory thus is crucial to effectuate lasting emancipatory institutional transformation⁵⁹ in the Latin American judiciary. Not only does LatCrit have the vision and the commitment to imagine and articulate an alternative institutional order,⁶⁰ it also has the resources and the experience to ensure that the reform process itself is not strategically manipulated to maintain structures of privilege and subordination.⁶¹

The LatCrit project can expose and prevent any rhetorical manipulation of the reform process through its profound knowledge of the Latina/o reality and condition. Joined and informed by experienced and critical members of the relevant constituencies, reformers are better equipped to design new judicial institutions which are responsive to the needs of the communities they serve.

LatCrit experience might illuminate, for example, how the civil law models prevalent in Latin America may perpetuate “hierarchical, non-participatory, and exclusionary allocations of decisional authority.”⁶² Courts operating in these models can become isolated bureaucracies, bureaucracies that distance judges from the majority of society and deprive them of procedural restraints to temper their biases or discretion.⁶³ Judicial reform efforts must address the failures of existing systems to confront repression, but must do so with cultural sensitivity and intelligence, a task for which the LatCrit project is perfectly situated.

LatCrit also would be sensitive to sources of oppression that are internal components of Latina/o culture.⁶⁴ The region’s historical pattern of authoritarian domination is generally attributed with reinforcing Latina/o cultural traits, such as fatalism and acceptance of corruption.⁶⁵ These cultural tendencies animate public opinion regarding Latin

58. *Id.* at 908-09.

59. Iglesias, *supra* note 13, at 1048.

60. *Id.* at 1052.

61. *Id.* at 1073.

62. *Id.* at 1052.

63. Robert G. Vaughn, *Proposals for Judicial Reform in Chile*, 16 FORDHAM INT’L L.J. 577, 582 (1992-93).

64. Hernández-Truyol, *supra* note 51, at 29.

65. See Latin Culture, available at http://business.baylor.edu/Phil_VanAuken/lcul.htm (last visited Apr. 21, 2004).

American judicial institutions.⁶⁶ Polls clearly demonstrate the "climate of distrust and frustration [that] permeates the [region's] judicial system."⁶⁷ In this climate, the public harbors low expectations of justice when forced to utilize judicial resources.

Two seemingly contradictory themes are relevant to this issue. First, there has been and continues to be broad public support for legal instrumentalism to advance societal goals in the Latin America region.⁶⁸ This recognition that courts engage in contextual interpretation of national constitutions certainly creates a permissive atmosphere in which responsive, and potentially repressive, law has thrived.⁶⁹ Conversely, despite this support, the Latin American citizenry appears openly to question their judicial systems' competence, independence, and ethics. This hostility has not, however, translated into organized activism.⁷⁰ The public appears resigned to the status quo and disengaged from the judicial reform process. LatCrit members are well-placed to represent this cultural constituency,⁷¹ to elucidate this apparent paradoxical societal dissonance, and even, perhaps, to enlist greater public participation in the reformation enterprise.

LatCrit unflinchingly will confront other dimensions of Latina/o tradition that can be used to subvert the struggle for self-determination. Latina/o cultural traits such as the sanctity of family, the dominant role of religion, and the rigid expectations of proper gender roles and behavior conspire to subordinate women and have been subjected to the scrutiny of LatCrit scholars.⁷² With LatCrit guidance, judicial reform efforts in the region could be both sensitive to the Latina/o temperament yet resistant to these oppressive social and cultural patterns of conduct. As one commentator thoughtfully reflects: "Where cultural practices are concerned, it is important, on the one hand, to protect traditions from the improper imposition of outsiders' ideologies. On the other hand, culture must not be used as a pretext to shield norms that perpetuate . . .

66. See *supra* text accompanying notes 34-38.

67. Nagle, *supra* note 22, at 370.

68. Becky L. Jacobs, *Pesification and Economic Crisis in Argentina: The Moral Hazard Posed by a Politicized Supreme Court*, 34 U. MIAMI INTER-AM. L. REV. 391, 414-20 (2003).

69. See *id.*

70. But see *id.* (describing an incident during which Argentinean protestors threw rocks and eggs at the homes of individual justices of La Corte Suprema de Justicia de la Nación (the Argentine Supreme Court) to demonstrate their dissatisfaction with the state of the judiciary in general, and with the Supreme Court's jurisprudence in particular).

71. Wolfram Anders, Reporter, *Panel Session, Comparative Approaches to the Theory of International Law*, 80 AM. SOC'Y INT'L L. PROC. 152, 154 (1986) (remark of Ian Brownlie).

72. Hernández-Truyol, *supra* note 51, at 28.

subordination.”⁷³ In the context of judicial restructuring, this admonition could prevent the reproduction of institutionalized oppression and secure the ultimate legitimacy of the reform process itself.⁷⁴

V. CONCLUSION

The universal economic and political ramifications of ineffective and poorly functioning judiciaries have attracted the attention of scholars and reformers of all persuasions and jurisprudential tendencies. However, while Latin American reform projects will have an inevitable effect upon Latinas/os,⁷⁵ the LatCrit movement has not yet focused its critical gaze on the subject.

Pro-development researchers have a particular interest in participating in the Latin American judicial reform effort. Motivated by a commitment to, and a belief in, the unlimited potential of the region’s natural resources, including its human capital, the developmentally-minded seek to create effective legal systems that facilitate economic development and social interaction. However, this certainly is not the exclusive view, nor does it offer, or even purport to offer, a comprehensive or unbiased analysis of the issue. Indeed, to balance its inherent prejudices and to ensure the ultimate success of any restructuring, many adherents to globalization theories actively promote a participatory reform process, one in which all affected parties are involved. “Ownership [of the process and of the result] is a condition of success in any field, but it is particularly relevant in legal reform, which goes to the core of the social fabric of a country.”⁷⁶

Thus, this Essay. The author strongly believes that the LatCrit perspective is essential to the long-term viability of any judicial reorganization in the region. Professor Iglesias’s institutional-class analysis would focus comprehensively on how power is organized by Latin American legal institutions and on how these institutions participate in subordination.⁷⁷ By examining the legal distribution of power among different groups within this specific institutional context, all reformers will better understand how law is implicated in producing the relations of powerlessness and can avoid creating new structures that merely reproduce the poverty and subordination that are manifested as racial spaces.⁷⁸

73. *Id.* at 43.

74. *See id.* at 42.

75. Román, *supra* note 3, at 588.

76. Shihata, *Legal Framework for Development*, WORLD BANK TECHNICAL PAPER NO. 280, *supra* note 18, at 15.

77. *Cf.* Iglesias, *supra* note 13, at 1057-58.

78. *Id.* at 1060.

While some might argue that LatCrit theory is incompatible with the pro-development perspective, it is this author's opinion that the two projects are not mutually exclusive, but rather are complementary. The LatCrit movement critiques legal, political, and economic structures with the goal of achieving true social justice;⁷⁹ pro-developers theorize that economic development advances societal stability and self-determination.⁸⁰

This is particularly relevant in the context of judicial reform. Everyone identified with the reform movement, including those with pro-development leanings, share the desire to create intelligently designed court systems that are capable of responding to the most pressing societal challenges: pervasive poverty, inadequate health services, and failing infrastructures. As such, the results of a LatCrit institutional-class analysis would enrich the collective literature, reinforce common goals, and improve the quality and longevity of any reformed institutions that result from the process.

Without conceptual evolution informed by a critical analysis of how the judiciary creates racial spaces,⁸¹ judicial reform efforts likely will not address LatCrit's anti-subordination message and might leave new processes intact that reproduce institutionalized powerlessness. As Professor Iglesias has noted, "the structural arrangements of the past tend to have an uncanny hold on the possibilities of the future."⁸² To prevent the replication of existing racial spaces and to expand the scope of its anti-subordination agenda, this author urges LatCrit scholars to join the project's analyses to other judicial reform methodologies.⁸³ This practical engagement of LatCrit theory to the advancement of transformation, the creation of material social change that improves the lives of Latinas/os and

79. Román, *supra* note 3, at 591.

80. Cf. Beatrice Weder, *Legal Systems and Economic Performance: The Empirical Evidence*, WORLD BANK TECHNICAL PAPER NO. 280, *supra* note 18, at 21-26.

81. See Iglesias, *supra* note 13, at 1048.

82. *Id.*

83. Iglesias, *supra* note 7, at 654-55.

other subordinated groups,⁸⁴ dedicates LatCrit theory to praxis, a project imperative.⁸⁵

In the view of one highly regarded LatCritic,

[T]he key to a productive LatCrit race/ethnicity discourse will be whether [the project] engage[s] issues of subordination with a sensibility of interconnectivity, cooperation and coalition. LatCrit scholars must endeavor always to situate [their] work in light of other analyses, communities, and interests; LatCrit scholarship must recognize, accommodate, and incorporate the work that precedes and surrounds our own. In this way, [LatCrit scholars] can leverage the reach of [their] work through the mutual cultivation of progressive, critical coalitions, especially with outsider scholars who also are engaged in the anti-subordination struggle.⁸⁶

This vision is what will ensure that LatCrit will be a “leading voice in the global theoretical debate”⁸⁷ on matters of universal concern.

84. The issue of judicial reform is neither an exclusively nor a primarily Latina/o concern, and the LatCrit movement counts among its repertoire the ability to forge a common consciousness and to generate a shared discourse on this type of universal issue. Iglesias, *supra* note 7, at 654-55. The LatCrit project invites outsider and other scholars to share its fundamental goal of reinvigorating equality law through a critical dismantlement of all legal and social structures that subordinate disenfranchised communities. Valdés, *supra* note 4, at 1122-41 (discussing an essay that appears in a LatCrit symposium, Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395 (1997)). LatCrit already has joined Asian-American anti-subordination scholars, for example, in exploring the transnational character of their communities. This evinces the initial stirrings of a larger consciousness and community to connect Latina/o and other anti-subordination projects to achieve social progress through legal reform. *Id.* Judicial reform provides an excellent opportunity for LatCrit to share its vision and to collaborate with other advocates to generate transnational analyses of this potentially oppressive legal and social condition.

85. See Valdés, *supra* note 4, at 1092-93.

86. See *id.* at 1111.

87. Román, *supra* note 3, at 589.