

LatCrit VII: Coalitional Theory and Praxis: Social Justice Movements and  
LatCrit Community  
The Past, Present and Future of the Puerto Rico-U.S. Colonial Relationship:  
Vieques, Transculturation, and Reparations

**\*369** REPARATIONS AND THE COLONIAL DILEMMA: THE INSURMOUNTABLE HURDLES  
AND  
YET TRANSFORMATIVE BENEFITS

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### Introduction

The Seventh Annual Latina and Latino Critical Race Theory ("LatCrit") Conference held in May 2002 at the University of Oregon, not unlike other efforts in the movement, addressed a panoply of challenging, provocative, and controversial issues. Perhaps one the most intellectually interesting and yet troubling panels addressed reparations for the inhabitants of United States' colonial territories. Specifically, the panel was titled "Reparations, Redress, and Remedies: Undoing the Legacy of Colonialism and Imperialism." Members of the academy as well as a representative of Puerto Rico's Independence Party participated in a lively discussion and debate. Although the articles resulting from this panel touch upon Puerto Rico's colonial dilemma, not all addressed the issue of reparations. It is the topic of reparations that is the focus of this cluster introduction.

The topic of reparations provokes strong feelings because, among other reasons, it is a request of the dominant culture to atone for past wrongs, primarily through monetary relief. [\[FN1\]](#) For many, the response to any request for reparations, but particularly for a request from the inhabitants of Puerto Rico, [\[FN2\]](#) would be: "Why reparations?" Not unlike reparations claims for Native Hawaiians, opponents to a Puerto Rican reparations effort would probably deem the reparations claims unavailing because the opponents simply would fail to perceive that any legal wrong has occurred. [\[FN3\]](#) This cluster introduction will address this question of "why reparations." Before addressing the nascent Puerto Rican reparations debate, a brief description of LatCrit theory is in order.

LatCrit theory is an academic undertaking led by legal scholars, primarily those of color, aimed at transforming or at least challenging the practice of producing legal scholarship within the North American legal academy. [\[FN4\]](#) LatCrit is, thus, a movement within the academy that is committed to both the internal transformation of the academy itself as a site for the production of knowledge, discourse, and standards, as well as to the external transformation of social and economic hierarchies and status through the law. [\[FN5\]](#) Though this effort involves both **\*370** oral presentations and written works, the central product of the undertaking is the diverse and provocative articles stemming from the annual LatCrit conferences. [\[FN6\]](#) Speaking in part on the subject of how LatCrit derived from Critical Race Theory, one of the founders of the movement described LatCrit as

an infant discourse that responds primarily to the long historical presence and general sociolegal invisibility of Latinas/os in the lands now known as the United

States. . . . like other geneses of critical legal scholarship, LatCrit literature tends to reflect the conditions of its production as well as the conditioning of its early and vocal adherents. [\[FN7\]](#)

LatCrit is, thus, an experiment of outsider scholarship which seeks to unmask the methods by which Western economic, political, and legal institutions have victimized, subordinated, marginalized, and silenced Latinas and Latinos and other outsider groups. [\[FN8\]](#)

As mentioned above, this introductory essay is part of the LatCrit effort and attempts to situate as well as critique works touching upon the topic of reparations or other redress for colonized people. After a brief discussion of the basic problems of any reparations effort, this essay will examine the articles stemming from the panel. This will be followed by a proposal to change the trajectory of the Puerto Rican reparations debate from one couched in monetary redress to one seeking restoration or repair of that country's status to one that is consistent with autonomy. As the title of the panel suggests, the topic of reparations is both provocative to progressive scholars and controversial to traditional theorists. Reparations are generally viewed as a form of financial and structural remedy for past institutional and systematic discrimination. [\[FN9\]](#) They are seen to include compensation from governmental authorities such as "return of sovereignty or political authority, group entitlements, and money or property transfers, or some combination of these, due to the wrong-doing of the grantor." [\[FN10\]](#) The form reparations will take and which governmental \*371 sector will pay for the monetary relief, state or federal authorities, depends on among other things, the particular demands of victimized group, the nature of the wrong committed, the temporal proximity of the wrong, and the extent of political influence of the victims.

#### I. Reparations

The topic of reparations likely provokes debate from vastly different political perspectives. One basic tension presented by any reparations debate that explores claims from a new victims group, stems from the fact that in recent legal parlance the term "reparations" has become almost synonymous with the struggle of African Americans to obtain payment of damages from the United States and individual state governments that perpetrated the immoral crimes of slavery. [\[FN11\]](#) This fact may result in a host of problems for any new victims group, not the least of which is a perception of changing the focus on claims by African Americans to the other victims group. In the words of Professor Robert Wesley, an expert on African-American reparations, there is the danger of replicating the "everyone's being harmed hierarchy of oppression." [\[FN12\]](#)

Although not all of the articles stemming from the panel sought to address the reparations issue, some instead focusing just on Puerto Rico's colonial problem, at least one of the works in this cluster seeks to expand the reparations discourse to include the plight and efforts of Puerto Rican victims of United States imperialism. [\[FN13\]](#) The engagement, while provocative, particularly when one considers the stagnation in the efforts to change the colonial states of the United States' island dependencies, such as Puerto Rico, is also potentially harmful to other reparations efforts, and may even result in a backlash against the more generalized effort to expose the wrong of Puerto Rico's colonial status. In particular, a reparations movement for groups such as the people of Puerto Rico runs the risk of being perceived as deprioritizing other claims, such as those of the African Americans. Professor Eric Yamamoto worried aloud about this when he noted "[r]eparations for one group may stretch the resources or political capital of the giver, precluding immediate reparations (or enough reparations) for others." [\[FN14\]](#)

While at the same time a reparations debate may be perceived as a "race to the bottom" in a destructive search for "comparative victimhood," [\[FN15\]](#) for traditionalists, the thought of reparations for any group, including African Americans, strikes them as not only unworkable but also unmerited. [\[FN16\]](#) This negative reaction is likely stronger for a claim by the people of Puerto Rico. The Puerto \*372 Rican reparations problem can be situated within a paradigm of the problems associated with all reparations efforts. [\[FN17\]](#) Professor Yamamoto described three dangers or problems associated with reparations movements: (1) the problem of a legal strategy based on a group harm used in an individual rights domestic legal paradigm; (2) the psychological dilemma of further victimization of those seeking redress; and (3) the self-interest based ideology of reparations. [\[FN18\]](#) The danger associated with "framing" a legal strategy consists of traditional substantive and procedural legal hurdles such as standing, statute of limitations, causation, and indeterminacy of damages, [\[FN19\]](#) each of which may defeat a reparations claim in court. The psychological "dilemma of reparations" suggests that proponents may suffer from a backlash from the dominant culture. The very effort may perpetuate existing stereotypes of the victims, and create competitive tensions from other victim groups seeking similar redress. The ideology of reparations suggests that such a remedy will only occur when it will actually or appear to further the larger dominant culture's interests. [\[FN20\]](#) This essay will track Professor Yamamoto's framework in the context of a Puerto Rican reparations effort.

The dangers of efforts to gain reparations raised by Professor Yamamoto are formidable and may even be insurmountable for monetary claims in favor of the residents of Puerto Rico. Indeed, as far as Puerto Rico is concerned, as other works have illustrated, [\[FN21\]](#) it is likely that a person in the United States would not even know of Puerto Rico's anomalous subordinate legal status, let alone envision some colonial harm suffered at the hands of the United States. [\[FN22\]](#) This problem, arguably within the psychological dilemma of reparations, with perhaps limited exceptions, appears too daunting to lead to monetary compensation for the people of Puerto Rico. The dominant culture simply does not see a wrong, let alone being willing to \*373 award reparations. It is, however, this very lack of recognition of Puerto Rico's colonial plight that may be the very reason to consider using a reparations effort or debate to promote what Yamamoto calls the use of reparations movements as "cultural performances" to heighten awareness of the problem irrespective of the outcome of the claims for monetary relief. After an examination of the articles in this cluster, this essay will explain further why, perhaps, a Puerto Rican reparations effort should be re-conceptualized as a coalescing political effort to raise awareness and promote political coalition building based on colonial commonalities. [\[FN23\]](#)

## II. The Plenary on Reparations

Despite the plenary's fairly specific topic of reparations or other redress in the colonial context, the works in this cluster, though all touching upon Puerto Rico, vary greatly in emphasis. The three works in this cluster consist of: (1) Manuel Rodríguez Orellana's "Vieques: The Past, Present, and Future of the Puerto Rico-U.S. Colonial Relationship"; [\[FN24\]](#) (2) Charles R. Venator Santiago's "The Uses and Abuses of the Notion of Legal Transculturation: The Puerto Rican Example"; [\[FN25\]](#) and (3) Pedro Malavet's "Reparations Theory and Postcolonial Puerto Rico: Some Preliminary Thoughts." [\[FN26\]](#) While Rodríguez Orellana's and Venator Santiago's pieces are interesting and informative works addressing Puerto Rico's colonial status, the thrust of this critique will be on Malavet's work as it focuses on the topic of the panel-- reparations or other redress to colonialism.

In his article on legal transculturation, Venator Santiago engages in a critique of four Puerto Rican scholars who have addressed the concept of transculturation as applied to

Puerto Rico's legal structure. [\[FN27\]](#) Venator Santiago explains that legal transculturation can be understood "as a process of developing a hybrid or mixed national legal system composed from the legal traditions already present in 'the contact zone' that would become the new nation." [\[FN28\]](#) Venator Santiago argues that such a notion can be used to explain as well as understand Puerto Rico's multiple legal traditions. [\[FN29\]](#) This article examines leading Puerto Rican legal commentators describing Puerto Rico's hybrid legal system, which combines a common law and civil legal system. [\[FN30\]](#) Venator Santiago examines the works of Carmelo Delgado Cintrón, José Trías Monge, Liana Fiol Matta, and Rubén Nazario Velasco and how they used transculturation to describe the historical development of *\*374* different aspects of the Puerto Rican legal system after the United States' occupation. [\[FN31\]](#)

Venator Santiago argues that much of the literature on Puerto Rico's legal system uses a misguided understanding of the notion of transculturation. [\[FN32\]](#) His thesis is that these four Puerto Rican legal commentators have failed to recognize that the notion of transculturation is ultimately premised on the organic process of constructing a national identity, yet Puerto Rico's legal tradition is contingent on the territory's subordinate legal and political status. Therefore, according to Venator Santiago, the use of the notion of transculturation without accounting for the absence of an "independent" nation-building project abuses the notion of transculturation. [\[FN33\]](#)

In the context of addressing transculturation, Venator Santiago's work underscores Puerto Rico's colonial status by pointing out that Puerto Rico's hybrid legal system exists as a result of its anomalous subordinate colonial predicament. Indeed, Puerto Rico's hybrid mix of civil and common law is a byproduct of United States expansion. It was the early-twentieth-century U.S.- sponsored movement of "Americanization" that was a cultural transformation effort which included, among other things, changing Puerto Rico's legal system. [\[FN34\]](#) Venator Santiago's work addressed this significant but narrow topic associated with colonialism rather than the title of the panel which addresses reparations or other colonial redress. In light of this fact, Venator Santiago's work also could be highlighted in a more traditional historical or comparative analysis of Puerto Rico's legal structure.

Rodríguez Orellana's article, though again not addressing reparations, does directly examine Puerto Rico's colonial subjugation. This piece focuses on the wrongs committed by the United States government against the people and environment of one of the islands that is part of Puerto Rico--the island of Vieques. [\[FN35\]](#) This work is useful as a precursor for the reparations discussion because it assists in understanding why and how the people of Puerto Rico have been wronged. This is an illuminating work that explores a tragedy that is essentially unexamined on mainland political, academic, or popular circles. This work, in vivid detail, answers an insulting, yet challenging, question posed to Rodríguez Orellana at the airport in San Juan, Puerto Rico, after attending a recent people of color legal conference. [\[FN36\]](#) A colleague of color, after discussing a panel on colonialism, asked aloud "in light of all of the problems in the world, why should we care about Puerto Rico's problem?" Rodríguez Orellana persuasively explains why people should care.

Rodríguez Orellana begins his work by compassionately noting that the story of the United States' subordination of Puerto Rico "is a story that has not been sufficiently told in the United States, and needs to be repeated as often as necessary--in legal publications, professional forums, and classrooms--to enlist the support of American intellectuals." [\[FN37\]](#) This article explains why the United States *\*375* was so interested in Puerto Rico--because of its strategic location and the United States' long-term geopolitical interests. [\[FN38\]](#)

Control of Puerto Rico was basic to the extension of U.S. influence over Latin America in general and the Caribbean in particular. The invasion and acquisition of Puerto Rico, which guarded the eastern approaches of the Caribbean Sea, was inextricably tied to the decision to build a canal connecting the Atlantic and Pacific oceans. [\[FN39\]](#)

With respect to the length the United States would go to protect its interests, Rodríguez Orellana discussed a recently declassified 1945 U.S. War Department memorandum opposing any new status for Puerto Rico. [\[FN40\]](#) In the memorandum, the War Department purportedly insisted on privileges for U.S. Armed Forces in perpetuity over all public utilities, as well as all air, water, and land transportation facilities. [\[FN41\]](#) Rodríguez Orellana also exposes the extent to which the U.S. government went to further its interests, including keeping dossiers on persons "suspected" of subversion by virtue of their association with independence or decolonization activities. [\[FN42\]](#) Although Rodríguez Orellana notes that these efforts are well documented and continue today, [\[FN43\]](#) the article fails to enlighten the reader with those specific well-documented examples which would make his argument considerably more persuasive to those unaware of these events. Nevertheless, Rodríguez Orellana documents other troubling activities by U.S. authorities including the Federal Bureau of Investigation's admissions of "monitoring, intervention, infiltration, and persecution of persons, such as Nationalist Party leader Pedro Albizu Campos, student organizations such as the Federation of University students, and legitimate political parties--such as the Puerto Rican Independence (PIP) and Socialist parties (PSP)." [\[FN44\]](#)

In addition to exposing the above wrongful acts conducted by the U.S. government, the thrust of the article addresses the violations against the people and environment of Vieques. The article documents the U.S. Navy's occupation of over two-thirds of Vieques for military maneuvers and installations. These military activities consisted of bombings and other war activities resulting in contaminating Vieques' environment with dangerous levels of depleted uranium, napalm, heavy metals, toxic substances, and carcinogens. [\[FN45\]](#) These consequences in turn are believed to have caused or at least contributed to disproportionately high cancer rates for the people of Vieques. [\[FN46\]](#) Although Rodríguez Orellana's article does not address reparations, it does address other appropriate remedies for the wrongs committed against Puerto Rico and its people--self-determination through independence. Perhaps more importantly, this article engages the reader in a fashion that other writers, including this author, have struggled with overcoming. In essence, this *\*376* article highlights why the colonization of Puerto Rico is a wrong that has included environmental travesties, liberty deprivations, and other violations of basic principle of human rights, including self-determination, as well as a rudimentary perversion of democracy and free-will.

The last article in this cluster is Professor Pedro Malavet's "Reparations Theory and Postcolonial Puerto Rico" piece. [\[FN47\]](#) This is a challenging work in part because it is the first known to this author that advances a reparations remedy for the residents of Puerto Rico. Borrowing from the critiques concerning the lack of democracy in the structure and actions of the European Union, [\[FN48\]](#) Malavet argues that Puerto Rico's lack of political participation and power within the United States federal government results in a "democratic deficit" for the inhabitants of Puerto Rico. [\[FN49\]](#) As addressed in other works, [\[FN50\]](#) this subordination results in a legally constructed status that is second-class. [\[FN51\]](#) The solution for this subjugated status is to develop what Malavet terms a "postcolonial political organization for the island." [\[FN52\]](#) According to Malavet, there are three legitimate postcolonial alternatives for a postcolonial organization: (1) independence, (2) non-assimilationist statehood, and (3) a constitutional bilateral form of free association. [\[FN53\]](#)

Two of Malavet's three so-called postcolonial alternatives are controversial and subject to challenge. As previous works have observed, [\[FN54\]](#) for well over fifty years supporters of Puerto Rico's commonwealth status have repeatedly argued that the 1953 creation of the commonwealth created a bilateral form of free association. [\[FN55\]](#) For instance, in 1953 Muñoz Marín, the first Puerto Rican-born governor of Puerto Rico and often considered the "father" of the Commonwealth, argued that the law creating the Commonwealth transformed the relationship between the Puerto Rican people and Congress to one which could not be altered without the consent of each of the contracting parties. [\[FN56\]](#) Similarly, a 1997 U.S. House of Representatives report described the pro-Commonwealth position on a Commonwealth definition as predicated upon a "longstanding" belief that "Puerto Rico's status had been converted in 1952 into a permanent form of associated autonomous statehood." [\[FN57\]](#) Yet despite these claims, as Rodríguez Orellana's article illustrates, Puerto Rico is far from able to dictate its future. Other examples of Puerto Rico's subordinate status are raised by Malavet's article when it recognizes the political disenfranchisement of the people of Puerto Rico. [\[FN58\]](#)

It is because of the ease in which notions of a constitutional bilateral compact have been bantered about to describe an idealistic vision of Puerto Rico's current status, despite the realities of U.S. colonialism, that serious questions exist <sup>\*377</sup> concerning the propriety of using a status option that is so easily manipulated and maintains the vestiges of colonialism. [\[FN59\]](#) In fact, Malavet acknowledges this shortcoming of the label "freely associated" state. [\[FN60\]](#) The postcolonial alternative of a non-assimilationist statehood is also problematic. It may easily and persuasively be argued that statehood is merely the culmination of the colonial endeavor. This option also has pragmatic concerns. In a post-September 11, 2001, world of heightened fear of the foreigner, it is extremely unlikely that the United States would accept Puerto Rico as a state anytime in the near future. The shortcomings of the visions of a bilateral free association and a non-assimilationist statehood options are likely the reasons for Malavet's advocacy of independence as the preferred postcolonial alternative. [\[FN61\]](#)

Despite these noteworthy but minor questions concerning postcolonial alternatives, Malavet's focus is on the more controversial question of reparations. Although this writer, with some pause, ultimately disagrees with a generalized reparations effort seeking monetary relief for people of Puerto Rico, Professor Malavet should be applauded for his courage, his intellectually challenging argument, and perhaps his foresight in setting forth this colonial problem in this fashion.

Though his framework envisions a broader vision of "restoration," [\[FN62\]](#) including the psychological cure of reparations, [\[FN63\]](#) if in fact Malavet was primarily seeking monetary relief or return of lands for the people of Puerto Rico, the likelihood of this effort resulting in such a remedy would be probably remote. More importantly, such an effort runs the risk of resulting in ridicule, scorn, and downright contempt by both the dominant culture and other potential victims groups. The largest hurdle to overcome is likely to result from the failure of the dominant culture to even recognize a colonial problem associated with Puerto Rico. Mainland U.S. citizens simply do not think of Puerto Rico as other than as a potential vacation location. If pressed, Puerto Rico is more likely to be perceived as a foreign land, and unlikely to be viewed as a colony of the United States. [\[FN64\]](#) For instance, as Rodríguez Orellana noted, [\[FN65\]](#) when President George W. Bush on June 14, 2001, announced that the United States would discontinue military exercises in Vieques in May 2003, which ultimately was rejected by Congress, [\[FN66\]](#) he described the people of Puerto Rico not as U.S. citizens but as "our friends and neighbors and they don't want us there." [\[FN67\]](#) Interestingly, the president of the United States, when addressing a problem faced by millions of U.S. citizens residing in Puerto Rico, did not refer to them as "our own people," or as what they

actually are--U.S. citizens--but as "our \*378 friends and neighbors." [\[FN68\]](#) Other notable examples include Congressman Jose Serrano's recollections:

What we have is a situation where I find on so many occasions that half, if not more, members of Congress have no understanding whatsoever of the relationship . . . asking me on my next trip to Puerto Rico to bring them back coins for their collections, stamps for their collection . . . [A]t my father's funeral . . . someone said to me, why is the American flag on your father's casket. I said, he wanted it that way, he served in the Army . . . [the questioner responded with] I had no idea the Puerto Rican Army used the American Flag. [\[FN69\]](#)

Congressman Serrano's point highlights a basic ignorance concerning Puerto Rico's relationship with the United States; as a U.S. territory, Puerto Rico uses U.S. postage and currency and its people have a long history of serving proudly in the U.S. military. [\[FN70\]](#) Congressman Luis Gutierrez, who is also of Puerto Rican ancestry, has his own similar story. After attending a Puerto Rican Affirmation Day Tribute for the over 3000 Puerto Rican servicemen killed or wounded in the Korean war, the congressman was refused entry into the U.S. Capitol and was accused of presenting false congressional credentials. The capitol security officer told the congressman that he and his people should go back to the country they came from. [\[FN71\]](#)

As the Chicago Tribune poignantly observed, "for Puerto Ricans, it is a peculiar part of the American experience to be treated as a foreigner in your own land. To be told with scorn to go back to your own country, when you're already there." [\[FN72\]](#) Although these accounts are far from a scientific survey, they are vivid and almost unbelievable examples of the failure to see the people of Puerto Rico as anything but foreigners. [\[FN73\]](#) Accordingly, it is also likely that most Americans are utterly unaware of any colonial problem.

For the more enlightened, there is a distorted recognition of some unique relationship between Puerto Rico and the United States, with Puerto Rico receiving billions in U.S. governmental aid and its inhabitants paying no income taxes. [\[FN74\]](#) \*379 Malavet acknowledges the concern when he notes "the traditional narrative about Puerto Rico in the United States posits that the Puerto Rican isleños/os 'have the best of both worlds' because 'they' do not pay federal taxes and nonetheless get federal benefits." [\[FN75\]](#) Although the reality is that the people of Puerto Rico do not pay income tax, [\[FN76\]](#) they do pay federal taxes, including user fees such as Social Security taxes. In addition, the local taxes they pay are "higher than in most states, including both federal and local contributions," and the lack of comparable benefits if Puerto Rico were a state more than makes up for the so-called benefits of its unique status. [\[FN77\]](#) This distorted perception of the people of Puerto Rico as privileged participants in the U.S. scheme of governance may result in anger at the thought or talk of reparations. This "dilemma of reparations," as Yamamoto described, [\[FN78\]](#) may be too difficult to overcome.

In addition, there may be concerns from other victims groups. As mentioned earlier, reparations is now closely associated with African-American efforts. [\[FN79\]](#) The wrongs against this group dating back to slavery and the Jim Crow era are without question. Although Malavet specifically states that he is not intending "to develop a 'comparative victimology' that is intended to divide marginalized groups," [\[FN80\]](#) there is nonetheless a danger that by increasing the number of groups seeking monetary relief there will be a corresponding weakening of other claims given the government's limited resources. [\[FN81\]](#) As Vincene Verdum, an African-American scholar, in his sobering confession noted,

the source of my ambivalent reaction to [the apology to Japanese Americans] was at first difficult to identify. After some introspection, I guiltily discovered that my

sentiments were related to a very dark, brooding feeling that I had fought long and hard to conquer--inferiority. A feeling that took first root in the soil of "why them and not me." [\[FN82\]](#)

In addition to the dilemma of reparations with respect to Puerto Rico, there is the problem of framing a legal claim that will be recognized by U.S. courts. The thrust of this concern is that reparations efforts seek redress for group rights in the United States' judicial system which has an individual rights legal paradigm. Not unlike international law human rights claims, such as requests for self-determination, reparations seek large-scale redress for generalized wrongs to a group of victims. With certain isolated notable exceptions in the case of reparations, [\[FN83\]](#) the U.S. legal *\*380* system, which is premised upon individual rights, has not been very responsive to these efforts. [\[FN84\]](#) This problem was recognized by one scholar who noted that by casting reparations as a "claim for compensation based on slavery," such claims must establish "that all African Americans were injured by slavery and that all white Americans caused the injury or benefited from the spoils of slave labor." [\[FN85\]](#) Professor Westley acknowledged the constraints of such an effort and concluded that the use of political efforts through legislation and not the courts are the best avenue to address group claims, such as reparations. [\[FN86\]](#) Westley's proposal, with a recognition of certain pragmatic limits of the political process for outsiders, carries considerable force and will be addressed further in the proposed solution of this essay.

Within the U.S. judicial framework, substantive and procedural legal bars such as statutes of limitations, lack of proof of causation, lack of proof concerning individual perpetrators, lack of traceable wronged individuals, and indeterminacy of damages [\[FN87\]](#) have led certain writers such as Boris Bittker to abandon claims based on historical wrongs such as slavery and propose claims based on present-day societal discrimination. [\[FN88\]](#)

In the case of Puerto Rico, the above bars carry significant weight. For the people of Puerto Rico, in a court-based reparations effort, they would have to establish that they were individually the wronged; that the wrong occurred recently; that there is an identifiable wrongdoer; that the wrong was caused by the wrongdoer; and that the damages are certain and foreseeable. Here again there is the added problem of the dilemma of reparations with respect to identifying a wrong. Unlike slavery, Jim Crow laws, or even the overthrow of the Hawaiian Republic, a Puerto Rican effort first must situate the discussion in such a way for U.S. mainland citizens to recognize a problem with the United States' involvement with Puerto Rico. The efforts of advocates and political leaders such as Rodríguez Orellana, Malavet, and Rubén Berríos Martínez have begun that process. [\[FN89\]](#) Unfortunately, aside from within Puerto Rico and by a small number of progressive legal scholars within the United States, [\[FN90\]](#) this effort on the mainland has only just begun.

In the case of Puerto Rico, there are nonetheless certain focused claims that could be cognizable within the U.S. judicial framework. For instance, the case of the inhabitants of Vieques may very well provide for such a claim. These claims, however, likely would not be constitutionally based. The reason for this is that the United States Supreme Court, at the turn of the last century, in a series of decisions known as the "Insular Cases," seriously limited the constitutional rights of the residents of Puerto Rico and other U.S. island dependencies. [\[FN91\]](#) In these cases, the *\*381* Supreme Court developed the "Territorial Incorporation Doctrine," [\[FN92\]](#) whereby only fundamental constitutional rights are applied to protect the residents of the unincorporated territories such as an island dependency like Puerto Rico. [\[FN93\]](#) Relying on the territorial incorporation doctrine, [\[FN94\]](#) the United States Supreme Court has held that the disparate treatment of the residents of Puerto Rico is constitutional as long as there is a

rational basis for the discrimination. [\[FN95\]](#) As a result of these decisions, it appears that, unlike Japanese-American claims based upon their World War II internment, [\[FN96\]](#) the people of Puerto Rico likely will not be successful with constitutional claims based on doctrines such as the Equal Protection Clause. For instance, in *Harris v. Rosario* [\[FN97\]](#) and *Califano v. Torres*, [\[FN98\]](#) the Supreme Court upheld the U.S. government's unequal treatment for the residents of Puerto Rico for Supplemental Security Income and Aid to Families with Dependent Children benefits because there was some rational basis for the disparate treatment. [\[FN99\]](#) In the case of Vieques, the U.S. military likely will argue, as they have done before, that Vieques is the only or ideal location for the armed forces to engage in air, land, and sea maneuvers. A U.S. court reviewing such a constitutionally based reparations claim may very well conclude that there was a rational basis for the government's actions and uphold the military's actions.

The constitutional impediment to Vieques claims does not, however, preclude other federal or territorial law claims based on environmental protection, civil rights, or other human rights. The environmental and health problems, if provable in court, associated with the U.S. military operations on Vieques are the type of recent, traceable, and finite claims that may prove to be successful. The Vieques claims would be analogous to Japanese-American internment claims. As Yamamoto explained, "Japanese Americans succeeded on their reparations claims not because they transcended the individual rights paradigm, but because they were able to fit their claims tightly within it." [\[FN100\]](#) The federal or territorial law Vieques claims likely would be comparable to the Japanese-American claims in that (1) they would challenge specific governmental orders and ensuing military orders; (2) the challenge would be based on existing environmental or civil rights-based legal norms (in the case of Japanese Americans it was based on constitutional claims); (3) both legislatures and courts could identify violations of those legal norms; (4) the <sup>\*382</sup> claimants are easily identifiable as they reside on Vieques; (5) the government actors would be identifiable (U.S. military and executive officials); (6) these governmental actions directly led to the wrongs for which relief is sought (they issued orders prompting the military action); and (7) damages would be manageable given the fairly small number of Vieques inhabitants. A claim for redress for the victims of the wrongs done to Vieques also would resemble claims brought by the victims of the Rosewood Massacre. [\[FN101\]](#) For the survivors of these narrowly tailored legal claims, which contained a causal nexus between identifiable victims and wrongdoers, and finite damages, the state of Florida in 1995 paid survivors and descendants from \$375 to \$150,000 each. [\[FN102\]](#)

In addition to claims by the residents of Vieques, as Rodríguez Orellana's article illustrates, the U.S. government engaged in legally questionable surveillance and privacy invasions against independence leaders in Puerto Rico. [\[FN103\]](#) These individuals may also have narrowly tailored legal claims. In fact, in *Noriega-Rodríguez v. Hernandez-Colon*, [\[FN104\]](#) the Puerto Rico Supreme Court held that the government practice of surveillance and opening files solely based on individuals' political views was unconstitutional. [\[FN105\]](#) Although subject to U.S. court challenge, the Noriega-Rodríguez decision and ones like it could be the basis for monetary or other relief. Yet another group of victims with potentially viable claims are the assimilation targets of the United States' "Americanization Movement." Shortly after granting the people of Puerto Rico with a form of U.S. citizenship, from 1900 to 1940 the U.S. government promoted efforts in the territory to change the culture of the Puerto Rican people, including changing their language to English. [\[FN106\]](#) Puerto Rico's legal system also was restructured to imitate the U.S. common law system in order purportedly to protect U.S.-based investments in the territory. [\[FN107\]](#) For these individuals, however, it may be more difficult to obtain judicial relief because they were not easily identifiable and their damages are more indeterminate than the Vieques or government espionage claims.

The third reparations problem for a generalized Puerto Rican reparations movement is

the self-interest-based ideology of reparations. This problem, following Derrick Bell's interest convergence theory, [\[FN108\]](#) arises because the dominant culture likely will not give away its wealth or apologize in the absence of some gain for the dominant culture. In the case of Puerto Rico it is not likely that the U.S. government will turn over large sums to victims the United States does not recognize as being wronged, particularly when the United States believes it has nothing to gain for its part.

In conclusion, a generalized Puerto Rican reparations effort for monetary relief, with limited exception for narrowly based claims for recent wrongs against identifiable groups, likely will not prevail. The legal hurdles, the psychological dilemma of reparations, and the failure of the dominant culture to find any self-<sup>\*383</sup> interest in reparation for the residents of Puerto Rico lead to obstacles too difficult to overcome.

### III. A Proposal

If a Puerto Rican reparations effort seeks, instead of monetary relief, other gains, particularly increased visibility of the problem, then a reparations effort may be effective. Such a reconceptualization from traditional reparations efforts may have a transformative effect of changing or at least challenging the mainland perspective of Puerto Rico's colonial dilemma. Such a focus could transform a Puerto Rican reparations effort to an effort toward "cultural performances" providing outsiders, such as the people of Puerto Rico, with an institutional public forum. As Westley suggests, even if these efforts are unsuccessful, they should be undertaken because of the "intellectual benefit of promoting dialogue." [\[FN109\]](#) These performances should not be limited to the judicial arena; they should involve and perhaps focus on other formal arenas such as local, state, and federal legislatures. Scholars, educators, and activists should engage in these performances in their writings, presentations, classrooms, and popular cultural avenues such as "op-eds" and other related media works. Although the Malavet article seems to advocate a vision of reparations that will result in the reallocation of public resources creating economic benefits to the people of Puerto Rico, [\[FN110\]](#) he also cautions that reparations should not be viewed as compensation, but as repair or restoration of broken relationships. [\[FN111\]](#) It is this aspect of Malavet's thesis that this essay will advocate to reconceptualize reparations as relief that does not necessarily focus on monetary relief, at least at this stage of the debate. In large part, because the pragmatic and psychological hurdles for a Puerto Rican effort are so difficult to overcome, requests for Puerto Rican reparations should--at least in this early stage of the debate--be couched in a focus on exposure of the wrongs associated with Puerto Rico's colonial dilemma; this in turn should be followed with increased efforts to seek acknowledgements of the wrong, and ultimately an apology for the wrongs against the Puerto Rican people. Although even this cautionary approach likely will be received by substantial opposition or disregard by the dominant culture, the effort should be undertaken in a continuing effort to support human rights and racial justice for the people of Puerto Rico. [\[FN112\]](#)

While most reparations efforts are couched in strategies geared toward seeking judicial relief, as mentioned above, judicial relief should not be the sole or even primary focus toward seeking reparations. Indeed, Professor Westley accurately exposed the shortcomings of reparations efforts focusing on judicial remedies. [\[FN113\]](#) He notes that the judiciary has become increasingly hostile toward efforts at redressing racial discrimination such as affirmative action. [\[FN114\]](#) In light of this trend and the shortcomings of judicial reparations of standing, deference, timing, and res <sup>\*384</sup> judicata, Westley advocates the use of legislatures to seek redress. [\[FN115\]](#) This avenue is a potentially more effective route for Puerto Rican redress efforts.

Much like Westley's suggestion that legislative efforts seeking redress could look to the legislatures of former slave states, Puerto Rican efforts could focus on local and state arenas that may be initially more receptive. This in turn could build momentum and force further debate. For instance, a Puerto Rican redress effort could start in the Puerto Rican legislature, whereby that body could acknowledge the wrongs against the people of Vieques and other specific wrongs. The legislature could formally request an apology from Congress and the President of the United States. Though politically aggressive and far from a likely successful route, such efforts could begin legitimate dialogue. These legislative efforts could also be attempted in jurisdictions with significant Puerto Rican populations, such as New York City and Chicago, Illinois. The efforts may be grass-roots engagements where political influence is more concentrated. In a post-September 11 period of renewed nationalism and generalized fear of foreigners, even this more political route is one of questionable results. This effort should, notwithstanding the abovementioned problems, be undertaken because it may ultimately lead to debate, an apology, and in an ideal setting, that this author likely would not live long enough to see, a structural status change for Puerto Rico.

A transformative reparations effort, in addition, should not limit itself to isolated claims for redress. Reparations efforts should promote collaborative undertakings and be used for political coalition-building. As critical race and LatCrit theory have illustrated, [\[FN116\]](#) the victimization of individuals in this country is not limited to one or a few groups. A reparations effort should use the commonalities of wrongs to coalesce and form formidable political efforts. Even the U.S. colonial problem is not isolated to Puerto Rico. As addressed in recent works, [\[FN117\]](#) the people of Guam, [\[FN118\]](#) the U.S. Virgin Islands, [\[FN119\]](#) American Samoa, [\[FN120\]](#) Micronesia, [\[FN121\]](#) the Northern Mariana Islands, [\[FN122\]](#) the Marshall Islands, [\[FN123\]](#) and Palau [\[FN124\]](#) all have been victims or willing accomplices of U.S. colonialism. These and other stories must be told in conjunction with each other and efforts for change or redress should at least consider the benefits of collaborating undertakings. [\[FN125\]](#) As one critical theorist informed this author when he entered the academy, identity is often ultimately the decisive factor in empathy and coalition efforts. [\[FN126\]](#) In other words, if groups have *\*385* commonalities, these stories should be told together in order to promote understanding and encourage coordinated action. Professor Natsu Saito, in her impressive article "Asserting Plenary Power over the 'Other'," [\[FN127\]](#) engages in this needed comparative study at U.S. victimization of groups such as indigenous people, colonized people, and immigrants under the auspices of Congress' plenary power over foreign affairs. [\[FN128\]](#) These intellectual endeavors should be continued on academic as well as political arenas. Again, exploring "common ground" of harmed groups has the potential of leading those groups to promote dialogue and change. [\[FN129\]](#)

In addition to the domestic arena, as Professors Yamamoto, [\[FN130\]](#) Westley, [\[FN131\]](#) and Saito [\[FN132\]](#) have recognized, international law, despite its shortcomings with respect to its enforceability, [\[FN133\]](#) should be used to put political pressure on the United States to remedy past wrongs and engage in a broader debate. [\[FN134\]](#) International human rights are a forceful political tool that may cause domestic legal change. In other words, international law could be used to pressure the United States to follow the rest of the world. For instance, the Universal Declaration of Human Rights contains broad mandates protecting groups from repression that could be a basis for reparations claims. Arenas such as the International Court of Justice may be one such avenue. [\[FN135\]](#)

Other countries have used reparations to remedy wrongs. For instance, Canada recently apologized to and promised reparations to Canada's indigenous people for theft of the land and destruction of their culture. [\[FN136\]](#) Britain has offered reparations to New Zealand's Maori for Britain's race wars against that group. [\[FN137\]](#) France recognized its complicity in the deportation of 76,000 Jews to Nazi death camps. [\[FN138\]](#) The Catholic

Church apologized for its assimilationist policy in Australia that contributed to the attempted destruction of the Aborigines spirit and culture. [\[FN139\]](#) Again, even if these efforts in the international arena fail to provide redress, they too may serve reparations' goals of recasting domestic civil rights claims as global international human rights claims. [\[FN140\]](#)

**\*386 Conclusion**

These are some preliminary observations on a reparations debate concerning claims by colonized people, though the views expressed here are still evolving and may indeed change. Nevertheless, the panel on reparations at the LatCrit conference and, in particular, Professor Malavet's article on the subject are likely to provide continuing interesting dialogue.

It is this author's ultimate view that a reparations effort for the people of Puerto Rico should be limited to narrowly tailored federal and local territorial law based claims for identifiable victims, recently wronged by U.S. officials. Claims by the residents of Vieques, targets of unlawful governmental surveillance, and perhaps, but unlikely, the victims of Americanization efforts may be successful. Nonetheless, the reparations movement as a whole should be reconceptualized to focus on legislative and political efforts to promote dialogue and redress. This political approach should focus not only on local and state authorities, but should be geared at promoting knowledge of and support for other similarly-situated victims groups. Finally, international law norms, principles, and legal institutions should be used to attempt to achieve change or at least promote a global human rights debate.

**Footnotes:**

[\[FNd1\]](#). Professor of Law, Florida International University, College of Law; J.D., University of Wisconsin. This essay is dedicated in loving memory to Ms. Carmen Hernandez. I would like to thank the organizers of the Seventh Annual LatCrit Conference, especially Professor Steven Bender, for allowing me to participate in the written symposium by submitting the essay.

[\[FN1\]](#). See Eric K. Yamamoto, Racial Reparations: Japanese American Redress and African American Claims, 40 B.C. L. Rev. 477, 19 B.C. Third World L.J. 477 (1998).

[\[FN2\]](#). Puerto Rico is a group of islands in the Caribbean. Though the main island is called Puerto Rico, the territory includes the islands of Vieques, Culebra, Mona, and Monito.

[\[FN3\]](#). Id.

[\[FN4\]](#). Substantive Program for LatCrit VII, available at <http://personal.law.miami.edu/~fvaldes/LatCrit/icviidoes/substantiveprogram.htm> (visited on Nov. 20, 2002).

[\[FN5\]](#). Id.

[\[FN6\]](#). See Symposium, LatCrit VI: Latinas/os and the Americas: Centering North-South Frameworks in LatCrit Theory, 55 Fla. L. Rev. \_\_\_ (forthcoming 2003); but there has been a symposium issue for each of the annual LatCrit conferences. See generally Symposium, LatCrit V: [Class in LatCrit: Theory and Praxis in a World of Economic Inequality, 78 Denv. U. L. Rev. 467 \(2001\)](#); Symposium, LatCrit IV: Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections, 23 U.C. Davis L. Rev. 751 (2000);

Symposium, LatCrit III: Comparative Latinas/os: [Identity, Law and Policy in LatCrit Theory](#), 53 *U. Miami L. Rev.* 575 (1999); Symposium, LatCrit II: Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory, [19 Chicano-Latino L. Rev.](#) 1 (1998); Symposium, LatCrit I: LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship, 2 *Harv. Latino L. Rev.* 1 (1997); Colloquium, LatCrit: Representing [Latina/o Communities: Critical Race Theory and Practice](#), 9 *La Raza L.J.* 1 (1996); Colloquium, [International Law, Human Rights and LatCrit Theory](#), 28 *U. Miami Inter-Am. L. Rev.* 177 (1996); see also Joint Symposium, LatCrit Theory: Latinas/os and the [Law](#), 85 *Cal. L. Rev.* 1087 (1997) reprinted in [10 La Raza L.J.](#) 1 (1998) (noting that this was a "stand-alone" symposium, not directly connected to one of the LatCrit conferences).

[FN7]. Francisco Valdes, Theorizing "OutCrit" Theories: Comparative Antisubordination Experience and Subordination Vision as Jurisprudential Method, available at <http://personal.law.miami.edu/~fvaldes/LatCrit/overview.html> (visited Nov. 22, 2002).

[FN8]. Ediberto Roman, Afterword to LatCrit VI, Outsider Jurisprudence and Looking Beyond Imagined Border, 55 *U. Fla. L. Rev.* \_\_\_ (forthcoming 2003).

[FN9]. Robert Westley, Many Billions Gone: Is It Time To Reconsider The Case For Black Reparations, 40 *B.C. L. Rev.* 429, 19 *B.C. Third World L.J.* 429 (1998).

[FN10]. *Id.*

[FN11]. Seventh Annual LatCrit Conference, Substantive Program Outline, at <http://personal.law.miami.edu/~fvaldes/LatCrit/lcviidocs/substantiveprogram.htm> (visited Nov. 22, 2002) (hereinafter Substantive Program Outline).

[FN12]. Westley, *supra* note 9, at 432.

[FN13]. See Pedro A. Malavet, [Reparations Theory and Postcolonial Puerto Rico: Some Preliminary Thoughts](#), 13 *Berkeley La Raza L.J.* 387 (2002).

[FN14]. Yamamoto, *supra* note 1, at 496.

[FN15]. Elizabeth M. Iglesias and Francisco Valdes, Afterword: [Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Agenda](#), 19 *Chicano-Latino L. Rev.* 503, 516 (1998); see also Devon W. Carbado, [Race to the Bottom](#), 49 *UCLA L. Rev.* 1283 (2002).

[FN16]. See Westley, *supra* note 9, at 436.

[FN17]. *Id.*

[FN18]. Yamamoto, *supra* note 1, at 487-501.

[FN19]. *Id.* at 487-93.

[FN20]. *Id.* at 497.

[FN21]. See Ediberto Roman, [Empire Forgotten: The United State's Colonization of Puerto](#), 42 *Vill. L. Rev.* 1119 (1997) (hereinafter "Empire"); Ediberto Roman, The Alien-Citizen Paradox and Other Consequences of U.S. Colonialism, [25 Fla. St. U. L. Rev.](#) 1 (1998) (hereinafter "Alien-Citizen"); Sylvia R. Lazos Vargas, [History, Legal Scholarship, and LatCrit Theory: The Case of Racial Transformation Circa The Spanish American War, 1846-1900](#), 78 *Denv. U. L. Rev.* 921 (2001); Efren Rivera Ramos, The Legal Construction

of American Colonialism, 65 Rev. Jur. U.P.R. 222 (1996); Jose A. Cabranes, Citizenship and the American Empire: notes on the legislative history of the United States citizenship of Puerto Ricans 7 (1979); José Trías Monge, Puerto Rico: The Trials of the Oldest Colony in the World 3 (1997); Roger M. Smith, Civic Ideals: Conflicting Visions of Citizenship in U.S. History (1998); Juan Torruella: The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal (1985); Hon. Jose A. Cabranes, [Puerto Rico: Colonialism as Constitutional Doctrine](#), 100 Harv. L. Rev. 450, 455 (1986) (book review); Sylvia R. Lazos Vargas & Petra DeWitt, One Hundred Years of Solitude for the Tropical Peoples of the Insular Territories: Transformations of National Identity, Race and Citizenship, 1896-1900 (forthcoming); Pedro A. Malavet, [Puerto Rico: Cultural Nation, American Colony](#), 6 Mich. J. Race & L. 1 (2000); Ediberto Roman, [The Alien-Citizen Paradox and Other Consequences of U.S. Colonialism](#), 26 Fla. St. U. L. Rev. 1 (1998); Ediberto Roman, [Empire Forgotten: The United States' Colonization of Puerto Rico](#), 42 Vill. L. Rev. 1119 (1997); Roger Smith, The Bitter Roots of Puerto Rican Citizenship (forthcoming 2000) ("the Spanish-American War was an unjust, unprovoked, and racist war of aggression by the United States"); Mark Stuart Weiner, Race Citizenship and Culture in American Law, 1883-1954: Ethno-Juridical Discourse from Crow Dog to Brown v. Board of Education (1998) (Ph.D. dissertation, Yale University). Tellingly, Alexander Bickel's well-known essay arguing that the moral justification of democracy is based on the consent of the governed has not a word about U.S. governance.

[FN22]. See Roman, Alien-Citizen, supra note 21, at 2-5.

[FN23]. See Elizabeth M. Iglesias, Foreword, [Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community](#), 53 U. Miami L. Rev. 575, 626 (1999) (emphasizing the significance of sustained development of coalitional theory and praxis); Elizabeth M. Iglesias & Francisco Valdes, [LatCrit at Five: Institutionalizing a Post-Subordination Future](#), 78 Denv. U. L. Rev. 1249 (2001) (stressing the importance of building "Intra-Latina/o Communities and Inter-Group Coalitions to Promote Justice Struggles").

[FN24]. Manuel Rodríguez Orellana, [Vieques: The Past, Present, and Future of the Puerto Rico-U.S. Colonial Relationship](#), 13 Berkeley La Raza L.J. 425 (2002).

[FN25]. Charles R. Venator Santiago, [The Uses and Abuses of the Notion of Legal Transculturation: The Puerto Rican Example?](#), 13 Berkeley La Raza L.J. 441 (2002).

[FN26]. See Malavet, supra note 13.

[FN27]. Venator Santiago, supra note 25, at 441.

[FN28]. Id. at 444.

[FN29]. Id. at 442.

[FN30]. Venator Santiago, supra note 25.

[FN31]. Id. at 441.

[FN32]. Id. at 442.

[FN33]. Id. at 450.

[FN34]. Luis E. Rodríguez-Rivera, [Genesis of Puerto Rico's Environmental Law: Study of Early Puerto Rico](#), 67 R.J.U. P.R. 201 (1998).

[\[FN35\]](#). Rodríguez Orellana, *supra* note 24.

[\[FN36\]](#). It was insulting because it was contemptuous as well as ignorant; it was challenging because ignorance concerning Puerto Rico is actually understandable in light of the dearth of discussion regarding Puerto Rico's exploitation.

[\[FN37\]](#). Rodríguez Orellana, *supra* note 24, at 426.

[\[FN38\]](#). *Id.* at 427.

[\[FN39\]](#). *Id.* at 427 (quoting Rubén Berríos Martínez, Puerto Rico's Decolonization, 76 For. Aff. 100, 103 (1997)).

[\[FN40\]](#). *Id.* at 428 (citing Juan M. García Passalcqua, Mi Testimonio del ELA, El Vocero, Aug. 28, 2001).

[\[FN41\]](#). *Id.*

[\[FN42\]](#). *Id.* at 428.

[\[FN43\]](#). *Id.* at 428.

[\[FN44\]](#). *Id.* at 429 (citing Puerto Rico Senate, report of the Committee on Government and Federal Affairs with Additional Report Submitted by the Puerto Rican Independence Party Delegation, December 22, 2000).

[\[FN45\]](#). *Id.* at 429-30.

[\[FN46\]](#). *Id.*

[\[FN47\]](#). Malavet, *supra* note 13.

[\[FN48\]](#). See, e.g., A. Michael Froomkin, The [Empire Strikes Back](#), 73 *Chi.-Kent L. Rev.* 1101 (1998); Joseph H.H. Weiler, Does Europe Need a Constitution? Demos, Telas, and the German Maastricht Decision, 1 *Eur L.J.* 219 (1995); J.H.H. Weiler, The [Transformation of Europe](#), 100 *Yale L.J.* 2403 (1991).

[\[FN49\]](#). Malavet, *supra* note 13, at 390.

[\[FN50\]](#). See Roman, Empire, *supra* note 21, at 1120; Roman, Alien-Citizen, *supra* note 21, at 2-6; see also Malavet, Cultural Nation, *supra* note 21, at 76; Lazos, *supra* note 21.

[\[FN51\]](#). Malavet, *supra* note 13, at 406 n.101.

[\[FN52\]](#). *Id.* at 391.

[\[FN53\]](#). *Id.*

[\[FN54\]](#). Roman, Empire, *supra* note 21, at 1154.

[\[FN55\]](#). See *id.*; Raymond Carr, Puerto Rico: A Colonial Experiment 77 (1984).

[\[FN56\]](#). Roman, Empire, *supra* note 21.

[\[FN57\]](#). See [H.R. Rep. No. 105-131, pt. 1, at 23 \(1997\)](#).

[FN58]. Malavet, *supra* note 13, at 400.

[FN59]. See Roman, Alien-Citizen, *supra* note 21, at 25.

[FN60]. See Malavet, *supra* note 13, at 404 n.88 (noting that such a state can truly be achieved by a U.S. constitutional amendment).

[FN61]. Malavet, *supra* note 13, at 391.

[FN62]. See *id.* at 405.

[FN63]. *Id.*

[FN64]. See *supra* footnotes 58-61 and accompanying text.

[FN65]. See Rodríguez Orellana, *supra* note 24, at 433; see also Ediberto Roman & Theron Simmons, Membership Denied: Subordination and Subjugation under United States Expansionism, [39 San Diego L. Rev. 437, 492 \(2002\)](#).

[FN66]. See National Defense Authorization Act for FY2002, See 1049(a), 107 P.L. 107, 115 stat. 1012 (Dec. 8, 2001).

[FN67]. See Raymond Hernandez, Both Sides Attack Bush Plan to Halt Bombing on Vieques, *The New York Times*, June 15, 2001, at A1-A32.

[FN68]. Unfortunately, following the September 11, 2001 tragedy, Congress passed legislation prohibiting the cessation of military operations on Vieques. See National Defense Authorization Act for FY2002, See 1049(a), 107 P.L. 107, 115 stat. 1012 (Dec. 8, 2001); see also Rodríguez Orellana, *supra* note 24, at 433.

[FN69]. See Puerto Rico Status Plebiscite, Joint Hearing Before the Subcomm. On Nat'l. Am. Insular. Affairs of their Comm. on Resources, and the Subcomm. on the W. Hemisphere of the Comm. on Int'l. Relations 104th Cong. 141 (1995) (statement of Rep. Serrano) (N.B.: as a U.S. territory the Puerto Rican people use U.S. postage and currency and have served proudly in the U.S. Armed Forces).

[FN70]. See Roman, Alien-Citizen, *supra* note 21, at 28.

[FN71]. See Alex Garcia, One Day at the Capital, *Hisp. Bus.*, June 1996, at 112.

[FN72]. David Jackson & Paul de la Garza, Rep. Gutierrez Uncommon Target of a too Common Slur, *Chi. Trib.*, April 18, 1996, at 1.

[FN73]. See Neil Gotanda, Asian-American Rights and the "Miss Saigon Syndrome," in *Asian Americans and the Supreme Court 1096* (Hyung-Chan Kim ed., 1992) (In "the United States, if a person is racially identified as African American or White, that person is presumed to be legally a U.S. Citizen and socially an American...these presumptions, however, are not present for Asian Americans, Latinos, Arab Americans, and other non-Black racial minorities. Rather, there is the opposite presumption that these people are foreigners; or, if they are U.S. citizens, then their racial identity includes a foreign component."); Juan Perea, [Los Olvidados: On the Making of Invisible People, 70 N.Y.U. L. Rev. 965, 966](#) (noting that Latino invisibility caused in part by "our foreign" ethnicity).

[FN74]. See Malavet, *supra* note 13, at 410.

[FN75]. *Id.*

[FN76]. See Lisa Napoli, [The Legal Recognition of the National Identity of a Colonized People: The Case of Puerto Rico](#), 18 *B.C. Third World L.J.* 159, 176-77, notes 68-69 (1998) (noting that the U.S. received billions in taxes from Puerto Rico's residents).

[FN77]. See, e.g., Malavet, *supra* note 13, at 411.

[FN78]. Yamamoto, *supra* note 1, at 493.

[FN79]. See Malavet, *supra* note 13, at 395-96.

[FN80]. See *id.* at 396.

[FN81]. See Yamamoto, *supra* note 1.

[FN82]. Vincene Verdum, *If the Shoe Fits, Wear It: An Analysis of Reparation to African-Americans*, 67 *Tul. L. Rev.* 547, 647 (1993).

[FN83]. See, e.g., Yamamoto, *supra* note 1 (addressing Japanese American reparations granted by the U.S. Government); Caroline Aoyagi, *Bittersweet Victory for Japanese Latin Americans: After 57 Years, Former Internees to Receive Apology and \$5,000 Redress Payment from United States*, *Pac. Citizen*, June 19-July 2, 1998, at 1; see also Yamamoto, *supra* note 1, at 483 (addressing President Clinton's apology to indigenous Hawaiians for the illegal U.S.-aided overthrow of Hawaii).

[FN84]. See Yamamoto, *supra* note 1, at 487.

[FN85]. See Verdum, *supra* note 81, at 630.

[FN86]. Westley, *supra* note 9.

[FN87]. See Yamamoto, *supra* note 1, at 507 (for a more exhaustive analysis of these legal hurdles).

[FN88]. Boris I. Bittker, *The Case for Black Reparations* (1973).

[FN89]. For a discussion of some of Berríos's efforts, see Rodríguez Orellana, *supra* note 24, at 430-32.

[FN90]. See, e.g., Malavet, *supra* note 13; Roman, *Empire*, *supra* note 21, at 1119; Roman *Alien-Citizen*, *supra* note 21, at 1; Rivera Ramos, *supra* note 21, at 222; Vargas, *supra* note 21 (forthcoming).

[FN91]. See e.g., [Balzac v. Porto Rico](#), 258 U.S. 298 (1922); [Dorr v. United States](#), 182 U.S. 1 (1901); [Downes v. Bidwell](#), 182 U.S. 244 (1901); [Delima v. Didwell](#), 182 U.S. 1 (1901); [Crossman v. United States](#), 182 U.S. 221 (1901); [Huus v. N.Y. & Porto Rico S.S. Co.](#), 182 U.S. 392 (1901); [Fourteen Diamond Rings v. United States](#), 183 U.S. 176 (1901); see [Ocampo v. United States](#), 234 U.S. 91 (1914); [Ochoa v. Hernandez](#), 230 U.S. 139 (1913); [Dowdell v. United States](#), 221 U.S. 325 (1911); [Kopel v. Bingham](#), 211 U.S. 468 (1909); [Grafton v. United States](#), 206 U.S. 333 (1907); [Kent v. Porto Rico](#), 207 U.S. 113 (1907); [Rasmussen v. United States](#), 197 U.S. 516 (1905); [Trono v. United States](#), 199 U.S. 521 (1905); [Gonzalez v. Williams](#), 192 U.S. 1 (1904); [Kepner v. United States](#), 195 U.S. 100 (1904); [Mendezona v. United States](#), 195 U.S. 158 (1904); [Hawaii v. Mankichi](#), 190 U.S. 197 (1903); [Goetze v. United States](#), 182 U.S. 221 (1901); [Dooley v. United States](#), 182 U.S. 222 (1901); [Armstrong v. United States](#), 182 U.S. 243 (1901); [Downes v. Bidwell](#), 182 U.S. 244 (1901); [Dooley v. United States](#), 183 U.S. 151 (1901).

[FN92]. See [Downes, 182 U.S. at 289](#) (White, J., concurring); [Balzac, 258 U.S. at 312-13](#).

[FN93]. [Downes, 182 U.S. at 282](#).

[FN94]. For a further examination of the Insular Cases, see Monge, *supra* note 4 (arguing the Court erred by not following the elder Justice Harlan's lead); Neuman, *supra* note 47, at 979 (1991) ("No persuasive normative basis for the Insular Cases has been put forward."); Ramos, *supra* note 21 (arguing that the Insular Cases demonstrate ideological and racial bias); Roman, *Alien- Citizen*, *supra* note 21, at 23 (doctrine of incorporation is "morally illegitimate constitutional principle").

[FN95]. See, e.g., [Harris v. Rosario, 446 U.S. 651 \(1980\)](#) (per curiam); [Califano v. Torres, 435 U.S. 1 \(1978\)](#).

[FN96]. Yamamoto, *supra* note 1.

[FN97]. [Harris, 446 U.S. at 651](#).

[FN98]. [Torres, 435 U.S. at 4-5](#).

[FN99]. See [Harris, 446 U.S. at 651-52](#); [Torres, 435 U.S. at 4-5](#).

[FN100]. Yamamoto, *supra* note 1, at 490.

[FN101]. See Michael D'Orso, *Like Judgment Day: The Run and Redemption of A Town Called Rosewood* (1996).

[FN102]. See Yamamoto, *supra* note 1, at 480 n.11.

[FN103]. Rodríguez Orellana, *supra* note 24, at 428.

[FN104]. *Noriega-Rodríguez v. Hernandez-Colon*, 13e P.R. Dec. 919, 92 JTS 85 (1992).

[FN105]. *Id.*

[FN106]. See generally Ronald Fernandez, *The Disenchanted Island* 55-58 (2d. ed. 1976).

[FN107]. Luis E. Rodríguez-Rivera, [Genesis of Puerto Rico's Environmental Law: Study of Early Puerto Rico](#), 67 *Rev. Jur.U.P.R.* 201 (1998).

[FN108]. Derrick A. Bell, Jr., [Brown v. Board of Education and The Interest-Convergence Dilemma](#), 93 *Harv. L. Rev.* 518 (1980).

[FN109]. Westley, *supra* note 9.

[FN110]. See Malavet, *supra* note 13, at 405.

[FN111]. *Id.*

[FN112]. Francisco Valdes, [Insisting on Critical Theory in Legal Education: Making Do While Making Waves](#), 12 *La Raza L.J.* 137, 148 (2001) (observing that "outsiders wage hand-to-hand combat" daily to promote antisubordination principles within and outside the legal academia).

[\[FN113\]](#). Westley, *supra* note 9.

[\[FN114\]](#). *Id.*

[\[FN115\]](#). *Id.*

[\[FN116\]](#). See Mari J. Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 Harv. C.R.-C.L. L. Rev. 3231 (1987); Derrick Bell, Race, Racism and American Law (2d. ed. 1980).

[\[FN117\]](#). Roman & Simmons, Membership Denied, *supra* note 64, at 437.

[\[FN118\]](#). *Id.* at 493.

[\[FN119\]](#). *Id.* at 495.

[\[FN120\]](#). *Id.* at 497.

[\[FN121\]](#). *Id.*

[\[FN122\]](#). *Id.* at 508.

[\[FN123\]](#). *Id.* at 508.

[\[FN124\]](#). *Id.* at 514.

[\[FN125\]](#). See, e.g., Elizabeth Iglesia, On the Shadow Making Intersections in and Between Asian Pacific American Critical Legal Scholarship and Latina/o Critical Theory, 40 B.C. L. Rev. 349, 370, 19 B.C. Third World L.J. 349, 370 (1998) (mapping out commonalities in the struggles of Latinas and Latinos and Asian Pacific Americans); Robert S. Chang & Keith Aoki, [Centering the Immigrant in the Intern/National Imagination](#), 85 Cal. L. Rev. 1395 (1997); [10 La Raza L.J. 309 \(1998\)](#) (noting common concern to Latinas and Latinos and Asian Americans).

[\[FN126\]](#). Much thanks to Prof. Elizabeth Iglesias for these conversations.

[\[FN127\]](#). Natsu Taylor Saito, [Asserting Plenary Power Over the 'Other': Indians, Immigrants, Colonial Subjects, and Why U.S. Jurisprudence Needs to Incorporate International Law](#), 20 Yale L. & Pol'y Rev. 427 (2002).

[\[FN128\]](#). *Id.*

[\[FN129\]](#). See Ediberto Roman, A Common Ground: Perspectives on Latino-Latina Diversity, 2 Harv. Latino L. Rev. 423 (1997).

[\[FN130\]](#). Yamamoto, *supra* note 1, at 508.

[\[FN131\]](#). Westley, *supra* note 9.

[\[FN132\]](#). Saito, *supra* note 124, at 467.

[\[FN133\]](#). See generally Yamamoto, *supra* note 1.

[\[FN134\]](#). Progressive theorists have long advocated the importance of International Law. See, e.g., Natsu Taylor Saito, [Beyond Civil Rights: Considering "Third Generation"](#)

[International Human Rights Law in the United States](#), 28 U. Miami Inter-Am. L. Rev. 387 (1996-97); Ediberto Roman, [A Race Approach to International Law \(RAIL\): Is There a Need for Yet Another Critique of International Law?](#), 33 U.C. Davis L. Rev. 1519 (2000); Berta Esperanza Hernandez-Truyol, [Building Bridges: Bringing International Human Rights Home](#), 9 La Raza L.J. 69 (1996).

[FN135]. Universal Declarations of Human Rights, G.A. Res. 217 (A III), U.N. GAOR, 3d. sess., pt. 1, U.N. Doc. A/810 (1948).

[FN136]. See Yamamoto, supra note 1, at 487.

[FN137]. Id.

[FN138]. Id.

[FN139]. Id.

[FN140]. Yamamoto, supra note 1, at 510.