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Symposium: Twelfth Annual LatCrit Conference Critical Localities: Epistemic Communities, Rooted Cosmopolitans, New Hegemonies and Knowledge Processes: **Cluster I:** Critical Politics and Jurisprudence

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SUMMARY:

... Cabarcas Macias' paper seeks to refocus the approach to the study of law by drawing on a new historiographical approach that privileges the everyday lives of subordinated populations. ... This essay contributes to a small body of articles focusing on new historical interpretations of American legal history published in LatCrit symposia that seek to de-center the law and the state by recasting the debates from a subaltern position. ... Perhaps a LatCrit approach that pays attention to the content of the form of traditional legal history could select events (content), which have been excluded from traditional legal narratives and shape these into a more democratic narrative that highlights the oppressive and exploitative ideologies of the past. ... Tucker Culbertson's report and invitation to join the LatCrit NGO is representative of two important dimensions that have been constant companions of the LatCrit project, namely, a concern for international dimensions of critical politics and jurisprudence, and a practical concern with social justice. ... Rojas' article should be read as a further contribution to the growing body of LatCrit scholarship on human rights and justice. ... Rojas' article is also representative of efforts by LatCrit to create a space where scholars from the global south can articulate critical positions in mainstream academic venues. ... For example, a LatCrit approach, along the lines of what Monzon argues in his article, would challenge efforts by the United States to institute reforms in the arena of penal and civil procedure codes in Latin America that seek to imitate the common law tradition. ... Likewise, a LatCrit approach would challenge efforts to transplant ideologically laden legal notions, like affirmative action, which are shaped by ethnocentric institutional and social experiences, from the U.S. to Latin American countries. ... This critique would explore how legal transplants can reproduce hegemonic ideologies that perpetuate essentialist, subordinating, and exploitative discourses and practices in historically oppressed countries that comprise a global south. ... Of course, the critical nature of this endeavor would not lose sight of local forms of discrimination that also reproduce these oppressive ideologies.

TEXT:

[*1]

I. Introduction

What is LatCrit Critical Politics & Jurisprudence?

Since 2003, LatCrit has endeavored to incorporate young scholars into the annual conference, as well as within other projects, through a student paper competition. The Student Scholar Program aims to mentor, enable, and encourage young critical scholars, regardless of their disciplinary backgrounds, to participate in LatCrit debates.¹ The first essay in this cluster was written by one of this year's Student Scholars. Gina Cabarcas Macias' paper seeks to explore some of the intersections between law, theory, and the subordination of indigenous populations in Colombia during the national founding period. The paper offers some brief reflections on the role of law in the institutionalization of pejorative narratives of the notion of the "Indian" in the everyday lives of Colombians during the national independence period. While the bulk of the paper focuses on some theoretical debates informing the contours of the relationship between

law, theory, and subordination, the concluding portions of her paper discuss, albeit briefly, several appellate court cases during the national independence period, which provide insights into the ways in which the law ascribed a pejorative meaning to the notion of the Indian. [*2]

Cabarcas Macias' paper seeks to refocus the approach to the study of law by drawing on a new historiographical approach that privileges the everyday lives of subordinated populations. This essay contributes to a small body of articles focusing on new historical interpretations of American legal history published in LatCrit symposia that seek to de-center the law and the state by recasting the debates from a subaltern position.ⁿ² To be sure, a LatCrit approach could emphasize a distinct re-reading of history that pays attention to traditionally marginalized or excluded questions about everyday life of subordinated groups. Perhaps a LatCrit approach that pays attention to the content of the form of traditional legal history could select events (content), which have been excluded from traditional legal narratives and shape these into a more democratic narrative that highlights the oppressive and exploitative ideologies of the past. Of course, this could mean that it may be possible to construct an unfamiliar historical narrative that can help re-think the present in more creative ways.

Tucker Culbertson's report and invitation to join the LatCrit NGO is representative of two important dimensions that have been constant companions of the LatCrit project, namely, a concern for international dimensions of critical politics and jurisprudence,ⁿ³ and a practical concern with social justice. Culbertson's contribution documents the conceptual inauguration of the LatCrit NGO as part of the World Conference Against Racism, and the official granting of consultative status in 2006 by the United Nations Economic and Social Council (ECOSOC).ⁿ⁴ Drawing on a post-colonial critique, as well as on a variety of LatCrit approaches, this report documents the LatCrit NGO response to the UN's "Questionnaire on Complementary Standards on Racism, Racial Discrimination, Xenophobia, and Related Intolerance." This report is representative of a form of praxis that [*3] seeks to challenge various forms of international and global discrimination in a critical manner.ⁿ⁵

Hugo Rojas' clear and insightful article explores the case of Omar Ahmed Khadr and his attorney in the United States (US) detention camps in Guantanamo Bay, Cuba. Drawing on an analogy to Franz Kafka's *The Trial*, Rojas' article interrogates the current legal process employed by the U.S. in its efforts to prosecute the detained subjects. At a time when even the former Chief Prosecutor for the Bush Administration, Col. Morris D. Davis, has begun to question the fundamental justice of the Military Commissions,ⁿ⁶ Rojas' article offers a concise critique informed by a critical concern for human rights. Rojas' article should be read as a further contribution to the growing body of LatCrit scholarship on human rights and justice.ⁿ⁷ Rojas' article is also representative of efforts by LatCrit to create a space where scholars from the global south can articulate critical positions in mainstream academic venues.

Jose Maria Monzon's contribution seeks to provide a critique of the role of Anglo-American legal imperialism in shaping the Argentinian legal culture. The essay is representative of an effort to grapple with the problem of legal and cultural transplants in the Argentinian legal tradition. It is unfortunate that the essay does not engage the work of other scholars that have addressed this subject in Argentinaⁿ⁸ as well as in other Latin American countries more broadly.ⁿ⁹ More importantly, Monzon's work can be situated as part of small but consistent body of LatCrit approaches that looks at the clash of legal culturesⁿ¹⁰ and the challenges posed by the formation of new conceptions of law that generally borrow from more hegemonic legal traditions.ⁿ¹¹ A LatCrit approach to the study of legal transculturation could focus on the subordinating effects of the global north's efforts to re-define Latin American legal traditions in line with a capitalist global agenda. To be sure, the focus of this critique could center on the efforts to adjust legal traditions from the global south to a more subordinated position within a global north hierarchy by domesticating the possibility of critical jurisprudence.

For example, a LatCrit approach, along the lines of what Monzon argues in his article, would challenge efforts by the United States to institute reforms in the arena of penal and civil procedure codes in Latin America that seek to imitate the common law tradition. Likewise, a LatCrit approach would challenge efforts to transplant ideologically laden legal notions, like affirmative action, which are shaped by ethnocentric institutional and social experiences, from the U.S. to Latin American countries. This critique would explore how legal transplants can reproduce hegemonic ideologies that perpetuate essentialist, subordinating, and exploitative discourses and practices in historically oppressed countries that comprise a global south. Of course, the critical nature of this endeavor would not lose sight of local forms of discrimination that also reproduce these oppressive ideologies.

Towards a new jurisprudence?

FOOTNOTES:

n1 For more information regarding the LatCrit Student Scholar Program (SSP) as well as for samples of past contributions and selected papers, please visit the SSP site at: <http://www.latcrit.org/>.

n2 See, e.g., Guadalupe T. Luna, *Gold, Souls, and Wandering Clerics: California Missions, Native Californians, and LatCrit Theory*, 33 U.C. DAVIS L. REV. 921 (2000); Susan Scafidi, *Old Law in the New World: Solorzano and the Analogical Construction of Legal Identity*, 55 FLA.L.REV. 191 (2003); Charles R. Venator Santiago, *Race, Nation-Building and Legal Transculturation During The Haitian Unification Period (1822-1844): Towards A Dominican Perspective*, 52 CLEV. ST. L. REV. 63 (2005); and Kim David Canbonpin, *How The Border Crossed Us: Filling The Gap Between Plume v. Seward and the Dispossession Of Mexican Landowners in California After 1848*, 52 CLEV. ST. L. REV. 297 (2005).

n3 For examples on LatCrit approaches to international social justice, see the following: Sylvia R. Lazos Vargas, *Globalization or Global Subordination?: How LatCrit Links the Local to Global and the Global to the Local*, 33 U.C. DAVIS L. REV. 1429 (2000); Chantal Thomas, *Globalization and the Reproduction of Hierarchy*, 33 U.C. DAVIS L. REV. 1451 (2000); Gil Gott, *Critical Race Globalism?: Global Political Economy, and the Intersections of Race, Nation, and Class*, 33 U.C. DAVIS L. REV. 1503 (2000); and 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).

n4 Please visit the LatCrit webpage for more information regarding the LatCrit NGO at: <http://www.latcrit.org/>.

n5 See, e.g., Peggy Maisel, *Lessons from the World Conference Against Racism: South Africa as a Case Study*, 81 OR. L. REV. 739 (2002).

n6 William Glaberson, *Former Prosecutor to Testify for Detainee*, N.Y. TIMES, February 28, 2008, at A18.

n7 See, e.g., Steven W. Bender, *Sight, Sound, and Stereotype: The War on Terrorism and its Consequences for Latinas/os*, 81 OR.L. REV. 1153 (2002); Natsu Taylor Saito, *Beyond Civil Rights: Considering "Third Generation" International Human Rights Law in the United States*, 28 U. MIAMI INTERAM. L. REV. 387 (1997); Adrien Katherine Wing, *Critical Race Feminism and the International Human Rights of Women in Bosnia, Palestine, and South Africa: Issues for Latcrit Theory*, 28 U. MIAMI INTERAM. L. REV. 337 (1997); and Magdalena M. Martin Martinez, *Spain and Latin America: Jurisdiccion Universal y Crimenes Internacionales*, 9 U. MIAMI INT'L. & COMP.L. REV. 171 (2000).

n8 See, e.g., Jonathan M. Miller, *A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process*, 51 AM.J.COMP. L. 839 (2003).

n9 See, e.g., Antonio Gidi, *Class Actions in Brazil--A Model for Civil Law Countries*, 51 AM.J. COMP. L. 311 (2003); M. C. Mirow, *Borrowing Private Law in Latin America: Andres Bello's Use of the Code Napoleon in Drafting the Chilean Civil Code*, 61 LA.L.REV. 291 (2001); and Jorge L. Esquirol, *The Failed Law of Latin America*, 56 AM.J.COMP. L. 75 (2008).

n10 See, e.g., 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).

n11 See, e.g., Hugo Rojas, *Cambios Sociales y Cambios Juridicos en Chile: Construyendo Nuevos Puentes Entre Sociologia y Derecho en la Promocion del Realismo Juridico Latinoamericano*, 13 BERKELEY LA RAZA L.J. 453 (2002); Pedro A. Malavet, *LatCritical Encounters with Culture in North-South Frameworks*, 55 FLA.L.REV. 1 (2003); Jorge L. Esquirol, *Continuing Fictions of Latin American Law*, 55 FLA.L.REV. 41 (2003); Michael Wallace Gordon, *Legal Cultures of Latin America and the United States: Conflict or Merger*, 55 FLA.L.

REV. 115 (2003); Hugo Rojas, Stop Cultural Exclusions (in Chile)!: Reflections on the Principle of Multiculturalism, 55 FLA.L. REV. 121 (2003); and Julie Mertus, Mapping Civil Society Transplants: A Preliminary Comparison of Eastern Europe and Latin America, 53 U. MIAMI L. REV. 921 (1999).