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BUILDING BRIDGES IV: OF CULTURES, COLORS, AND CLASHES – CAPTURING THE INTERNATIONAL IN DELGADO’S CHRONICLES*

Berta Esperanza Hernández-Truyol**

Sex, race, gender, sexuality, color, religion, language, nationality, ethnicity, culture, poverty – socially constructed categories, social tropes that relegate “others” to subordinated positions in the varied and various cultural and economic marketplaces of both global and local societies. Richard Delgado’s transformational work engages all of these tropes insightfully, disturbingly, and illuminatingly. His rich literature conceptualizes persons as multidimensional, complex beings and exposes society


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as the pre-fabricated stage in which diverse interactions evolve. Delgado's epistemological stance is fluid, non-rigid, and grounded on subjectivity.

In this essay I will focus on Delgado's latest book *When Equality Ends: Stories About Race and Resistance.* I will develop how that work injects invaluable dimensions of international human rights law and theory into contemporary domestic jurisprudence. I will also explore the benefit that Delgado's treatment of international human rights law and theory will bring to both critical and human rights perspectives in the analysis of law, theory, and policy.

Indeed, Rodrigo, one of Delgado's protagonists, is himself a walking expression of cosmopolitanism, a characteristic that the Professor — the older mentor in the *Rodrigo Chronicles* — quickly recognizes. Rodrigo is part African American, part Latino, and part Italian. He was raised in Italy where he graduated from high school at the U.S. post to which his father had been assigned; he was educated in the law in Italy at Bologna, one of Italy's oldest and most prestigious universities. His life partner, Giannina, is an

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2 See Richard Delgado, *The Coming Race War? And Other Apocalyptic Tales of America After Affirmative Action and Welfare* 131 (1996) [hereinafter DELGADO, THE COMING RACE WAR?] (The Professor tells Rodrigo, "You are a cosmopolitan person"). Cosmopolitan is used here in the sense of well-traveled, worldly, international, and sophisticated. See, e.g., *Webster's Ninth New Collegiate Dictionary* (1988) (defining cosmopolitan as 1: "having world wide rather than limited or provincial scope or bearing. 2: having wide international sophistication: worldly. 3: composed of persons, constituents, or elements from all or many parts of the world . . .").


accomplished poet\textsuperscript{7} who also goes on to law school to pursue a social justice agenda.\textsuperscript{8} After graduating from the University, Rodrigo returns to the United States for family reasons.\textsuperscript{9} He encounters threatened denaturalization of his U.S. citizenship, as a result of his six-month “part-time military training in the Italian army shortly after [his] twentieth birthday”\textsuperscript{10} and he is forced to return to Italy temporarily.\textsuperscript{11} Ironically, Rodrigo had trained with the Italian army as “a reasonable way of paying back the Italian nation for subsidizing [his] education at a fine University.”\textsuperscript{12} Rodrigo, in his typical creative fashion, resolves his immigration travails by becoming an Irish national. This maneuver is made possible by European Union provisions that permit free travel between member States; both Italy and Ireland are E.U. members. Irish nationality is helpful in his quest to return to this country because, within the United States, the Irish constitute a group with preferred immigration status. In these borderlands, a large Irish immigration society supports Irish immigration and sponsors immigrants. Therefore, Rodrigo, now an Irish national who can boast U.S. family ties, garners support and obtains a private bill that allows him to enter the United States.\textsuperscript{13} Once back in the country, Rodrigo earns an LL.M. degree at a prestigious university\textsuperscript{14} and fulfills his dream of joining the legal academy.\textsuperscript{15}

Some might criticize Delgado’s development of Rodrigo as being a “pastiche,” or argue that Rodrigo is subject to construction as surreal by the many persons he encounters. To me, a fellow world traveler – Cuban-born naturalized U.S. citizen with Latina and Indian (Native) roots, raised in Puerto Rico, with family stints

\textsuperscript{7} DELGADO, THE COMING RACE WAR?, supra note 2, at 2; DELGADO, WHEN EQUALITY ENDS, supra note 6, at 5.
\textsuperscript{8} DELGADO, THE COMING RACE WAR?, supra note 2, at 2.
\textsuperscript{9} DELGADO, THE RODRIGO CHRONICLES, supra note 3, at 15.
\textsuperscript{10} Id. at 17.
\textsuperscript{11} Id.
\textsuperscript{12} Id.
\textsuperscript{13} Id. at 21.
\textsuperscript{14} Id. at 19-21.
\textsuperscript{15} Id. at 191.
in France and Holland – Rodrigo is quite real. As his experiences and characteristics reveal, Rodrigo – his lineage, travels, and experiences – is a representation, indeed an embodiment, of the Latina/o multidimensional experience within the fronteras estadounidenses. Rodrigo is Latina/o panethnicity – multiracial, multicultural, multilingual, multiethnic, and even multinational. This young, cosmopolitan, erudite globe-trotter provides an entrée into Delgado’s work through an internationalist’s lens – a lens that provides further grounds to expand and transform theory and doctrine for the development of an anti-subordination project. Part One of this piece will suggest how conversations about human rights law can enrich Critical Theory, as well as how Critical Theory can serve to develop, expand, and transform human rights norms. Part Two will look more specifically at Cultures, Colors, and Clashes to illustrate the value of the analysis that is suggested in Part One. The Conclusion underscores the utility of Professor Delgado’s rich and creative work in guiding global understanding on multidimensionality, interconnectivity, and intersectionality.

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16 See Hernández-Truyol, Building Bridges I, supra note * (discussing the multidimensionality of Latina/os).
17 The basis of the concept of Latina/o pan-ethnicity is “the pan-Latino consciousness emerging in this country” conjoined with the realization that Latina/os “must never obscure the uniqueness of the experiences of these various Latino groups.” Angelo Falcón, Through the Latin Lens, NEWSDAY, Sept. 3, 1992, at 106. The idea of pan-ethnicity is centered on the notion that, in the United States, “more brings [Latina/os] together than separates them within the political process.” Id. Pan-ethnicity is sometimes cited as a raison d’être for LatCrit discourse because, despite our differences, our common problems are many and together we can ensure the power to find a solution. Other times, Latina/o pan-ethnicity is cited as a source of skepticism as to whether such a theoretical construct can exist because our differences are many and will impede a common perspective from which to launch a cohesive discourse.
18 See, e.g., Kimberlé Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color, 43 STAN. L. REV. 1241 (1991) (proposing an intersectionality approach); Hernández-Truyol, Building Bridges I, supra note * (proposing a multidimensionality approach); see also Elvia R. Arriola, Gendered Inequality: Lesbians, Gays and Feminist Legal Theory, 9 BERKELEY WOMEN’S L.J. 103 (1994) (urging a holistic approach);
I. CRITICAL INTERVENTIONS INTO THE HUMAN RIGHTS IDEA

In 1997, Critical Race Theory ("CRT") celebrated its tenth anniversary. At that time, Critical Race theorists commemorated the birth of a movement, one in which Delgado plays a central and transformative role. At its core, this movement is committed to humanitarian conceptions of personhood – conceptions that transcend the limitations of current equality doctrine. It echoes Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 STAN. L. REV. 581 (1990) (proposing an anti-essentialist, multiple-consciousness analytical approach); Francisco Valdes, Sex and Race in Queer Legal Culture: Ruminations on Identities and Inter-Connectivities, 5 S. CAL. REV. L. & WOMEN'S STUD. 25 (1995). Valdes uses an interconnectivity concept as a complement to multiplicity, multidimensionality and intersectionality. He defines "interconnection" as "openness, interactivity, flexibility and adaptability [with] [c]onnectivity thus serv[ing] as the predicate for inter-connection . . . [and] simultaneously signifying what is, as well as what can be; it both denotes capacity — that which is — and delineates potential — that which can be . . . [thereby] the term describes at once both the actual and the possible." Id. at 47-48 (citations omitted).


21 See, e.g., Berta Esperanza Hernández-Truyol, Borders (En)gendered: Normativities, Latinas, and a LatCrit Paradigm, 72 N.Y.U. L. REV. 882 (1997) [hereinafter Hernández-Truyol, Borders (En)gendered] (discussing the normative perspective of equality doctrine). Equality narratives in the United States appear fixated on an "equality as sameness" model. This paradigm has generated an awkward jurisprudence on issues of race (particularly in the affirmative action context), sex (especially in the ongoing pregnancy debate), and gendered family hierarchies (notably in discussions about the public and private including essential but unpaid work). See James Carney, Why Talk Is Not Cheap: The Turmoil of Clinton's Race Initiative Is the Latest Evidence of America's Black-White Distrust, TIME, Dec. 22, 1997, at 32 (noting the strife among members of the Initiative's advisory board, critics, and even White House staffers over the makeup and goals of President Clinton's Initiative on Race). See also Geduldig v. Aiello, 417 U.S. 484 (1974); DELGADO, THE
the human rights norms that were first comprehensively articulated in the Universal Declaration of Human Rights, a revolutionary document that embraces a plethora of individual rights central to personhood — not only civil and political rights, but also social, economic, cultural, and solidarity rights. Reading Delgado's work in the context of the ideals articulated in the Universal Declaration provides a fitting approach through which to break global and local cycles of inequality by both "globalizing a localism" and "localizing a globalization." By "globalizing a

COMING RACE WAR?, supra note 2; CHARLES LAWRENCE & MARI J. MATSUDA, WE WON'T GO BACK: MAKING THE CASE FOR AFFIRMATIVE ACTION (1997); Berta E. Hernández-Truyol, To Bear or Not to Bear: Reproductive Freedom As an International Human Right, 17 BROOK. J. INT'L L. 309 (1991); Ann C. Scales, Towards a Feminist Jurisprudence, 56 IND. L.J. 375 (1981). Critical Race and feminist theorists have challenged the validity and authority of an equality jurisprudence that aspires to and insists upon blindness with respect to race, sex, and class differences — a patently unworkable approach. A realistic reconsideration of the equality paradigm would: acknowledge both sameness and difference, and serve to resolve concerns about fairness and injustice; explain the real incongruity between the goals of full participation in society by all persons and the reality of the invisibility and marginalization of many individuals and groups; and unite, rather than divide, varied but often interdependent communities. See Hernández-Truyol, Building Bridges I, supra note *; Hernández-Truyol, Building Bridges II, supra note *; Hernández-Truyol, Building Bridges III, supra note *.


23 See, e.g., DELGADO, THE RODRIGO CHRONICLES, supra note 3 (discussing economics in chapter two; the market in chapter three; discrimination in chapter four; and race and the State in chapter seven); DELGADO, WHEN EQUALITY ENDS, supra note 6 (discussing equality in chapter one, the market and discrimination in chapter two, and economics in the market in chapter three).

24 See BOAVENTURA DE SOUSA SANTOS, TOWARD A NEW COMMON SENSE: LAW SCIENCE AND POLITICS IN THE PARADIGMATIC TRANSITION 263 (1995) [hereinafter SANTOS, TRANSITION] (defining “globalized localism” as “the processes by which a given local phenomenon is successfully globalized, be it the worldwide operation of TNC’s, the transformation of the English language into lingua franca, the globalization of American fast food or popular music, or the worldwide adoption of American copyright laws on computer software” and explaining “localized globalism” as “the specific impact of transnational practices and imperatives on local conditions that are thereby destructured and
localism,” I propose a venture that, following Rodrigo’s reality, transforms a purely domestic25 Critical Theory movement into a global one by using domestic Critical Theory to develop and transform the context, meaning, and application of international human rights norms. The “localizing a globalism” aspect of this proposal entails the simultaneous utilization of theoretical and substantive dimensions of human rights norms to develop and transform the context, meaning, and reach of domestic critical discourses.

This essay explores the complementary relationships between Critical Race Theory and international law and, more specifically, human rights law. Its goal is to elucidate the way in which globalizing Critical Theory and localizing human rights norms can redefine notions of social and civic participation so that all persons, wherever located, may enjoy their full complement of human rights. The globalization of domestic Critical Theory seeks to reconstruct human rights norms both domestically and

restructured in order to respond to transnational imperatives”). My use of the term globalized localism refers to the use of domestic critical concepts that inform international norms. My turn of the phrase in this work is to refer to the use of an international human rights concept to develop, expand, and transform the context, concept, meaning, and application of critical theoretical constructs. Currently, in both international and domestic spheres, it is virtually impossible to travel through a day without repeated confrontations with the term “globalization.” However, seldom will one encounter remotely similar definitions. Professor Santos defines globalization as the “process by which a given local condition or entity succeeds in extending its reach over the globe and, by doing so, develops the capacity to designate a rival condition or entity as local.” Boaventura De Sousa Santos, Toward a Multicultural Conception of Human Rights, 18 ZEITSCHRIFT FÜR RECHTS-SOZIOLOGIE 1, 3 (1997). See also Aihwa Ong, Strategic Sisterhood or Sisters in Solidarity? Questions of Communitarianism and Citizenship in Asia, 4 IND. J. GLOBAL LEGAL STUD. 107 (1996) (defining globalization as “the intensified capitalist integration of the world”). I use the term globalization to refer to the process(es) by which inter, intra, and transboundary movements of capital, information, and persons serve(s) to influence, affect, and change norms, traditions, processes of learning, and exchanges of information and goods exchanges.

internationally in order to render them truly inclusive. Simultaneously, localizing international human rights norms and principles into domestic critical discourse – much as Rodrigo has done just by who he is\(^{26}\) – may effect a paradigm shift through which the U.S. language of citizenship and equality may come to incorporate international human rights notions of personhood and human dignity.\(^{27}\)

Human rights and critical theories share common aspirations for liberation and justice. Therefore, they provide opportunities for mutual enrichment. For instance, critical theoretical movements that address subaltern communities in the United States have flourished in the last fifteen years.\(^{28}\) These movements parallel significant human rights developments regarding individual rights and, more recently, the rights of marginalized groups (including ethnic, racial, and religious minorities; indigenous/first nations peoples; women; and children) and the rights of peripheral States in the worldwide arena. Like international human rights discourses, Critical Theory movements engage notions of individual rights and dignity in relation to the State; however, these movements go beyond statism.

Through their treatment of individual rights and dignity, critical movements follow the lead of the human rights model which transformed the doctrine of State sovereignty from one in which individuals are objects of State power to one in which individuals become the subjects of international law. Human rights norms demand accountability for a State’s treatment of all

\(^{26}\) See id.

\(^{27}\) See, e.g., id. at 148-65.

persons within its jurisdiction – citizens and non-citizens alike. Human rights language, then, is a morally compelling tool for denouncing sovereign actions that derogate the dignity and integrity of personhood and citizenship.\(^29\)

While the human rights model facilitates full personhood for all, it is important not to romanticize the human rights regime that presently exists. Before it can serve its emancipatory function, the human rights vision itself must be reconstructed – a task for which Critical Theory may prove highly beneficial.

Since relatively early in their development, human rights norms have been criticized for being entrenched in the very Western/Northern hegemonic norms\(^30\) that critical scholars ("Crits") have denounced in the domestic arena: norms that were articulated by, and crafted in the image of, Western/Northern power elites. In the domestic arena, Crits have challenged the objectivity and fairness of a system of laws designed for the interests of only a few homogeneous, powerful political actors.\(^31\)

Since its inception, Critical Theory in the United States, in particular Feminist Theory and Critical Race Theory, has attempted to deconstruct the legal narrative to reveal its roots in a propertied, white, male paradigm.\(^32\) As it relates to the human

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\(^{30}\) See *Santos, Transition*, supra note 24, at 346.

\(^{31}\) See, e.g., Delgado, *When Equality Ends*, supra note 6, at 127-42. (discussing the inherent unfairness of formal and informal legal structures for outsiders).

rights model, Critical Theory may inspire a similar substantive deconstruction of the context in which international law has emerged. For example, Critical Theory-type analysis may reveal that norms we deem "universal" were in fact developed in narrow social, economic, historical, and cultural spaces. Indeed, such a

his success in making other people act just like him is not. No culture that has come in contact with Western industrial culture has been unchanged by it, and most have been assimilated or annihilated, surviving only as vestigial variations in dress, cooking or ethics.

See also Jerome McCristal Culp, Jr., Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy, 77 VA. L. REV. 539 (1991) (arguing that the failure to present personal experiences reinforces majoritarian perspectives); Derrick A. Bell, Jr., White Superiority in America: Its Legal Legacy, Its Economic Costs, 33 VILL. L. REV. 767 (1988) (arguing that courts reflect white supremacy and discussing the economic costs of racism); Regina Austin, Sapphire Bound!, 1989 WIS. L. REV. 539 (maintaining the need to have black women's voices so that issues are not viewed only from the white, middle-class perspective); Derrick A. Bell, Jr., AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987) (discussing the myth of an egalitarian, color-blind Constitution); Adrienne D. Davis & Stephanie M. Wildman, The Legacy of Doubt: Treatment of Sex and Race in the Hill-Thomas Hearings, 65 S. CAL. L. REV. 1267 (1992) (noting that these hearings reflect patriarchal assumptions about women); Richard Delgado, Norms and Normal Science: Toward a Critique of Normativity in Legal Thought, 139 U. PA. L. REV. 933 (1991) (criticizing the dominant school of normative jurisprudence); Richard Delgado, Shadowboxing: An Essay on Power, 77 CORNELL L. REV. 813 (1992) (discussing the dominant culture preference for "objective" norms because they are of benefit to the empowered as they define the meaning of the rules); Neil Gotanda, A Critique of "Our Constitution Is Color Blind", 44 STAN. L. REV. 1 (1991) (maintaining that a color-blind approach promotes white supremacy); Linda S. Greene, Multiculturalism as Metaphor, 41 DEPAuL L. REv. 1173 (1992) (discussing how the Supreme Court's "normative vacuum" results in a failure to enforce equality and inclusion); Margaret M. Russell, Race and the Dominant Gaze: Narratives of Law and Inequality in Popular Film, 15 LEGAL STUD. F. 243 (1991) (arguing that movies reinforce and replicate the popular culture's view of racial subordination); Robert A. Williams, Jr., Columbus's Legacy: Law as an Instrument of Racial Discrimination Against Indigenous Peoples' Rights of Self-Determination, 8 ARIZ. J. INT'L & COMP. L. 51 (1991) (explaining that the Supreme Court jurisprudence dealing with American Indians comes from a medieval European tradition and law of colonization brought by Columbus that seeks to legitimate cultural racism); Hernández-Truyol, Borders (En)gendered, supra note 21.
deconstruction may reveal the effective imposition of the perspective and experience of a few powerful States upon many others.  

Critical Theory provides a lens that reveals the hegemonic influences on international human rights documents. Critical Theory questions the validity of normative standards that were formulated prior to the entrance of the former colonies into the community of nations. By incorporating the interests of these previously excluded States, Critical Theory would inject a post-colonial perspective for reconstituting appropriate standards, rather than supporting the acceptance of the interpretation that patently fostered the interests of the colonizers. Once we understand the context in which human rights documents emerged, we can reconstruct international rules and norms that are more inclusive and just.

33 An example of the exclusionary process for defining human rights is the adoption of the Universal Declaration of Human Rights. The Universal Declaration was signed by only forty-eight States, with eight States abstaining (including Saudi Arabia, the USSR, South Africa, and Yugoslavia). Today with 185 independent States belonging to the community of nations, the majority of which never voted on the Declaration, this document is nevertheless broadly accepted as embodying a plethora of customary universal human rights norms. See Berta Esperanza Hernández-Truyol, Human Rights Through a Gendered Lens: Emergence, Evolution, Revolution, in WOMEN’S INTERNATIONAL HUMAN RIGHTS: A REFERENCE GUIDE (Kelly Askin & Doreen Koenig eds., 1999) [hereinafter Hernández-Truyol, Gendered Lens]; Berta Esperanza Hernández-Truyol, Reconciling Rights in Collision: An International Human Rights Strategy, in IMMIGRANTS OUT!: THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 254, 257-59 (Juan Perea ed., 1997) (describing customary norms and international human rights law).

34 Critical analysis, whether or not expressly framed as such, unpacks in the business context the master narrative of the law-and-economics ideology, too. See, e.g., Claire Moore Dickerson, Cycles and Pendulums: Good Faith, Norms, and the Commons, 54 WASH. & LEE L. REV. 399, 401, 422 (1997) (explaining that the commercial terrain is not level); Claire Moore Dickerson, From Behind the Looking Glass: Good Faith, Fiduciary Duty and Permitted Harm, 22 FLA. ST. U. L. REV. 955, 969, 977 (1995) (explaining the way in which the law-and-economics perspective permits harm to fall upon the weaker of opposing parties).
The adoption of the Universal Declaration reflected a commitment by States to a collection of indivisible, interdependent, and inviolable rights that include not only civil and political rights, but also social, economic, cultural, and solidarity rights. As the Declaration itself provides, all levels of rights are indivisible and interdependent. The anticipation that this holistic human rights ideal would be incorporated into a single convention was short-lived. Unfortunately, the panoply of rights included in the Universal Declaration was eventually bifurcated into two separate treaties—the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social and Cultural Rights ("Economic Covenant").

Critical theorists would explain the failure of this original vision by unmasking the power imbalance among the original drafters as follows. During deliberations on the anticipated single human rights convention, it became apparent that the

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35 The Declaration includes the rights to life, Universal Declaration, supra note 22, art. 3, liberty, id., nondiscrimination, id. arts. 2 & 7, as well as the prohibition of slavery, id. art. 4, inhuman treatment, id. art. 5, arbitrary arrest, id. art. 9, and arbitrary interference with privacy, id. art. 12. These are all considered civil and political in nature. See also ICCPR, infra note 36; Economic Covenant, infra note 36.

36 International Covenant on Civil and Political Rights, opened for signature Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 51, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered in force Mar. 23, 1976) (not ratified by the United States until 1988 with limiting reservations) [hereinafter ICCPR]. The ICCPR includes rights such as: the right to life, id. art. 6; freedom from torture or cruel, inhuman, or degrading treatment or punishment, id. art. 7; freedom from slavery and servitude, id. art. 8(1)-(2); the non-applicability of retroactive laws, id. art. 15; the right to recognition as a person before the law, id. art. 16; and the right to freedom of thought, conscience, and religion, id. art. 18. The Universal Declaration also includes rights such as the right to social security, Universal Declaration, supra note 22, art. 22; full employment, id. art. 23; fair working conditions, id. art. 23; an adequate standard of living, id. art. 25; and participation in the cultural life of the community which are considered economic, social and cultural in nature, id. art. 27.

Western/Northern States were comfortable only with the grant of civil and political rights. Thus, these States supported only the "negative" right of individuals to be free from governmental interference with respect to civil and political rights — an approach grounded in the "equal access" thinking of the liberal tradition. These States were resistant to granting positive social, economic, and cultural rights, and consequently resisted undertaking State obligations with respect to such rights.

On the other hand, newly emerging States — so-called Third World States or underdeveloped, peripheral States — and the then-Second World viewed negative rights as a preservation of colonialism and of the already powerful bourgeoisie's power over the masses. The vision of former colonies and of communist States was that the masses could and would be liberated only by the grant of positive social and economic rights.

38 See Mary G. Dietz, Context Is All: Feminism and Theories of Citizenship, 116 DAEDALUS 1, 4-5 (1987). Interestingly, and perhaps ironically, the liberal vision, while stuck on civil and political rights even at the expense of the greater societal good, recognized the inviolability premise: "[e]ach person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override . . . . The rights secured by justice are not subject to political bargaining or the calculus of social interests." John Rawls, A THEORY OF JUSTICE (1971), quoted in id. at 4. See also DELGADO, THE COMING RACE WAR?, supra note 2, at 4-36 (discussing the problem with liberalism); DELGADO, WHEN EQUALITY ENDS, supra note 6, at 55-77 (discussing "[w]hat's [w]rong with [n]ololiberalism"). Negative rights are those that focus on the individual's personal rights with the consequent effect of placing limits on actions of governments — the conception of rights as "freedom from" government interference. On the other hand, positive rights and those that articulate a "social bill of rights" have attached to them positive government obligations. See generally Charles Taylor, Human Rights: The Legal Culture, in INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 173 (Henry J. Steiner & Philip Alston eds., 1996).

39 See Hernández-Truyol, Gendered Lens, supra note 33; Dietz, supra note 38, at 4 ("The life of liberalism ... began in capitalist market societies, and as Marx argued, it can only be fully comprehended in terms of the social and economic institutions that shaped it.").

40 See DELGADO, WHEN EQUALITY ENDS, supra note 6, at 55-77 (questioning the value of less than full economic protections for housing).
Not surprisingly, the Western/Northern States resisted this perspective; thus, the panoply of rights set forth in the Universal Declaration were bifurcated into a civil and political rights covenant and a separate (and unequal) social, economic, and cultural rights covenant. To date, the United States remains steadfast, albeit virtually alone, in its refusal to ratify the Economic Covenant. Even those Western States that have ratified the Economic Covenant for the most part view it not as an obligation to create economic rights, but rather as an obligation to enforce, in a non-discriminatory manner, those rights the State already recognizes. A critical evaluation of this process reveals the resulting structure as one in which the West's narrative was institutionalized. It thus leads to the conclusion that a reconstruction of that structure is necessary.

Indeed, pursuant to the dominant Western interpretation, only civil and political rights, the so-called "first generation" rights, are considered international human rights. But, as critical theorists would emphasize, a comprehensive review of the documents makes plain that economic, social, and cultural rights are not, and should not, be relegated to a second class of rights.

Moreover, a critical analysis of the blueprints for the Universal Declaration elucidates the divergent viewpoints of the North and South, and of the East and West with respect to human rights. The Universal Declaration's roots lie in the American

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42 At this junction it is appropriate to mention that an ongoing debate exists between the Critical Legal Studies school and the Critical Race theorists regarding the value of rights. See, e.g., Richard Delgado, The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?, 22 HARV. C.R.-C.L. L. REV. 301 (1987) (criticizing Critical Legal Studies); M. Tushnet, An Essay on Rights, 62 TEX. L. REV. 1363 (1984) (noting that rights are unstable); Patricia J. Williams, Alchemical Notes: Reconstructing Ideals from Deconstructed Rights, in CRITICAL RACE THEORY, supra note 28 (noting the importance of rights language); see also THE POLITICS OF LAW, supra note 28; CRITICAL RACE THEORY, supra note 28.
Declaration of Independence and the French Declaration des Droits de L'Homme — documents resulting from late eighteenth-century political and social uprisings that sought to identify impermissible governmental intrusions into individual lives. Yet, as critical thinkers have underscored, it is important to recall that these eighteenth-century social and political revolutions coexisted with slavery, the decimation of indigenous peoples, and with women's status as chattel — hardly positions of equality or equal access. Thus, while all agree that civil and political rights such as the rights to non-discrimination, liberty, and security of the person are not only desirable but necessary, current interventions into equality discourses require a recognition of their exclusionary beginnings in order to ensure that at the present time all persons benefit from this historical legacy despite its exclusionary origin.

Critical interventions, thus, could inform global discourses both by providing the tools for exposing the hegemonic foundations of human rights norms and by assisting in their counter-hegemonic, multidimensional, multicultural reconstruction. In these reconstructive efforts it is imperative that new notions of justice that have a paramount respect for personhood do not become bound by any one particular group or ideology — not by Westernization, not by the privileging of elites from peripheral spaces, not by the visible portions of global market economies, nor by apologists for economic growth. Toward this end, the process of reconstruction must be transformational, dynamic, and ongoing in a profoundly unhegemonic way.

Critical Theory can help inform the debate surrounding other particular norms. For example, human rights instruments,

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43 See Romany, supra note 29, at 89 ("[T]he presence of patriarchy in these emancipatory structures [of liberalism] reveals the gap between liberal concepts and reality"); see also Ursula Vogel, Marriage and the Boundaries of Citizenship, in THE CONDITION OF CITIZENSHIP 79 (Bart van Steenbergen ed., 1994).
including the UN Charter, mandate nondiscrimination on the basis of sex in their general nondiscrimination clauses. If one looks beyond those clauses to some of the substantive provisions granting specific rights, however, one finds that some of these provisions exclude sex as the basis for protection. For example, while Article 2(1) of the ICCPR mandates sex equality, Article 20 provides that "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." On its face, Article 20 does not proscribe sex-based advocacy of hatred.

Canons of construction – both domestic canons based on contract law and international canons based on the Vienna Convention on the Law of Treaties – provide that general provisions cede to the specific. Therefore, the omission of gender from Article 20 signifies that the advocacy of sex-based "hatred that constitutes incitement to discrimination, hostility or violence" is not proscribed. This interpretation suggests that sex-based violence, if bad at all, is not as egregious as ethnic, race, or religion-based hatred. This suggestion is indefensible, as sex-based violence constitutes such a prevalent global problem that it unites women from the North and South and the East and West. For instance, at the 1993 Human Rights Conference in Vienna, women from all areas of the world joined to bring the subject of sex-based violence to the forefront of the human rights meeting (a meeting that at the outset did not even include women on the agenda).

Certainly, a Critical Race Feminist re-evaluation and re-interpretation of the prohibitions against sex-based violence is in order. Critical Race Feminism and feminist discourse are vital tools to the reconstruction of these norms in a manner sensitive to the intersections of race, sex, ethnicity, class, religion, language, and sexuality. Such critical interventions are not only appropriate, but also necessary for a truly workable human rights model to emerge.

45 See, e.g., UN Charter art. 1, para. 3; art. 55, para. c.
The hegemonic foundations of international human rights norms are further evident in the Race Convention’s construction of sex, race, and racial power. This treaty contains a general nondiscrimination provision that is silent on sex. Its preamble refers to a provision of the Universal Declaration that includes sex; yet, the Race Convention omits sex from the Universal Declaration reference.

Moreover, the very definition of race in the Race Convention is emblematic of its West/North viewpoint. The Convention defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field or public life.”

This definition effectively internationalizes and institutionalizes the U.S. construction of race – the binary black-white paradigm. It racializes ethnicity and national origin and has the potential to erase classifications that are neither black nor white.

The LatCrit movement has specifically challenged the conflation of many and varied identity factors. Race as a generic

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47 See DELGADO, WHEN EQUALITY ENDS, supra note 6, at 163-87 (discussing how the black-white binary erases Latina/os from the aspirations of civil rights efforts).

48 LatCrit is a theoretical movement that was initiated as a distinct discourse within Critical Legal Theory. Its origins are traceable to the first colloquium organized with the purpose of having Latina/o law professors and their friends critically explore the position of Latina/os within the academia and society. It started the road towards an inquiry concerning what the politics of identity means through a Latina/o lens, which, by necessity, is a pan-ethnic prism. This first colloquium took place during the 1995 Annual Meeting of the Hispanic National Bar Association. That gathering started the momentum for the regular planning of reuniones that promote an interrogation of what it means to be Latina/o in this diverse world of ours which necessarily promotes relating of the
term for all differences is a wholly inadequate construct for Latina/os (and other groups such as Asians, Pacific Islanders, and Native peoples) whose multidimensionality within the U.S. borderlands, much like Rodrigo’s multidimensional identity, can render them as racial, ethnic, and linguistic others. An interpretation that equates difference with race and race with the black-white binary not only reflects the dominance of, but adopts as "neutral, rational . . . and just," the West/North perspective – the “perpetrator perspective”49 in the international arena. Such an epistemology presents as normative the monolingualism of the white, straight, moneyed, educated, able-bodied male. Once critically refashioned, however, the indivisibility/interdependence50 Latina/o condition to other groups’ locations, interests, and issues. Indeed, a central goal and foundational premise of LatCrit is to be diverse and inclusive. See Elizabeth M. Iglesias & Francisco Valdes, Afterword, Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas, 19 UCLA CHICANO-LATINO L. REV. 503, 507-08 (1998); see generally Symposium, Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory, 53 U. MIAMI L. REV., 4 U. TEX. HISP. L.J. (1999); Symposium, Difference, Solidarity and the Law: Building Latina/o Communities Through LatCrit Theory, 19 UCLA CHICANO-LATINO L. REV. 1 (1998); Symposium, LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship, 2 HARV. LATINO L. REV. 1 (1997). Thus, the original gathering and those that have taken place since then are multiethnic, multiracial experiences where community transcends and embraces racial, ethnic, national, linguistic, sexual, gender, class, and religious differences and similarities. Significantly, this young movement has produced an expansive and impressive series of published colloquia, particularly in the context of the importance of literature in the academy. See Colloquium, International Law, Human Rights, and LatCrit Theory, 28 U. MIAMI INTER-AM. L. REV. 177 (1997); Symposium, LatCrit Theory: Latinas/os and the Law, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1998); Colloquium, Representing Latina/o Communities: Critical Race Theory and Practice, 9 LA RAZA L.J. 1 (1996); see also THE LATINO/A CONDITION, supra note 28; Hernández-Truyol, Borders (En)gendered, supra note 21; Hernández-Truyol, Building Bridges III, supra note *; Hernández-Truyol, Building Bridges II, supra note *. 

49 Key Writings, supra note 28, at xiv.

structure of the human rights model, which mandates the recognition of rights as holistic, indivisible, and interdependent, becomes invaluable as a tool to eradicate injustice.

Other vestiges of these foundational inequalities are yet to be eliminated. Women are still far from attaining full citizenship rights and benefits in any geography of the global community. Racial, sexual, and ethnic minorities within First World States, all people in Third World States, and indigenous peoples in all States – North and South, East and West – are similarly deprived of full citizenship rights. All of these populations, regardless of their status as citizens under the current liberal conception, are experiencing a widespread pattern of inequality in access to education, health, nutrition, and in participation in the social, political, and economic spheres. In other words, they are experiencing a widespread pattern of unequal recognition as full persons. Similarly, minorities in both core and peripheral States experience a widespread pattern of unequal access to wealth, resources, technology, and wages. These conditions provide a clear opportunity to cultivate critical theoretical discourses that can transform exclusionary international principles into just ones.

The tremendous polarization of the economic development of States also provides a valuable entry for a critical theoretical intervention into human rights discourse. Understanding the

(recognizing the interdependence of “housing, food, medical care, education, and other basic needs” which are second generation rights, with first generation civil and political rights); Hernández-Truyol, Gendered Lens, supra note 33.  
51 See, e.g., DELGADO, THE RODRIGO CHRONICLES, supra note 3, at 95-96 (discussing the need for economic rights); id. at 201 (discussing the failure to recognize some economic conditions as rights).  
52 See Ralf Dahrendorf, The Changing Quality of Citizenship, in THEORIZING CITIZENSHIP, supra note 44, at 16 (“[T]here is a deep similarity between the underclass problem in rich countries and the problem of poor countries . . . . [T]hey too are economically ‘not needed’ and politically harmless, but challenge our moral foundations.”); Romany, supra note 29 (“International society can thus be viewed as a blown-up liberal State which legislates in accordance with liberal humanistic values and which accepts as part of a social contract those values which refer to the essential dignity and freedom of human beings.”).
historical underpinnings of human rights norms explains why the international arena teems with the inequalities attendant to market economies, and to the economic locations of States as core or peripheral, developed or underdeveloped, North or South.

Earlier this essay discussed how the polarization of the political interests of States resulted in the severance of the human rights vision into civil and political rights on the one hand and social, economic, and cultural rights on the other. More recently, the economic globalization movement has rendered this schism more patent, particularly in the failed programs of aid to underdeveloped States. Such programs were destined for failure, as they were not only highly bureaucratized but were implemented without a thorough understanding of the various cultures and needs of diverse peoples and of the problems in the societies receiving aid. Recent post-Cold War events reveal great discord resulting, at least in part, from economic instability and inequality. The attendant consequences are increased nationalism, ethnic strife, civil war, and human rights abuses – challenges that the international community is struggling to resolve, regrettably without marked success.

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53 See, e.g., SANTOS, TRANSITION, supra note 24, at 427 ("[T]he core-periphery hierarchy in the world system is the result of unequal exchange, a mechanism of trade imperialism by means of which surplus-value is transferred from the periphery to the core."); see also DELGADO, WHEN EQUALITY ENDS, supra note 6, at 55-77; Jane E. Larson, Free Markets Deep in the Heart of Texas, 84 GEO. L. J. 179 (1995).

54 See, e.g., David M. Trubek, Back to the Future: The Short, Happy Life of the Law and Society Movement, 18 FLA. ST. U. L. REV. 1, 23-4 (1990); see also DELGADO, WHEN EQUALITY ENDS, supra note 6, at 55-77. But see Larson, supra note 53 (suggesting that the proper response to informal economics is gradualized formalization to which Larson refers as “regularization” and rejecting “either or” options of “outright deregulation” or “uniform regulation”).

55 See Dahrendorf, supra note 52, at 16-17 (noting that post communist States do not have a “bourgeoisie” concerned both about civil rights and economic growth which results in a confusion that, in turn, makes persons seek a “citizenship” that is formulated on a desire to belong to a homogeneous group – a “deplorable” result as “the true test of the strength of citizenship rights is heterogeneity.”).
A critical perspective on these conflicts could yield valuable information to address myriad problems. For instance, many different States and communities could benefit from the application of an appropriately globalized version of the U.S. race discourse. Effectively, every First World State has an internal Third World – inner cities, "new underclasses," racial and ethnic minorities, the disenfranchised, economically marginalized persons, and second-class citizens whose race, sex, sexuality, class, religion, linguistic ability, and/or nationality "others" them as Rodrigo and the Professor have widely discussed. Critical theorists concerned with social justice and issues of race, sex, class, sexuality, ethnicity, religion, and their intersections have been analyzing these concerns. Their vast and rich literature offers valuable suggestions for corrective measures and can be a phenomenal resource for global challenges and conversations.56

Similarly, critical analyses could develop, expand, and transform the globalization discourse and provide it with a broader mission – one that could work to eradicate barriers in the understanding of globalization's both positive and negative consequences. Current economic globalization discourse is limited to opening and broadening financial markets, disregarding the impact of market expansion on individual lives. If the economic globalization discourse adopted a critical perspective, existing narratives would be broadened to include stories beyond those about massive capital transfers in the world geography that presently monopolize the conversation.

A critical chronicle would consider also up-to-now invisible transmigrations related to economic globalization, such as the flow of labor – a flow involving individuals who are almost exclusively from ethnic and racial minority groups.57 This flow of labor relates to the flow of capital and goods. A critical evaluation

56 See generally DELGADO, THE COMING RACE WAR?, supra note 2; DELGADO, THE RODRIGO CHRONICLES, supra note 3; DELGADO, WHEN EQUALITY ENDS, supra note 6.
of the globalized economy would consider low-wage workers that service the demands generated by industries; that is, it would consider the workers who clean up the glamorous buildings where the money travels, the hotels where global financiers stay, and the restaurantes at which they eat.

A critical lens would render visible the meanings of movements of persons in the geography of the global economy. It would critically question the social and economic byproducts and consequences of these movements, such as the migration of customs, languages, and religious and cultural practices that follow the flow of persons. Consider, for instance, the different culinary traditions that result in the desire and need for "ethnic" foods. Such demand causes industries to emerge to meet the demand. These new businesses range from food import start-ups to the ethnic restaurants that originally spring up to feed service workers and eventually are discovered by traders. An inclusive globalization perspective would include all of the service industries necessary to support both the visible and invisible cities, not only those that implicate big money concerns. Such a changed vision of globalized economies would shift the focus of the globalization discourse from transnational capitalism to economic justice.

Beyond reconceptualizing the discourse of economic globalization, Critical Theory would help craft solutions for other conflicts that involve diverse peoples. Critical movements would ensure that human rights discourse does not simply become an

58 Significantly, many of the conversations between Rodrigo and the Professor are held at various ethnic restaurants. See, e.g., DELGADO, THE COMING RACE WAR?, supra note 2, at 14 (noting a conversation at a Vietnamese restaurant); id. at 63 (noting a discussion at a Middle Eastern restaurant); DELGADO, THE RODRIGO CHRONICLES, supra note 3, at 69 (noting a discussion at a Mexican facility); DELGADO, WHEN EQUALITY ENDS, supra note 6, at 2 (noting a conversation held at an Ethiopian restaurant); id. at 31 (noting a discussion held at an American restaurant); id. at 56 (noting a discussion held at an Italian establishment); id. at 80 (noting a discussion held at a Moroccan restaurant); id. at 198 (noting a conversation at a Japanese establishment).
II. LOCALIZING THE GLOBAL: TRAVELING WITH RODRIGO AND THE PROFESSOR

A. Overview

Just as Critical Theory can contribute to the development and transformation of human rights discourse, the international human rights paradigm can provide a valuable and useful intervention into Critical Theory discourse in numerous ways. To illustrate this exciting possibility, after generally suggesting several locations for a human rights filter, I will focus on discussions of the young scholar, his mentor, and his partner, specifically with respect to culture, race, and dispute resolution.

First, the human rights framework transforms the structure of Critical Theory from one premised on comparativism to one premised on equality by providing a construct in which rights are viewed as indivisible and interdependent.\textsuperscript{59} International human rights norms afford classifications that constitute a more expansive and, consequently, more useful indicator than U.S. (and other local) indicia of an individual's attainment of dignity, integrity, and full citizenship. For example, the international human rights standards for non-discrimination include categories such as language, culture, and social origin - categories contested and rejected in many local environments, including the United States, as providing the bases for any protections at all.\textsuperscript{60} Moreover, a human rights analysis premised on the indivisibility and

\textsuperscript{59} For a brief discussion of the interdependence/indivisibility perspective, see Copelon, supra note 50, in THE POLITICS OF LAW 216 (David Kairys ed., 3d ed. 1998); Hernández-Truyol, Gendered Lens, supra note 33.

\textsuperscript{60} See Hernández v. New York, 500 U.S. 352 (1991) (addressing the issue of language-based discrimination); Rust v. Sullivan, 500 U.S. 173 (1990) (refusing to extend constitutional protections to the public funding of abortions); Hopwood v. Texas, 84 F.3d 720 (5th Cir. 1996) (refusing to allow affirmative action based on race or ethnicity).
interdependence of rights requires that these categories as a whole, rather than the single-trait fragmented analysis of U.S. jurisprudence, be the measure of an individual’s equality.

Second, while Critical Theory scrutinizes and rejects normative concepts that have institutionalized the “perpetrator perspective,” it has not always succeeded in its enterprise without imposing another perpetrator’s viewpoint. To be sure, Critical Theory has provided invaluable insights into the consequences of normalizing the dominant viewpoint: the exclusion of all women of certain classes and of racial, ethnic, religious, and sexual minorities.

While Critical Race Theory was founded upon the desire to effect “a left intervention into race discourse and race intervention into left discourse,” the resulting implementation of this approach was underinclusive. For instance, women of color, including Latinas, remained marginalized by a race-based system that obscured gender and sex-related issues. Thus, these women’s multidimensional identities—defined by sex, race, color, ethnicity, religion, sexuality, national origin, language, citizenship, and culture—exclude them not only from the norm, but also from a single-dimensional view of the “other” adopted by Critical Theory. Just as structural debates persist about the nature and extent of human rights, there are also some fundamental structural debates engaging the Crits as well.

Indeed, the appearance of various schools of critical thought makes evident that a transition away from the liberal binary paradigm—namely, black-white and male-female—is indispensable. Accordingly, critical discourses should incorporate the Universal Declaration’s recognition of the indivisible and interdependent nature of civil, political, social, economic, and cultural rights. If it is to promote successfully rights for all

61 See supra note 49 and accompanying text.
62 KEY WRITINGS, supra note 28, at xiv.
63 See, e.g., DELGADO, WHEN EQUALITY ENDS, supra note 6, at 109-25 (noting how the black-white paradigm does not serve Latina/os well in the struggle to attain equality).
peoples, Critical Theory would benefit, as does the human rights discourse, from a recognition of the need for collaboration and experience-sharing.

The international human rights model provides a blueprint for the construction of a participatory society in which all persons can fully exercise their rights and obligations as equal citizens. Because of his status, Rodrigo effectively is the embodiment of the sort of multidimensionality that mandates such a reformation. The existence of a subordinate or second class of citizens undermines the legitimacy of the political process, as well as that of the principles on which that system is founded. After all, a truly legitimate civil and pluralistic society is one that seeks and respects opinions and entertains needs of all governed peoples, regardless of differences.

Moreover, the multilingualism of the international human rights tradition is a useful addition to domestic Critical Theory. A body that listens only to one language from its people not only silences groups within its realm that speak different tongues, but also silences outside groups who share the language. Thus, importing the human rights discourse’s acceptance of multilingualism serves to promote local acceptance of the voices of excluded groups.

B. Cultures, Colors, and Clashes

Having noted some useful ways in which human rights discourse would influence Critical Theory, I turn to Rodrigo and the Professor’s conversations on cultures, colors, and clashes. It is important, however, to note that while I selected these three topics from a feast of possibilities, that selection does not indicate that they constitute three discrete, isolated, or isolatable areas of debate.

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or consideration. To be sure, these are three themes discussed at length and in depth by the actors. Nonetheless, as the human rights approach of indivisibility and interdependence guides my comments, it is important to note that these themes, too, are indivisible and interdependent. This section proceeds to consider how a human rights lens on the intellectual travels of Giannina, Rodrigo, and the Professor can reinforce and contextualize their erudite conversations.

I. Culture

Rodrigo and the Professor discuss the persistent social and legal inequality within the fronteras estadounidenses. As the paradigm of cultural diversity, Rodrigo is an apt representative of the Latina/o condition and thus a perfect interlocutor for, and critic of, hegemonic racial and cultural norms. Through his multidimensional lens, he perceives and challenges cultural supremacists who, in the name of objectivity, exalt Western thought and traditions over African and Eastern models. In Rodrigo's Book Bag, through conversations about recent books that disguise hate and disdain as objective social and legal analysis, the Professor and his young charge discuss matters of social and legal inequities, and challenge their origins.

For example, they discuss Dinesh D'Souza's The End of Racism: Principles for a Multiracial Society, which to them illustrates that "it's now acceptable to say things - about the genetic inferiority of blacks, for example - that were unthinkable a few years ago." In his book, D'Souza "traces the origin of racism against blacks and other groups of color" and argues that "liberalism - characterized by cultural relativism (the belief that all cultures are equal) and equality of result (the belief that absent prejudice and racism, all groups should be approximately equally

65 DELGADO, WHEN EQUALITY ENDS, supra note 6, at 1-25.
66 Id. at 2 (commenting on DINESH D'SOUZA, THE END OF RACISM: PRINCIPLES FOR A MULTIRACIAL SOCIETY (1995)).
67 Id. at 22 n.6.
successful in most competitions) – today constitutes the main barrier to a just society.”68 In a perverse sleight of words, D’Souza argues that, “diversity, affirmative action, and multiculturalism are all forms of racism.”69 Moreover, he believes other societies and cultures – such as African and Eastern ones – are inferior and can offer nothing to the superior West.70 Consequently, he favors an assimilationist approach for newcomers, much like the model embraced by early “melting pot” theorists, that will erase other cultures in the glorification of the valuable, preferred, greater one.71

Another author discussed by the dynamic scholars is Robert Bork, the failed nominee for the Supreme Court of the United States. In Slouching Toward Gomorrah: Modern Liberalism and American Decline,72 Bork “offers his usual dyspeptic assessment of multiculturalism, affirmative action, and pop culture, all of which he thinks herald the decline of civilization and the West.”73 Bork, like D’Souza, believes in Western pre-eminence. Moreover, he also agrees that the West has little to learn from other cultures, particularly “African ones which he seems to believe have produced no great music, science, or technology – little except a good recipe or two.”74

Finally Rodrigo and the Professor focus on Richard J. Herrnstein and Charles Murray’s The Bell Curve: Intelligence and Class Structure in American Life75 in which the authors set forth linkages between race and intelligence quotient and conclude, not

68 Id.
69 Id. at 4.
70 This argument reflects the underlying premise of the human rights construct before it is critically reconstructed, as discussed in part I above.
71 See DELGADO, WHEN EQUALITY ENDS, supra note 6, at 4.
73 DELGADO, WHEN EQUALITY ENDS, supra note 6, at 3.
74 Id.
surprisingly, that blacks are less intelligent than whites.\footnote{DELGADO, WHEN EQUALITY ENDS, supra note 6, at 3-4, 22 n.4.} In the end, their prognostications for people of color are devastating, concluding with a suggestion that a technological wall may be necessary to isolate the inner city from the rest of civilization, much like Indian reservations served to isolate those "savages."\footnote{Id. at 4, 22 n.10; see Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823) (referring to Native Americans as savages); see also DELGADO, WHEN EQUALITY ENDS, supra note 6, at 4, 23 n.13 (Rodrigo noting that D'Souza "expounds some highly dubious premises of his own — such that African society was backward and savage").}

This is but a domestic version of the isolationist international proposal to build a wall along the Mexican border to keep out those foreigners — "little brown peons"\footnote{Gary A. Greenfield & Don B. Kates, Jr., Mexican Americans, Racial Discrimination, and the Civil Rights Act of 1866, 63 CAL L. REV. 662, 694-710 (1975) (discussing the perception of Mexicans as non-white and Congressional references to Mexicans as "little brown peons").} — that has recently been embraced by other like-minded writers.\footnote{PETER BRIMELLOW, ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER (1995), cited in DELGADO, WHEN EQUALITY ENDS, supra note 6, at 4 ("It reminds me of Peter Brimelow's suggestion that we cordon off the entire Mexican border.").}

To be sure, as we see in Rodrigo and the Professor's conversations, these authors assault culture as a means of proving their outcome-determinative, fundamentally racist epistemologies. Whether the assault is against African-American or other black cultures, against Mexican or other Latina/o immigrants, the human rights paradigm of inalienability and interdependence of rights provides further arguments against such cultural veiling of racist tropes — a position that Rodrigo and the Professor tacitly and impliedly embrace. For example, the Universal Declaration, the ICCPR, and the Economic Covenant all have general non-discrimination clauses that provide broader protections against discrimination than U.S. law. Unlike United States law, these protect against discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social
origin, property, birth or other status. Moreover, as noted above, the Race Convention defines the term racial discrimination so as to conflate race with color, descent, or national or ethnic origin. These provisions afford another lens through which Rodrigo and the Professor can scrutinize the mechanisms used to subordinate and dehumanize outsiders – be they citizens or foreigners.

Another international human right significant to discussions of or about cultures is the right to participate in one’s culture and cultural activities. The articulation of this right in the ICCPR is especially important because this convention implicitly recognizes

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80 Universal Declaration, supra note 22, art. 2; ICCPR, supra note 36, art 2(1); Economic Covenant, supra note 36, art. 2(2). The United States is a signatory to the Universal Declaration and has ratified the ICCPR. It has not, however, ratified the Economic Covenant. However, that fact does not create a problem in this analysis because the provisions are identical in the three documents.

81 See, e.g., CERD, supra note 46, at art. 1(1). Interestingly, this definition reflects and incorporates the U.S. paradigm as it racializes both ethnicity and nationality. This critique and a consequent deconstruction and reconstruction would be a valuable intervention of critical thought into the reconstitution of human rights norms. Another interesting observation is that the Race Convention takes sex out of the racial equation much like the Women’s Convention takes race out of the sex-discrimination equation by defining “discrimination against women” as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, art. 1, 1249 U.N.T.S. 13, 19 I.L.M. 33. These mutual exclusions provide another location for critical interventions into the development and transformation of human rights norms. Significantly, the United States has ratified the CERD but not the Women’s Convention.

82 See Universal Declaration, supra note 22, art. 1; id. art. 27 (providing the right to participate freely in the cultural life of the community); ICCPR, supra note 36, preamble; id. art. 27 (providing the right to enjoy one’s own culture); CERD, supra note 46, art. 5(e)(vi) (providing the right to equal participation in cultural activities).
that religious and ethnic minorities are particularly vulnerable to a tyrannical majority's whims in denying cultural rights.\footnote{See ICCPR, supra note 36, art. 27 ("In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture . . . .").}

Given that the human rights contained in these instruments are fundamental and inalienable rights—rights essential to life as human beings—Rodrigo and the Professor could charge those who deny them of violating fundamental rights—whether expressly in the name of cultural superiority or as a pretext for subordinating races or ethnic groups. In this regard, saying that someone is not, and does not deserve to be, equal "because they are not really like us"\footnote{See REBECCA M. WALLACE, INTERNATIONAL LAW 175 (1986) ("Human Rights . . . are regarded as those fundamental and inalienable rights which are essential for life as a human."); Hernández-Truyol, Gendered Lens, supra note 33, at 5 (proclaiming that human rights are fundamental, inviolable, interdependent, indivisible, and inalienable rights ).} is unacceptable discrimination even if it is justified because it results from economic and class differences.\footnote{DELGADO, WHEN EQUALITY ENDS, supra note 6, at 9.}

Human rights doctrine prohibits such unequal treatment based on social status.\footnote{See, e.g., id. at 7 (using the example of the plant owner who takes out a profit from the labor of others; id. at 8 (using genetics to explain inequality and its consequent social stratification); id. at 10 (explaining that capitalism requires an underclass and that colonization requires exploitable peoples).}

\footnote{See, e.g., id. at 7 (using the example of the plant owner who takes out a profit from the labor of others; id. at 8 (using genetics to explain inequality and its consequent social stratification); id. at 10 (explaining that capitalism requires an underclass and that colonization requires exploitable peoples).}

\footnote{It is noteworthy that in the United States the books that Rodrigo and the Professor critique all fall under the ambit of protected speech. However, should any of these works be deemed "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" under international law, they would be prohibited. ICCPR, supra note 36, art. 20. Significantly, the United States took a reservation against the application of Article 20 based on First Amendment jurisprudence.}
2. Colors

The theme of equality and economics continues in *Rodrigo's Road Map* \(^{88}\) where Rodrigo and the Professor directly discuss and confront the inefficacy of economic theory in the context of irrational market forces. \(^{89}\) The conversation elucidates the "ubiquity of the problem of evil," \(^{90}\) a reality "which recognize[s] the human impulse to harm enemies, distrust foreigners, and conquer and enslave other societies." \(^{91}\) The young scholar notes that economic texts "all show humans struggling with the impulse to war against and suppress others," with the benevolent human impulse being saved only for familiar persons. \(^{92}\) He and the Professor observe that "[t]he cultural record shows that we are apt to be much less generous with people of other races... [implying] that humans, left to their own devices will not choose to deal with others they regard as different." \(^{93}\)

The conversation relies upon social science research establishing that "people go to the aid of persons of their own race more readily than that of others." \(^{94}\) They invoke the reality that racism crosses economic lines, indicating the plight of "black executives and law partners." \(^{95}\) Thus, as social science studies

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\(^{88}\) DELGADO, *WHEN EQUALITY ENDS*, supra note 6, at 27-54.

\(^{89}\) *Id.* at 43. The scholars cite the work of Robin West where "she shows that, in addition to a happiness-maximizing impulse, men and women have a darker side that causes us to surrender our autonomy and allow ourselves to be dominated and made miserable." *Id.* They also note that "cultural texts, as well as the human record, show a recurring tendency on the part of individuals to want to dominate and mistreat others." *Id.*

\(^{90}\) *Id.* at 42.

\(^{91}\) *Id.*

\(^{92}\) *Id.*

\(^{93}\) *Id.* at 43. The conversation continues to note that persons "will not hire, trade with, or in general bring [those of other races] into their circles of regard." *Id.*

\(^{94}\) *Id.* at 45.

\(^{95}\) *Id.* at 50; see also S. E. RUSH, *LOVING ACROSS THE COLOR LINE: A WHITE ADOPTIVE MOTHER LEARNES ABOUT RACE* (2000) (recounting the daily struggles
suggest, "people won't trade with perfectly acceptable partners because racist stereotypes and narratives persuade them that they are not worthy." Hence, they conclude that notwithstanding neutral marketplace language, and presumptions of market efficiency, the market is in fact anything but neutral.

These observations about color (and culture) are particularly significant for Latina/os whose identities cross racial and economic lines. It is more emphatically relevant for Latinas who daily cross borderlands of culture, race, and sex, and in addition remain the poorest of the poor. Culture becomes a double-edged sword for Latinas. We are forced to navigate cultural differences between the majority culture and the cultura Latina from subordinate positions.

Latinas are the "other" as women in addition to being racial, ethnic, and often religious and linguistic others. Moreover, Latinas confront a subordinate status even within our own culture because of our sex and sometimes our sexual orientation. Rodrigo and the Professor realize the problem of outgroups operating within majority paradigms, including Latina/os' specific difficulties in the context of the U.S. black-white paradigm. It is in these observations that the reformed human rights model would provide Rodrigo and the Professor with another avenue of hope. The protections of color and culture mentioned above, for example, would protect Latina/os from oppression by the majority against racism that a white professor's black daughter encountered.)
While at the same time protecting Latinas from Latino oppression,\(^{101}\)

In the context of the black-white binary, the human rights construct can be of great utility. Additionally, the Equality Project that is Rodrigo and the Professor’s aspiration, would also benefit from the Race Convention’s definition of racial discrimination which includes ethnicity and nationality. This definition provides a further critique of the exclusion of non-black and non-white outsiders from the civil rights vision and could bring Latina/os and other erased groups to a common center.

3. **Clashes**

Finally, I will address the ways in which Rodrigo and the Professor could rely on human rights law to support their insights about clashes between majority-minority interests. In *Conflict as Pathology*,\(^{103}\) the senior and young scholars, together with Giannina, unearth the reasons why informal processes, such as Alternative Dispute Resolution (“ADR”) mechanisms, disadvantage subordinate groups, notwithstanding arguments that ADR’s lower costs and relaxed venues have a leveling effect on power differentials.

For example, the Professor and Giannina discuss how the formal values of *la sociedad estadounidense* are “aspirational and egalitarian”\(^{104}\) — a system that means “all men [and women] are brothers [and sisters], every person is an equal moral agent” — and, importantly, are known and understood by “the average

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101 *See, e.g.*, id. at 120-21 (noting that “the black-white binary conveys to everyone that there’s just one group worth worrying about... [b]ut only the one group, blacks, has the moral standing to demand attention and solicitude” and that “the imagery deployed by the political right in the English-only and immigration-reform campaigns is nearly as vicious: Latinos come across as criminals, welfare loafers, and drug dealers. If we were part of the civil rights paradigm, no one would dare do this, at least so openly.”).


103 *Delgado, When Equality Ends*, supra note 6, at 127-42.

104 *Id.* at 131.
American.” Therefore, when this core value system is called up, the “average American . . . will often act in truly egalitarian fashion, treating a black or a woman, say, with equal dignity and respect.” On the other hand, “[i]n informal settings, with friends, in a bar or a private club, the same person who would behave in a genuinely fair-minded fashion at a Fourth of July picnic, with all the flags flying, feels much freer to tell an ethnic joke or act in a way that will hurt the job chances of a Chicana/o or African American.”

Based on these observations, the scholars conclude that a formal court setting, rather than an informal one, would be a preferable venue in which to obtain a fair result, particularly if one is not a normativo/a, but rather is, for example, “a woman, a gay man, a black, or any other outsider.” They acknowledge, however, that this environmental condition may be changing with the shift to the right of the political climate in the country – one in which the formal, public pronouncements have taken an anti-minority, anti-poor, anti-Latina/o direction.

The three friends specifically discuss the false premise of ADR – that conflict is pathological. To the contrary, using historical and cross-cultural examples, they note that conflict is the norm. To be sure, between some in a level playing field – such as big corporate entities – ADR is attractive because its informality serves to save time and money. But that premise that does not hold

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105 Id.
106 Id.
107 Id.
108 Id.
109 See id. at 132. With regard to minorities, Rodrigo and the Professor note that conservatives have been “attacking affirmative action and multicultural projects on campuses, and rolling back on voting rights and redistricting for minority candidates.” Id. With regard to the poor, they discuss welfare cuts; with regard to Latina/os, the scholars discuss anti-immigration reforms and English-only laws. Id. See also Berta Esperanza Hernández-Truyol & Kimberly Johns, Global Rights, Local Wrongs and Legal Fixes: An International Human Rights Critique of Immigration and Welfare Reform, 71 S. CAL. L. REV. 547 (1998) (discussing anti-immigration reforms as violations of human rights norms).
in the context of unequal bargaining positions. ADR is not normlessness; it is normative without the formality. So it seems that the end to which the trio aspires is fairness — an end that human rights norms can help define and achieve.

Indeed, the international documents guaranteeing a right to a fair trial address the issue just that way, in the context of everyone's right to equality before the law and everyone's entitlement to the equal protection under the law.\textsuperscript{110} These provisions, ensuring persons fair treatment before adjudicatory bodies and imposing upon the State the responsibility of ensuring

\begin{footnotesize}
\textsuperscript{110} See Universal Declaration, supra note 21, art. 7 ("All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination,"); id. art. 8 ("Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [or her] by the constitution or by law."); id. art. 10 ("Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his [or her] rights and obligations and of any criminal charge against him [or her]."); ICCPR, supra note 36, art. 14 ("All persons shall be equal before the courts and tribunals. In determination of any criminal charge against him [or her], or of his [or her] rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."); id. art. 26 ("All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."); id. art. 27 ("In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."); CERD, supra note 46, art. 5 (ensuring the "right to equal treatment before the tribunals and all other organs administering justice"); id. art. 6 (requiring State Parties to "assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his [or her] human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination").
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such fairness, certainly cross the formal/informal divide and go to the root cause of the unequal dispensation of justice that Giannina, Rodrigo, and the Professor discuss and critique.

Professor Thomas Franck’s theory of legitimacy would be helpful in the analysis of clashes. Franck’s construct is based on the premise that the legitimacy of any action, which he defines as governmental action, is dependent upon obtaining the consent of the governed and showing respect for the opinion of the people. To be legitimate, therefore, the government must ascertain the opinions and desires of the people, including outsiders, before designing and enforcing government actions. Thus, any adjudicatory process – be it formal or informal – that, as Rodrigo, Giannina, and the Professor reveal, is imbued with bias in favor of the normative would be illegitimate.

III. CONCLUSION

Following the trio’s inquisitive minds, then, one could argue that a legitimate process, institution, or norm must consider all persons’ locations – including their cultures, races, ethnicities, religions, classes – and must provide appropriate reparation for damages suffered. In order for this to occur, a model should be required to ask the sex, race, gender, sexuality, color, religion, language, nationality, ethnicity, culture, and poverty questions – that is, whether there are sex, race, gender, sexuality, color, religion, language, nationality, ethnicity, culture, poverty implications to the structure, process, or institution being scrutinized. These are precisely the questions that Rodrigo, Giannina, the Professor, and Rodrigo’s colleague, Laz, consider in unearthing the biases of ostensibly neutral structures, processes, norms, and institutions that are the subject of their discussions. Professor Franck’s legitimacy construct insists that outsiders’ presence and participation is not only desirable, but necessary for the legitimacy of an outcome.

111 See FRANCK, supra note 64.
Scrutiny of processes involves obtaining information about challenged practices from the perspective of both insiders and outsiders. An appropriate approach—one that comfortably fits both the critical theoretical model and the human rights ideology—would recognize the need for, and insist upon, broad and pluralistic participation. The approach must be pliable and dynamic. It must include input and evaluation from diverse cultures, cultural perspectives, languages, ethnicities, social origins (classes), religions, races, sexes, sexualities, and national origins. This approach must provide a voice for the interests, issues, and concerns of these groups in deliberations about rights, self-determination, autonomy, investments, change, and obligations. Absent such inclusion, the legitimacy of the process itself, as well as its outcomes, can and should be called into question.

Only with such a multi-layered focus can one seek to understand whether a practice is truly fair or whether it has been constructed as “neutral” (aka “fair”) because the sole scrutiny is the perpetrator’s perspective. Thus with respect to each “deviant” category, one should commence by asking: What is the origin and value of the practice? What is its significance to the majority group? What is its intrusion on the exercise of rights by a member of an outsider group? In addition, as Rodrigo and the Professor do, we must study the nature of the practice, its impact on outsider communities, the claimed advantages of the practice, and its harmful outcomes to outsiders.

The inquiries in which the young scholar and his mentor engage with respect to *Culture, Colors, and Clashes*, are well located in the global sphere. The cosmopolitan Rodrigo can surely challenge normativity from multidimensional spaces. In so doing, Rodrigo and the Professor have made an overwhelmingly rich and positive contribution to the legal literature. In particular, in this author’s view, their friendship and conversations have brought the Latina/o condition to the center of the discourse. With the

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113 See *The Latino/a Condition*, supra note 28.
trends to globalization and its attendant stresses and dislocations, the human rights lens simply enhances Rodrigo’s observations on an ever-changing world.