

# INTRODUCTION

## Globalization or Global Subordination?: How LatCrit Links the Local to Global and the Global to the Local

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The fifth and final cluster of this LatCrit IV Symposium, *International Linkages and Domestic Engagement*, includes five important contributions to LatCrit IV's focus on global issues by Professors Timothy Canova, Gil Gott, Tayyab Mahmud, Ediberto Román, and Chantal Thomas.<sup>1</sup>

Since the inception of the LatCrit movement, LatCrit scholars have been conscious not to confine their analytical gaze to domestic issues. In LatCrit, this commitment to international linkages is just not an "add-on," or a footnote to the LatCrit enterprise. LatCrit has learned from prior movements not adopt a "'sto[p]-at-the-water's-edge,"<sup>2</sup> procapitalist understanding of racial justice in the United States." Instead, LatCrit focused on the international almost immediately, publishing in 1996-97 a colloquium on International Law, Human Rights, and LatCrit Theory, thus making ex-

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<sup>1</sup> Timothy A. Canova, *Global Finance and the International Monetary Fund's Neoliberal Agenda: The Threat to the Employment, Ethnic Identity, and Cultural Pluralism of Latino/a Communities*, 33 U.C. DAVIS L. REV. 1547 (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); Tayyab Mahmud, *Race, Reason and Representation*, 33 U.C. DAVIS L. REV. 1581 (2000) (reviewing UDAY SINGH MEHTA, *LIBERALISM AND EMPIRE: A STUDY IN NINETEENTH-CENTURY BRITISH LIBERAL THOUGHT*); Ediberto Román, *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); Chantal Thomas, *Globalization and the Reproduction of Hierarchy*, 33 U.C. DAVIS L. REV. 1541 (2000).

<sup>2</sup> Gott, *supra* note 1, at 1512.

plicit that the linkages between globalization<sup>3</sup> and the domestic, and the domestic to global are integral to LatCrit.<sup>4</sup> As Professor Kevin Johnson's *Foreword* to this symposium emphasizes, leadership has been important in developing the LatCrit intellectual enterprise.<sup>5</sup> In the effort to ensure that LatCrit resist parochial tendencies, Professors Lisa Iglesias, Berta Hernández-Truyol, and Francisco Valdes have been not only instrumental, but also motivational, as a glance at footnotes of the five essays in this cluster testify. The oral history of LatCrit IV also reflects LatCrit's now traditional focus on the global. Professor Celina Romany's keynote remarks, *Global Capitalism, Transnational Social Justice and LatCrit Theory as Antisubordination Praxis*, admonished LatCrit theorists, or as she jokingly termed, "LatCritters," not to lose sight of the impor-

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<sup>3</sup> I define "globalization" as the free market push towards the breaking down of traditional nation state borders to facilitate the flow of commerce in the form of goods, services and human labor. At times, that flow of goods and human labor is legal, as under the liberalization of trade and open immigration regimes. Such flows can also be illegal, as in the flow of undocumented workers and refugees and drug contraband. In addition, globalism, with its emphasis on free markets, has had the observable effect of assimilating nonwestern cultures into the Western. This has meant that nonwestern countries, which had full employment, nature-friendly economies, are now under pressure to "develop" into consumer-oriented, primary-goods-consuming and environment depleting economies. See generally THE CASE AGAINST THE GLOBAL ECONOMY AND FOR A TURN TOWARD THE LOCAL (Jerry Nader and Edward Goldsmith eds., 1996); ULF HANNERZ, TRANSNATIONAL CONNECTIONS: CULTURE, PEOPLE, PLACES (1996); Canova, *supra* note 1, at 1554-55 ("[T]he neo-liberal agenda . . . promises greater liberty, but only of a certain kind, greater freedom to the owners of financial capital, but less freedom for those who must rely on wages and salaries, rather than interest on capital holdings, for their means of livelihood."); Gott, *supra* note 1, at 1503 n.3 (defining globalization as "a context in which state centric actors have lost control to, for example, complex economic and cultural structures that transcend erstwhile determinative relations between nation-states.").

<sup>4</sup> There are a number of prior LatCrit articles on globalization. See, e.g., Max J. Castro, *Democracy in Anti-Subordination Perspective: Local/Global Intersections: An Introduction*, 53 U. MIAMI L. REV. 863 (1999); Ivelaw Griffith, *Drugs and Democracy in the Caribbean*, 53 U. MIAMI L. REV. 869 (1999); Berta Esperanza Hernández-Truyol, *Las Olvidadas — Gendered in Justice/Gendered Injustice: Latina, Fronteras and the Law*, 1 IOWA J. GENDER, RACE & JUST. 353 (1998); Elizabeth M. Iglesias, *Foreword: Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community*, 53 U. MIAMI L. REV. 575 (1999); George A. Martínez, *Dispute Resolution and the Treaty of Guadalupe Hidalgo: Parallels and Possible Lessons for Dispute Resolution*, 5 SW. J.L. & TRADE AM. 147 (1998) [hereinafter Martínez, *Dispute Resolution*]; Mario Martínez, *Property as an Instrument of Power in Nicaragua*, 53 U. MIAMI L. REV. 907 (1999) [hereinafter Martínez, *Property as an Instrument of Power*]; Julie Mertus, *Mapping Civil Society Transplants: A Preliminary Comparison of Eastern Europe and Latin America*, 53 U. MIAMI L. REV. 921 (1999); Ediberto Román, *Reconstructing Self-Determination: The Role of Critical Theory in Positivist International Law Paradigm*, 53 U. MIAMI L. REV. 943 (1999); Colloquium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997).

<sup>5</sup> See Kevin R. Johnson, *Foreword, Celebrating LatCrit Theory: What Do We Do When the Music Stops?*, 33 U.C. DAVIS L. REV. 753, 784-85 (2000).

tant class, worker, and nation state political implications of the modern push towards “globalization.”<sup>6</sup>

The global is central to the LatCrit enterprise at two levels: first, to understand local issues of subordination and racialization, and second, to analyze the phenomenon of “globalization” as an agent of past and ongoing racial subordination. Legal scholars traditionally have treated these two spheres as dichotomous, independent areas of study; the former as the domain of critical race theory and the latter international law. However, that false division falls apart in LatCrit theory, as well as its sister movement Asian Pacific American Critical Legal Scholarship (“APA Crits”).<sup>7</sup> As Professor Francisco Valdes’s earlier essay, *Piercing Webs of Power*, underscores, the LatCrit enterprise, like much second generation of critical race theory and feminist work, emphasizes multidimensional analysis.<sup>8</sup> The dynamics of subordination — the interaction between race, gender, class, culture, history, and social group formation — are too complex to be captured in one or two dimensions, what Critical Race Theory has identified as “intersectionalities.”<sup>9</sup> Valdes uses the metaphor “web,” and urges “multidimensional critique . . . [as] another step toward helping the LatCrit community better visualize and understand the nature of . . . critical legal theory and praxis.”<sup>10</sup> This methodology enables LatCrit to “take a stance against all forms of subordination,” as Professor Lisa Iglesias declared in her essay linking APA Crits and LatCrit.<sup>11</sup>

Multidimensional methodology enables LatCrit to break through the artificial dichotomy of the global and the local. The results are remarkably creative scholarship. All of the works in this symposium illustrate, to greater or lesser extent, this linkage. Some, in

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<sup>6</sup> Celina Romany, *Global Capitalism, Transnational Social Justice and LatCrit Theory as Antisubordination Praxis*, May 1, 1999 (keynote remarks to the Fourth Annual LatCrit Conference) (notes on file with author).

<sup>7</sup> See generally Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-structuralism, and Narrative Space*, 81 CAL. L. REV. 1241, 1314-15 (1993); Symposium, *The Long Shadow of Korematsu*, 40 B.C. L. REV. 349 (1998).

<sup>8</sup> See Francisco Valdes, *Piercing Webs of Power: Identity, Resistance, and Hope In LatCrit Theory and Praxis*, 33 U.C. DAVIS L. REV. 897, 898-99 (2000).

<sup>9</sup> See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).

<sup>10</sup> Valdes, *supra* note 8, at 899.

<sup>11</sup> See Elizabeth M. Iglesias, *Out of the Shadow: Marking Intersections in and Between Asian Pacific American Critical Legal Scholarship and Latina/o Legal Theory*, 40 B.C. L. REV. 349, 358 (1998).

particular, resist the taxonomy that the symposium's participants necessarily have imposed on themselves in presenting such rich and varied research.<sup>12</sup> Part I below sketches out, by way of illustration only, how some of the work already presented in this symposium cultivates the linkage between local racial formation and global market dynamics. Part II then explores LatCrit's contribution to the critique of globalism.

## I. TO UNDERSTAND THE LOCAL WE MUST LOOK TO THE GLOBAL

The minority communities, or stated in today's political terminology, the "identity groups," on which LatCrit is most likely to focus, either directly or indirectly — Latinas/os, Asian Americans, Blacks, indigenous peoples, women workers — are groups that as a class are very much affected by the ongoing dynamics of globalization.<sup>13</sup>

Let us take first the plight of immigrants and undocumented workers California. The influx of these workers is a tangible result of the processes of globalization,<sup>14</sup> the ongoing "development," Western-style, of "underdeveloped" Latin American countries. The unleashing of global market forces and a historically based value hierarchy, which because of turn of the century imperialism established the West (or North) at the apex, triggered displacement of unskilled low-wage workers. In the specific case of Mexico-U.S. relations, the hemispheric push towards globalization under the "free trade" forces of NAFTA pressured Mexico to liberalize previously protected sectors of the economy.<sup>15</sup> The post-NAFTA de-

<sup>12</sup> See, e.g., *infra* Part I.

<sup>13</sup> LatCrit's stated purpose is to focus on Latinas/os. However, LatCrit is also concerned with the subordination of all peoples of color, how these various forms of subordination relate to one another, and the potential that such interrelationships offer for coalition building. See Iglesias, *supra* note 4, at 623-26; 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 CHICANO-LATINO L. REV. 509 (1998); Mary Romero, *Afterword, Historicizing and Symbolizing a Racial Ethnic Identity: Lessons for Coalition Building with a Social Justice Agenda*, 33 U.C. DAVIS L. REV. 1599 (2000); Francisco Valdes, *Afterword, Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience — RaceCrits, QueerCrit, LatCrits*, 53 U. MIAMI L. REV. 1265 (1999).

<sup>14</sup> See *supra* note 3 (defining globalism).

<sup>15</sup> NAFTA expressly requires that Mexico, for example, liberalize its rules related to foreign investment. See Symposium, *The Restructuring of Mexican Financial Services and the Application of Chapter 14 of NAFTA*, 7 U.S.-MEX. L.J. 67 (1999). Moreover, as part of a "free" trade zone, Mexico as well must abide by GATT-type rules proscribing any subsidies to industrial sectors. See generally Alicia Cebada Romero, *Antidumping, Countervailing Duties, and*

valuation of the Mexican peso and the subsequent governmental program of fiscal austerity, which even reached food subsidies, has fueled an increased labor flow from rural and poor Mexico into California and other border states.<sup>16</sup>

Both Dean Christopher David Ruiz Cameron and Professor Maria Ontiveros's contributions to this symposium center on how these immigrant undocumented workers, many from Mexico but others from nearby Latin American countries, become subject to exploitation and subordination once they cross the border, lose their status as Mexican citizens, and become undocumented workers — noncitizen low-wage workers.<sup>17</sup> As Dean Ruiz Cameron notes, these workers have been indispensable to building the infrastructure of much of the Southwest and maintaining America's supply of cheap fruits and vegetables.<sup>18</sup> They provide many comforts to residents of Los Angeles and the large cities close to the borders, as nannies, maids, lawn care workers, and ethnic restaurant workers. Yet, as noncitizens and "illegal" workers, the law has denied them labor rights, property rights, and human rights.<sup>19</sup> Perceived by low wage American workers as potential competitors

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*Safeguard Measures: Comparison Between The Agreements of the European Community And European Eastern Countries and NAFTA*, 16 ARIZ. J. INT'L & COMP. L. 437 (1999).

<sup>16</sup> See generally Andy Gutierrez, *Codifying the Past, Erasing the Future NAFTA and the Zapatista Uprising of 1994*, 4 HASTINGS W.-N.W. J. ENVTL. L. & POL'Y 143 (1998).

<sup>17</sup> See Christopher David Ruiz Cameron, *The Rakes of Wrath: Urban Agricultural Workers and the Struggle against Los Angeles' Ban on Gas-Powered Leaf Blowers*, 33 U.C. DAVIS L. REV. 1087 (2000) [hereinafter Cameron, *The Rakes of Wrath*]; Maria Ontiveros, *Forging Our Identity: Transformative Resistance in the Areas of Work, Class and the Law*, 33 U.C. DAVIS L. REV. 1057 (2000) [hereinafter Ontiveros, *Forging Our Identity*]. Both build on their own prior work. See Christopher David Ruiz Cameron, *The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers*, 53 U. MIAMI L. REV. 1089 (1999) [hereinafter Cameron, *The Labyrinth of Solidarity*]; Christopher David Ruiz Cameron, *How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving Speak-English-Only Rules as the Product of Racial Dualism, Latino Invisibility and Legal Indeterminacy*, 85 CAL. L. REV. 1347 (1997), 10 LA RAZA L.J. 261 (1998) [hereinafter Cameron, *How the Garcia Cousins Lost Their Accents*]; Maria Ontiveros, *To Help Those Most in Need: Undocumented Workers' Rights and Remedies under Titles VII*, 20 REV. L. & SOC. CHANGE 607 (1993-94) [hereinafter Ontiveros, *To Help Those Most in Need*].

<sup>18</sup> See Cameron, *The Labyrinth of Solidarity*, *supra* note 17; see also BILL ONG HING, *TO BE AN AMERICAN: CULTURAL PLURALISM AND THE RHETORIC OF ASSIMILATION* (1997).

<sup>19</sup> See sources cited in *supra* notes 16-17; see also Guadalupe T. Luna, "Agricultural Underdogs" and International Agreements: *The Legal Context of Agricultural Workers within the Rural Economy*, 26 N.M. L. REV. 9 (1996); Michael Olivas, *The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 ST. LOUIS U. L.J. 425 (1990).

and seen by many Americans as foreign usurpers, immigrants have been and remain the object of hostility and prejudice.<sup>20</sup>

In her essay, Professor Ontiveros describes the inter-relationship between the market forces that demand unskilled labor and the US national policies that deny these workers citizenship:

With respect to Latina/o farm workers, in particular, the United States has set up regimes at the intersection of immigration and labor law which allow immigrants to work in agriculture under very strict requirements. These requirements are designed to oppress workers because they guarantee an oversupply of labor while providing little or no legal recourse for the workers to have their grievances addressed. Most importantly, they are designed to deter settlement or empowerment because they provide for only temporary legal residence.<sup>21</sup>

Professor Ontiveros describes a *global* system of labor exploitation. Industries, like agriculture, depend on plentiful supplies of unskilled labor. For that purpose, the nation state must be lax in the enforcement of immigration laws, but restrictive in extending labor protections given to domestic to undocumented workers: while the nation state does not succeed in keeping workers from crossing its borders, it permits micro conditions of extreme exploitation. Professor Ontiveros argues that workers can fight back this web of global and local oppression by organizing locally. She uses the case study of the United Farm Workers to show how other national unions could benefit from organizing undocumented low-skilled workers.<sup>22</sup>

Dean Ruiz Cameron's contribution would be amusing if it weren't such a sad and telling commentary on American's over-enthrallment with the unearned benefits of globalization. Ruiz Cameron tells how unskilled workers, many undocumented, are organized by "*capitanes*" to perform lawn work for the rich and famous in Beverly Hills.<sup>23</sup> In yet another example of how the global enables local consumerism, the rich and famous, as well as middle class homeowners, enjoy manicured lawns at bargain rates. There

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<sup>20</sup> See Walter Stephan et al., *Prejudice Toward Immigrants*, 29 J. APPL. SOC. PSYCH. 2221 (1999).

<sup>21</sup> Ontiveros, *Forging Our Identity*, *supra* note 17, at 1063.

<sup>22</sup> *Id.* at 1059-62.

<sup>23</sup> Cameron, *The Rakes of Wrath*, *supra* note 17.

is one catch, however: the lawn workers' power blowers make too much noise.<sup>24</sup> The rich and famous of Beverly Hills "solved" this "noise pollution" problem in much the same manner that other middle class citizens infected with "Not in My Back Yard" syndrome solve such unpleasantness. They paraded before the city council and lobbied for an ordinance banning power blowers,<sup>25</sup> and exercised their influence and prestige to ensure that the benefits from global labor would not be too visible in Beverly Hills. The rich and famous did not offer to pay more for lawn work to ensure that this work, now more time consuming, was done quietly. The ordinance made the jobs of the lawn workers more physically taxing and compressed the margins of the *capitanes*. It remains to be seen whether the *capitanes* will have the negotiating power and will to adjust prices of lawn care upwards to avoid exploiting these workers.

Past LatCrit work has linked the global to the local in another way. LatCrit has centered on the "immigrant," and how this identity has been racialized. Dean Kevin Johnson has linked California's Proposition 187, the initiative that barred immigrants from schooling, medical care, and welfare benefits, to the past and current racialization of these workers.<sup>26</sup> In an intriguing illustration of how group identity is formed, Professor Yxta Murray described how Mexican Americans and Mexicans experience the majority's hostility towards them as a rejection of their membership in the community.<sup>27</sup> This, in turn, triggers these minorities' ambivalence at describing themselves as belonging to the American polity.<sup>28</sup>

In this symposium, Professor Chantal Thomas explicitly links the global to the local in her contribution entitled, *Globalization and the Reproduction of Hierarchy*.<sup>29</sup> Professor Thomas makes a very important argument. Globalization accentuates preexisting structural

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<sup>24</sup> See *id.* at 1092.

<sup>25</sup> See *id.* at 1094-97.

<sup>26</sup> See Tanya Kateri Hernández, *The Construction of Race and Class Buffers in the Structure of Immigration Controls and Laws*, 76 OR. L. REV. 731 (1997); Kevin R. Johnson, *Race, the Immigration Laws, and Domestic Race Relations: A Magic Mirror into the Heart of Darkness*, 73 IND. L.J. 1111 (1998); see also Gott, *supra* note 1, at 1507.

<sup>27</sup> See Yxta Maya Murray, *The Latino American Crisis of Citizenship*, 31 U.C. DAVIS L. REV. 503 (1998).

<sup>28</sup> This phenomenon has been captured by recent survey data analyzed in T. Alexander Aleinikoff & Ruben G. Rumbaut, *Terms of Belonging: Are Models of Membership Self-fulfilling Prophecies?* 13 GEORGETOWN IMMIGR. L.J. 1 (1998).

<sup>29</sup> Thomas, *supra* note 1.

inequalities in the United States, which disproportionately affect minorities, low-skilled workers, and those trapped in the inner cities in a cycle of unemployment, inadequate housing, substandard education, and welfare.<sup>30</sup> Thomas points out that the International Monetary Fund and Western leaders view “deindustrialization” — the process of industrial jobs being relocated overseas to cheap labor markets and new high skill service jobs sprouting up in advanced Western economies — as a “natural feature” of globalization.<sup>31</sup> The IMF cautions that for those workers and nonworkers, the “‘effects of [globalization] may . . . be significant’.”<sup>32</sup> However, drawing on the work of other critical race theorists, Professor Thomas makes the case that politicians have failed to address government policies and the resulting market forces that have relegated to the lowest strata of our economy low skill manufacturing sector workers and those who live in inner cities, which are disproportionately minorities. Thomas argues, not against globalization, but rather that “justice requires that the government . . . take steps to correct this structural disadvantage.”<sup>33</sup>

As Part I illustrates, LatCrit provides a “look from the ground up” in understanding how the various forces that drive global — markets, labor force flows, national identity formation — influence local communities. This more complex methodology enables LatCrit to move significantly beyond the Black/White traditional civil rights paradigm, and center on fundamental core issues affecting Latina/o communities.

## II. GLOBALIZATION OR GLOBAL SUBORDINATION?

The four remaining rich and challenging essays by Professors Gott, Román, Canova, and Mahmud attack the phenomenon of globalization. Each issues a challenge, and each deserves responses and engagement in future LatCrit work, as detailed below.

Both politicians and academics have peddled globalization as an absolute good. Globalism has been portrayed as a beneficent extension of technology, providing, among other things, the “global

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<sup>30</sup> See *id.* at 1455-76.

<sup>31</sup> See *id.* at 1497 (citing International Monetary Fund, *World Economic Outlook 1997: Globalization, Opportunities and Challenges* (1997)).

<sup>32</sup> *Id.* at 1498 (citing International Monetary Fund, *World Economic Outlook 1997: Globalization, Opportunities and Challenges* (1997)).

<sup>33</sup> *Id.* at 1455 n.15.



information highway.” It is also a consumerist windfall that provides cheap finished goods at the local Walmart to the middle class. Both Democrats and Republicans have urged the liberalization of world trade as a way to raise the standard of living of the poor worldwide, and to stabilize emerging democracies.<sup>34</sup>

This seamless rhetoric of “globalization,” “liberalization,” and the push to “world democracy” is another example of the “strategic manipulation of democratic rhetoric,” which LatCrit III Symposium investigated.<sup>35</sup> The unrest in Seattle during this Fall’s World Trade Organization talks and this April’s protests of the International Monetary Fund and World Bank’s meetings in Washington D.C. signaled that the debate over globalism cannot be repressed any longer. Labor, environmentalists, and white, middle-class socially progressive youths — important sectors of the American pluralist polity — were willing to fight, civil rights style, what they perceived to be *global* social injustice.<sup>36</sup> Bipartisan U.S. congressional resistance to Clinton’s request to “fast tracking” trade treaties also underscores increasing uneasiness with the unconsidered domestic effects of further trade liberalization.<sup>37</sup> Thus, the inertia that plagues pluralist politics when difficult issues come to the fore is slowing down the push towards globalization.

LatCrit IV’s essays grouped under this heading of *International Linkages and Domestic Engagement* mark another important step in investigating how globalization can be a force that continues class, race, nation state and cultural subordination.

In the first essay, Professor Gil Gott aptly maps out four distinct ways in which race and globalization intersect. First, he describes “critical race globalism,” as “the current conjuncture of globaliza-

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<sup>34</sup> Canova, *supra* note 1, at nn.30-36 and accompanying text; Gott, *supra* note 1, at 1508-09. Current presidential campaign politics underscores how much consensus there is on this point between Republicans and Democrats. In a PBS *News Hour* interview, George W. Bush proclaimed his support for continued trade liberalization and expansion of NAFTA. When asked how his policies differed from President Clinton’s, Bush answered that as a Republican, voters could be more confident in his continuing these policies, as opposed to trusting Democrats who had only recently found the free trade religion. See *McNeil News-Hour* (PBS television broadcast, Feb. 16, 2000).

<sup>35</sup> Iglesias, *supra* note 4, at 631.

<sup>36</sup> Aaron Bernstein & Paul Magnusson, *Free Trade Needs a Nod from Labor*, BUS. WK., Nov. 22, 1999, at 150-52; Bruce Stokes, *Labor Needs a Strong Arm in Seattle*, NAT’L J., Oct. 23, 1999, available in 1999 WL 28248080; *The New York Trade War*, ECONOMIST, Dec. 4, 1999, at 25-26; *The Protesters and the Bank*, N.Y. TIMES, Apr. 18, 2000 at A18.

<sup>37</sup> Greg Hitt, *House Rejects Fast-Track Authority for Clinton, Tying His Hands on Trade*, WALL ST. J., Sept. 28, 1998, at A12.

tion.”<sup>38</sup> This introductory cluster Essay has already described this conjuncture as the mainstay of globalization, the free market push towards the breaking down traditional nation state borders to facilitate the flow of commerce. Second, Gott distinguishes “critical race internationalism,” that could also be called international critical race theory praxis. This is the conscious activism by civil rights activists and critical race theorists to link political activism at home with international movements resisting racial, social and political subordination.<sup>39</sup> LatCrit, even though a young movement, has already begun to practice critical race internationalism by sponsoring conferences joining Spanish and Caribbean academics with LatCrit theorists.<sup>40</sup> Third, Gott calls for continued analysis of race and imperialism and their relationship to domestic and international politics.<sup>41</sup> This is the work, carried on by historians and political scientists, as well as by LatCrit theorists, that investigates both past and current linkages between colonialism/imperialism and various forms of hierarchy, racial formation, market exploitation under colonial rule, nation state building, and cultural imperialism.<sup>42</sup> Finally, Gott calls attention to the formation of “global racial space,” the phenomenon that “racial space is becoming globalized” and is now constantly subject to global currents and cross currents.<sup>43</sup> Part I of this Essay sketches how LatCrit takes on this task.<sup>44</sup>

Professor Gott’s taxonomy is useful in understanding how LatCrit takes on the global and the local. Much ongoing and past LatCrit work can be grouped in one of these four categories. Thus, Gott’s taxonomy is not just academic, it can serve as useful guideposts to LatCrit’s continued critique of race and globalization.

*Critical Race Globalism?: Global Political Economy, and the Intersections of Race, Nation, and Class*, as Gott’s title indicates, is mostly preoccupied with the first area of investigation, critical race globalism. In this work, Gott echoes Valdes’s call for “weblike” LatCrit analysis, and warns of pitfalls to be warded off in deconstructing the dynamics of globalization and race.

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<sup>38</sup> Gott, *supra* note 1, at 1503 n.3; *see also supra* note 3 (describing globalization).

<sup>39</sup> Gott, *supra* note 1, at 1503 n.3, 1510-11.

<sup>40</sup> *See* Johnson, *supra* note 5, at 764, 783.

<sup>41</sup> Gott, *supra* note 3, at 1504 n.4 (citing PENNY M. VON ESCHEN, *RACE AGAINST EMPIRE: BLACK AMERICANS AND ANTI-COLONIALISM, 1937-1957* (1997)).

<sup>42</sup> *See infra* notes 107, 110-12 and accompanying text.

<sup>43</sup> *See* Gott, *supra* note 3, at 1504 n.5.

<sup>44</sup> *See supra* Part I.

What are these pitfalls? First, rhetoric has changed, but substance has not. Nation-states, like modern democratic actors, have accepted the rhetoric of formal equality and abandoned manifest global white supremacy.<sup>45</sup> Yet practices and policies continue “the basic structure of differentiation that marked earlier imperial domination.”<sup>46</sup> Thus, Gott echoes Iglesias’s admonition in *LatCrit III’s Forward* that the “disjuncture between rhetoric and reality [is] a crucial political space for LatCrit theory to occupy.”<sup>47</sup>

Second, Gott admonishes his readers that “critical race globalism” analysis involves carefully navigating between the proverbial rock and hard place. LatCrit theorists must not “sign on to a facile kind of one-worldism,”<sup>48</sup> without questioning how a specific kind of globalism might further forms of subordination. Uncritical and careless parroting of conventional wisdom of the benefits of globalism can unwittingly lead to LatCrit theorists contributing to cultural imperialism (devaluing nonwestern cultural approaches), “the race to the bottom of distributive justice,” global labor exploitation (such as the examples provided by Professor Ontiveros and Dean Ruiz Cameron discussed in Part I), and “bad nationalisms” (read, neonativism).<sup>49</sup> Thus, Gott warns, LatCrit theorists must be wary of “thinking locally and acting globally . . . and thinking globally and acting locally.”<sup>50</sup> If LatCrit theorists “think local” to understand the global, they can misapprehend the global forces that are interacting with a local problem.

Gott concludes by urging LatCrit theorists not to stop at the “water’s edge,”<sup>51</sup> because the problems that LatCrit theorists analyze locally inevitably have an international dimension. Analysis on only a local level may seem more manageable, but just as LatCrit’s move from critical race theory has resulted in more complexity yielding surprising richness, so the move towards a focus on the global can enrich the reconstructive aspect of LatCrit scholarship. As an example, Gott suggests that LatCrit theorists could provide “justice informed leadership” in efforts to craft solutions for saving

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<sup>45</sup> Gott, *supra* note 1, at 1507.

<sup>46</sup> *Id.*

<sup>47</sup> Iglesias, *supra* note 4, at 631.

<sup>48</sup> Gott, *supra* note 1, at 1509.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 1510.

<sup>51</sup> *Id.* at 1512.

the Amazonian rainforest, building on the lessons learned from the environmental justice movement.<sup>52</sup>

The next contribution is Professor Ediberto Román's *A Race Approach to International Law (RAIL): Is There a Need for Yet Another Critique of International Law?*. This work parallels Gott's study of how imperialism continues to dominate relationships between North and South/developed economies and emerging economies, and the global construction of race. Taking inspiration from Professor Tayyab Mahmud's whimsical comment at LatCrit IV, Román proposes that scholars begin thinking about race-centered approaches to international law, or RAIL.<sup>53</sup> RAIL's foremost attribute is that it would not footnote, but rather place at the center, the troublesome issues that race, culture, ethnicity, religion, gender, and native peoples bring to the study of international law. Such an "outsider" focus, claims Román, has the potential to transform the whole structure of international law because it questions the legitimacy of the nation-state, which is at the very foundation of international law.<sup>54</sup> Does a nation-state that subordinates large segments of its population, the Taliban's subordination of women, for example, have any legitimacy in the international law regime? Román notes that traditional law approaches have sought to minimize these troublesome issues and, therefore, have no ready response to such a question.<sup>55</sup> "Race," notes Román, "does not neatly fall within the paradigm of the sovereign."<sup>56</sup>

Román explores what a race centered approach to the study of international law would look like. To focus on race at the level of international law means uncovering the relationship between present relations between nation states, the developed world and the developing countries, and how these relations are linked to a not-so-recent global system of colonialism. In the international law regime, Román sees continuing vestiges of colonial paternalism. For example, the United Nations regime of nation-state trusteeship brings in the disquieting notion that some nations are not yet ready to take on the burdens of democratic self-government.<sup>57</sup> This is the same argument that the U.S. initially used to deny Puerto

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<sup>52</sup> *Id.* at 1515.

<sup>53</sup> See Román, *supra* note 1, at 1530.

<sup>54</sup> *Id.* at 1536.

<sup>55</sup> *Id.* at 1521-24.

<sup>56</sup> *Id.* at 1536.

<sup>57</sup> *Id.* at 1537.

Rico the right of self-government.<sup>58</sup> Similarly, the right of self-determination has been selectively applied to European countries, but made “essentially unavailable for the less-advanced people of the Third World.”<sup>59</sup> As set forth by Román, RAIL raises new challenges for the LatCrit theorist who wishes to engage public international law. His is a challenging critique to the mainstream notions of international law, and an avenue that is well worth pursuing in future work.

The next work, Professor Canova’s essay, *Global Finance and the International Monetary Fund’s Neoliberal Agenda: The Threat to the Employment, Ethnic Identity, and Cultural Pluralism of Latina/o Communities*, falls into the category that Gott calls critical race globalism. Canova is concerned with how the International Monetary Fund (“IMF”) might have furthered the “subordinat[ion of] entire nations of color.”<sup>60</sup> The IMF, a post-World War II global market institution created by the Allied victors, implements principles of free market globalism by being the lender of last resort to nation states that find their currencies to be suffering the harsh discipline of currency markets and bond markets.<sup>61</sup> Accordingly, a critique of the IMF is a critique of global market economics; the state of international relations between nation states and supra global institutions; and the structural inequalities between North and South, First versus Third World, or developed countries versus emerging market economies (pick your preferred nomenclature).

As part of Canova’s indictment of the IMF, he cites the dramatic increase in the last decade of worldwide poverty.<sup>62</sup> The World Bank reports that over one-third of the world’s labor force are employed in low wage jobs or unemployed.<sup>63</sup> Unemployment, he notes, has “spiritual costs,” progressively “undermines a person’s identity formation,” and “leads to potentially destructive behavior.”<sup>64</sup>

In addition to these costs on individuals, the hardship remedies that the IMF has imposed on Asian, African, and Latin American

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<sup>58</sup> *Id.* at 1538-39.

<sup>59</sup> *Id.* at 1541.

<sup>60</sup> Canova, *supra* note 1, at 1549.

<sup>61</sup> See generally Sandra Blanco & Enrique Carrasco, *The Function of the IMF and the World Bank*, 9 TRANS’N’L L. & CONTEMP. PROBS. 67 (1999) (visited Apr. 19, 2000) <<http://www.uiowa.edu/ifcbook/>> (on file with author); see also Stanley Fischer, *Lessons from a Crisis*, *ECONOMIST*, Oct. 3, 1998, at 23-24, 27.

<sup>62</sup> Canova, *supra* note 1, at 1565.

<sup>63</sup> *Id.* at 1565-66.

<sup>64</sup> *Id.* at 1552

debtor nation states has also weakened them. First, there is the simple matter of a net transfer of wealth, both in the form of net debt payments (Canova reports over \$200 billion in six years) and in the flight of investment capital.<sup>65</sup> Canova muses that “the rentier has not just refused to disappear, but has come to once again predominate over enterprise.”<sup>66</sup> There is also the destabilization of these countries’ sovereignty, which Canova speculates might be key in stemming the tide of global cultural assimilation into Western-style materialism.<sup>67</sup>

This critique of the IMF is not unique. For various reasons, the IMF has increasingly come under attack from a variety of quarters, including such stalwarts of Western-style “neoliberal” market policies as *The Economist*<sup>68</sup> and Joseph Stiglitz, a world-known economics professor and one-time World Bank chief economist.<sup>69</sup> What is LatCrit’s contribution to this ongoing critique? Canova calls for LatCrit to take a hard look at “the foundations of the IMF’s neoliberal agenda,” to derail “the neoliberal pretense that the market objectively determines merit.”<sup>70</sup> He argues that LatCrit theorists must question the universal application of IMF’s guidelines for a “high quality” economy. These are guideposts based on post-World War II economic wisdom, “economic growth, macroeconomic stability [read, low inflation, low unemployment, low trade deficits, healthy inventory margins], good governance, more equitable income distribution, social safety nets for the poor, and increased employment.”<sup>71</sup> Canova implies that these IMF factors may in fact be formulaic staid measures of “merit,” which may no longer be appropriate given the continued failure of IMF policies to better the standard of living of the vast majority of the world’s labor force (in fact, it has worsened), and stave off what Canova calls the

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<sup>65</sup> *Id.* at 1558.

<sup>66</sup> *Id.* at n.32.

<sup>67</sup> *Id.* at 1578-79.

<sup>68</sup> See, e.g., *The Protesters and the Bank*, *supra* note 36 (urging the United States “to keep pressure for reform within”); *Bail in, Bail out*, *ECONOMIST*, Oct. 2, 1999, at 19 (criticizing IMF efforts to restore stability in Asia); *Sick Patients, Warring Doctors*, *ECONOMIST*, Sept. 18, 1999, at 81 (noting critique of IMF is due to its “apparent failure” in Mexico, Russia, and Asia); *Kill or Cure*, *ECONOMIST*, Jan. 10, 1998 (criticizing IMF forcing default of private creditors in Ecuador).

<sup>69</sup> Canova, *supra* note 1, at 1573 n.120 and accompanying text; see also *The Bumpy Ride of Joe Stiglitz*, *ECONOMIST*, Dec. 18, 1999 (citing Stiglitz’s critique of IMF’s “one size fits all” approach).

<sup>70</sup> *Id.* at 1566.

<sup>71</sup> *Id.* at 1571.

“asymmetrical burdens of adjustment,”<sup>72</sup> the continued suffering of people of color, the decimation of indigenous peoples, and the gradual erosion of nonwestern cultural values. Instead, Canova, calls for questioning “what makes a successful economy and [re-constructing] what criteria should be used to label an economy as successful and deserving of merit and credit.”<sup>73</sup>

Canova’s argument also critiques the work by another LatCrit symposium contributor, Professor Gilbert Carrasco. In a 1996 Lat-Crit colloquium, Carrasco called for “LatCrits with an interest in law and development to cautiously support the neo-liberal policies of IMF and World Bank.”<sup>74</sup> Canova rejects Carrasco’s entreaty, and argues instead that LatCrit theorists must actively “seek alternatives” to the IMF’s “neoliberal project.”<sup>75</sup>

Are Carrasco and Canova that far apart? It appears not, based on their bottom line recommendations. Canova recommends that the IMF’s criteria be more attuned to “equitable distributions of income and economic opportunity.”<sup>76</sup> Canova argues that the IMF has overly focused on *macroeconomics* and not given sufficient attention to *microeconomics* — how macro programs affect the poor, the culturally distinctive indigenous and other minorities, or continue non-democratic practices such as engraining an elite that too often has proven corrupt. Carrasco calls for monitoring the IMF to ensure that the IMF builds distributive justice concerns into its programs.<sup>77</sup> The authors essentially differ only as a matter of degree in their distrust of the IMF as an institution, and whether the IMF’s credit worthiness standards are legitimate.

This is a difference over which reasonable people may disagree; but it also reflects a difference in temperament. Canova and Carrasco differ most fundamentally in what each means by the term *LatCrit*. While Carrasco is concerned that LatCrit theorists

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 28.

<sup>74</sup> *Id.* at 25 (citing to Carrasco’s contribution in the LatCrit Primer).

<sup>75</sup> *Id.* at 14.

<sup>76</sup> *Id.* at 32.

<sup>77</sup> *Id.* at 26 & n.91 (citing Enrique Carrasco, *Law, Hierarchy and Vulnerable Groups in Latin America: Towards a Communal Model of Development in a NeoLiberal World*, 30 STAN. J. INTL. L. 221 (1994)). Following this view that — individuals can and should monitor global institutions, Carrasco has just finished assembling the *E-Book on International Finance and Development*, which he views as an educational and empowerment tool to help citizens understand international finance and development. See Symposium, *The E-Book on International Finance and Development*, 9 TRANSNAT’L L. & CONTEMP. PROBS. 1 (1999) <<http://www.uiowa.edu/ifdebook/E-Book.htm>> (on file with author) [hereinafter E-Book].

“be taken seriously” by policy makers,<sup>78</sup> Canova is concerned that LatCrit remain critical. Canova asks “[C]an . . . scholars . . . maintain their critical distance after they have entered the IMF’s orbit of neoliberal assumptions?”<sup>79</sup> Canova appears to capture the conundrum of scholars who choose to be “outsiders” or “crits”: must the critics be part of the legitimation of practices that further subordination to “be taken seriously”?<sup>80</sup> Or can a critical theorist engage, or even adopt, the assumptions of “neo liberalism” and still remain critical?

Both Canova and Carrasco are on to important points. As Canova argues, LatCrit’s critique of “neoliberalism” must be critical. At the same time, as Carrasco advocates, LatCrit critique must be specific and contextual,<sup>81</sup> and heed the call for multi-dimensional “thick” analysis that Professor Francisco Valdes identifies as the LatCrit methodology. LatCrit is broad enough to encompass both Canova’s and Carrasco’s voices; as Dean Kevin Johnson has noted in his *Forward*, LatCrit is now sufficiently robust to encourage the critique and counter critique of two energetic and engaged scholars.<sup>82</sup>

In such future dialogue, Canova and Carrasco, as well as other LatCrit theorists, should be mindful of Professors Gott’s warning that LatCrit must be wary of “thinking local” on global issues. Countries like Mexico, Chile and Brazil have complained that some Western voices now want to “protect” these countries from the “evils” of development.<sup>83</sup> In other words, critique, whether from a LatCrit or neoliberal perspective, could mask Western style paternalism. Arguably, IMF and WTO-style economic policies have bettered conditions of the middle class in countries like Mexico,

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<sup>78</sup> Canova, *supra* note 1, at n.93 (citing Enrique Carrasco, *Law, Hierarchy and Vulnerable Groups in Latin America: Towards a Communal Model of Development in a NeoLiberal World*, 30 STAN. J. INT’L L. 221, 328 (1994)).

<sup>79</sup> *Id.* at 26.

<sup>80</sup> See *supra* note 78 and accompanying text (discussing Carrasco’s concerns regarding LatCrit critique).

<sup>81</sup> Cf. Enrique Carrasco & Kristen J. Berg, *Praxis-Oriented Pedagogy: The E-Book on International Finance and Development*, 32 LOY. L.A. L. REV. 733 (1999) (advocating that critical scholars can monitor such institutions as IMF by having access to educational tools such as *E-Book*).

<sup>82</sup> See Johnson, *supra* note 5, at 778-79.

<sup>83</sup> See Paul Krugman, *An American Pie*, N.Y. TIMES, Feb. 16, 2000, at A29 (citing Mexico’s President Ernesto Zedillo as being critical of “self-proclaimed Western friends,” who are “determined to save developing countries from development”).



and Brazil.<sup>84</sup> Admittedly, the plight of indigenous peoples and the poor continues to be severe,<sup>85</sup> and these developing countries' industrial policies continue to jeopardize the environment. However, these democracies are in the process of forming their own policies and compromises concerning development, industrialization, market forces, distributive justice, and the rights of cultural and racial minorities. The results may not always be what LatCrit theorists and other Western observers believe to be most desirable outcome. But, LatCrit theorists should ask themselves, who should determine what kind of development is best for these countries: the popular masses, who like voters in every democracy, are subject to rhetorical manipulations by the elite, or the theorist that claims to avoid "false consciousness"<sup>86</sup>? This question is at the heart of every critical project and can only be navigated with the critical bent that Canova urges.

All the provocative essays discussed thus far point to yet another important issue. LatCrit theorists need to be more specific and theoretically complete when they make reference to, or attack, the "neoliberal project." Does the LatCrit critique of neoliberalism consist of unmasking what Professor Iglesias, in her *LatCrit III Forward*, called the "strategic manipulations of democratic rhetoric"?<sup>87</sup> Or alternatively, is this project one of challenging Western inspired "foreign interven[tions]" that "continue the scourge of corruption, dictatorship and underdevelopment"?<sup>88</sup> Does the "neoliberal" critique consist of deconstructing the "dominant neoliberal narrative that marries capitalism to democracy in a happy embrace of economic abundance and political freedom"?<sup>89</sup> Gott's depiction of the neoliberal agenda echoes Professor Iglesias's comprehensive list of concerns with structural inequalities, global economics, cultural imperialism and the plight of the nation state.<sup>90</sup> For Román,

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<sup>84</sup> See *Mexico Pulls off Another Trade Coup*, BUS. WK., Feb. 7, 2000, at 56; *Pulling Brazil Back from the Brink*, BUS. WK., May 10, 1999, at 50; see also *supra* note 81.

<sup>85</sup> See Canova, *supra* note 1, at 1558-61.

<sup>86</sup> Antonio Gramsci, a Marxist, believed that hegemony was embedded in the popular system of ideas and practices, what he termed "common sense." His concept of hegemony involved "false consciousness," a consent by the great masses based on embedded ideology, not an active thought process. See ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS (Q. Hoare & G. Smith trans., 1971).

<sup>87</sup> Iglesias, *supra* note 4, at 631.

<sup>88</sup> *Id.* at 638.

<sup>89</sup> *Id.* at 641.

<sup>90</sup> Gott, *supra* note 1.

the neoliberal project is a traditional international law regime based on an imperialist legacy.<sup>91</sup> Canova's critique of the "neoliberal agenda" takes aim at economic policies that do not sufficiently focus on employment, distribution of wealth, and the potential for destabilization of nation states.<sup>92</sup> Professor Chantal Thomas's critique of globalization takes aim at the distributive issues that are too easily ignored by liberals and neoliberals.<sup>93</sup>

On this issue, the next contribution by Professor Tayyab Mahmud makes some headway. Professor Mahmud reviews Uday Singh Mehta's study of classic liberal philosophy, *Liberalism and Empire: A Study in Nineteenth Century British Liberal Thought*.<sup>94</sup> Mehta's oeuvre attempts to link the philosophy of John Locke and John Stuart Mill, two early stalwarts of classic liberal thought, to colonialism as an economic practice, a racial construction, and a philosophic ideology.

This is a tall order, and Mehta's argument, ably presented by Professor Mahmud, is highly nuanced and complex. Mehta's focal point is classic liberals' enchantment with reason and rationality. Thus, Mehta picks up on the feminist<sup>95</sup> and communitarian<sup>96</sup> critique of liberalism based on the "anthropological characteristics posited as being common to all human beings . . . that everyone is naturally free, that all are . . . equal . . . and rational."<sup>97</sup> Mehta explores yet another facet of how the conceptualization of reason can be culture bound. In classic liberal philosophy, consensual politics needed to fashion the hypothetical social contract plays a crucial role.<sup>98</sup> Locke, for example, fashioned a hierarchy of maturity and development that distinguished those communities that were ready

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<sup>91</sup> Román, *supra* note 1, at 1526.

<sup>92</sup> See *supra* note 76 and accompanying text.

<sup>93</sup> See Thomas, *supra* note 1, at 1499-1501.

<sup>94</sup> Mahmud, *supra* note 1.

<sup>95</sup> See, e.g., April L. Cherry, *Social Contract Theory, Welfare Reform, Race and the Male Sex-Right*, 75 OR. L. REV. 1037 (1996) (discussing decontextualized assumption of homogeneity in liberal social contract theory and how this assumption disadvantages and continues subordination of women).

<sup>96</sup> See, e.g., MICHAEL SANDEL, DEMOCRACY'S DISCONTENT 14-16 (1996) ("[T]he liberal conception of the person is too thin to account for the full range of moral and political obligations we commonly recognize, such as obligation. This counts against its plausibility generally.").

<sup>97</sup> Mahmud, *supra* note 1, at 1587.

<sup>98</sup> *Id.* at 1588 & n.19 (citing John Stuart Mill, *Considerations on Representative Government*, in JOHN STUART MILL, THREE ESSAYS 402 (1975) (1861)).

to enter into a social contract from those that were not.<sup>99</sup> This hierarchy invited, but did not require, England and subsequently the U.S., to develop notions that some civilizations, like the Indians, Asians, Latin Americans, and indigenous, were too archaic, exotic, and unfamiliar to be considered capable of self-governance.<sup>100</sup> Reason, as practiced by early English liberals, was a practice in conceit, setting up the familiar as civilized and superior, and the unfamiliar as backward and inferior.<sup>101</sup>

As Mahmud points out, such a link is "ironic given the foundations of liberal thought [as an] abiding commitment to securing individual liberty and human dignity."<sup>102</sup> Mehta shows that the link between the conceit of rationality and the subordination of the foreign is avoidable by discussing the views of Burke, a republican thinker, as an alternative example. Burke eschewed the discourse of racial and civilizational superiority through which the British justified their empire.<sup>103</sup> Burke had a more realistic anthropology and believed that rationality could not be divorced from "sentiments, feelings, and attachments through which people are, and aspire to be."<sup>104</sup> Instead of seeking to impose rationality on the unfamiliar, Burke accepted that two civilizations as inapposite as were England and India were like "two strangers."<sup>105</sup> Strangers should agree to "the messiness of communication" and accept the premise that their discourse would not necessarily yield an "immanent truth on which words can fix."<sup>106</sup>

It is intriguing to think that Burkean thought foreshadowed today's ongoing work by a wide-ranging group of postmodernists, liberal philosophers, feminists, and critical theorists as to how to carry on a "rational" discourse that is inclusive in a modern cultural pluralist democracy.<sup>107</sup> All of these theorists converge on the idea

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<sup>99</sup> *Id.* at 1588-90.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 1586.

<sup>102</sup> *Id.* at 1583.

<sup>103</sup> *Id.* 1593.

<sup>104</sup> *Id.* at 1586.

<sup>105</sup> *Id.* (citing UDAY SINGH MEHTA, *LIBERALISM AND EMPIRE: A STUDY IN NINETEENTH-CENTURY BRITISH LIBERAL THOUGHT* 22 (1999)).

<sup>106</sup> *Id.* at 1596 (citing UDAY SINGH MEHTA, *LIBERALISM AND EMPIRE: A STUDY IN NINETEENTH-CENTURY BRITISH LIBERAL THOUGHT* 216 (1999)).

<sup>107</sup> See, e.g., SEYLA BENHABIB, *CRITIQUE OF NORMS AND UTOPIA: A STUDY OF THE FOUNDATIONS OF CRITICAL THEORY* 340 (1986) (advocating that we address the "concrete other" with a concrete history, identity and affective constitution); RENATO ROSALDO, *CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS* 168-95 (2d ed. 1993) ("Culture

that an attitude of humility (nonsuperiority) is key, and that participants must be able to accept the idea that communication may be “messy”<sup>108</sup> and incapable of yielding universal truths.<sup>109</sup> With what can only be characterized as understatement, Mahmud advises “this posture of imaginative humility may come in very handy”<sup>110</sup> in future LatCrit and post-colonial work.

Mahmud also recommends that future LatCrit work explore to what extent the “colonial encounter” is not a “thing of the past” but part of “the colonial lineage of many a hegemonic legal idea and practice of today.”<sup>111</sup> This fits into Gott’s third category, the study of the linkage between imperialistic and colonial practice and the current construction of race.<sup>112</sup> Several LatCrit theorists, Guadalupe Luna, Mary Romero, Efrén Rivera Ramos, Ediberto Román, Carlos Venator Santiago, Juan Perea, and I have taken on this challenge.<sup>113</sup> But as Mahmud rightly challenges, more remains

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and their ‘positioned subjects’ are laced with power and power in turn is shaped by cultural forms. Like form and feeling culture and power are inextricably intertwined. In discussing forms of social knowledge, both of analysts and of human actors, one must consider their social positions. What are the complexities of the speakers’ social identity? What life experiences have shaped it? Does the person speak from a position of relative dominance or relative subordination?”; Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 884 (1990) (“[I]f truth is understood as partial and contingent, each individual or group can approach its own truth with a more honest, self-critical attitude about the value and potential relevance of other truths.”); Robert L. Hayman, Jr., *The Color of Tradition: Critical Race Theory and Postmodern Constitutional Traditionalism*, 30 HARV. C.R.-C.L. L. REV. 57, 106 (1995) (“[U]ndeniably, pluralization, or postmodernization, comes at a certain . . . price, . . . the comfortable, self-assured determinacy afforded by homogeneity. But this determinacy was always illusory . . . .”); *Introduction to POSTMODERNISM AND LAW* xiii-xv (Dennis Patterson ed., 1994) (arguing that truth or falsity of any statement cannot be assessed in isolation from everything else we take to be true); Martha Minow, *The Supreme Court, 1986 Term Foreword: Justice Engendered*, 101 HARV. L. REV. 10, 31-38, 76 (1987) (“I conclude that I must acknowledge and struggle against my partiality by making an effort to understand your reality and what it means for my own. . . . The solution is not to adopt and cling to some new standpoint but instead to strive to become and remaining open to perspectives and claims that challenge our own.”).

<sup>108</sup> See *supra* note 106 and accompanying text (citing Burke).

<sup>109</sup> See *supra* note 107.

<sup>110</sup> Mahmud, *supra* note 1, at 1596.

<sup>111</sup> *Id.*

<sup>112</sup> See *supra* note 43 and accompanying text.

<sup>113</sup> See JUAN PEREA ET AL., RACE AND RACES: CASES AND RESOURCES FOR A MULTIRACIAL AMERICA 260-304 (1999); JUAN PEREA, *Fulfilling Manifest Destiny: Conquest, Race, and the Insular Cases*, in “FOREIGN IN A DOMESTIC SENSE”: AMERICAN EXPANSION AND THE CONSTITUTION (Christina Burnett & Burke Marshall eds., forthcoming); Guadalupe T. Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a “Naked Knife,”* 4 MICH. J. RACE & L. 39 (1998); Guadalupe T. Luna, *Understanding the Treaty of Guadalupe Hidalgo on Its 150th Anniversary, En el Nombre de Dios Todo-Poderoso: The Treaty of Guadalupe Hidalgo and Narrativos Legales*, 5 SW. J.L. & TRADE AM. 45 (1998); Ediberto Román, *The Alien-Citizen Para-*

to be done in turning a LatCrit eye to colonial encounters and constructing thick analyses of race.

Finally, Mahmud's contribution intimates that the contours of liberalism are malleable. The search to accommodate normative principles of early classical liberalism — individual dignity and freedom — within the modern cultural pluralist state is one in which modern liberal philosophers, such as John Rawls,<sup>114</sup> Ronald Dworkin,<sup>115</sup> and Will Kymlicka<sup>116</sup> engage. This is a normative position that LatCrit as an antisubordination critique shares with classical individual liberalism. I have argued that a critical perspective can coexist with classic individual liberal normative ideals; indeed, a critical perspective can apply liberal frameworks to rethink what sorts of democratic practices encourage inclusion of subordinated minorities.<sup>117</sup> This is a contestable position, and one that invites further discussion and critique within LatCrit.

My view is that LatCrit should dispute the linkage that some liberals make between normative individual liberalism and markets, and what this means to the construction of the state. Judge Posner, most notably, argues that “liberalism . . . has an intimate practical relation to economics,” namely, to promote “voluntary” market transactions.<sup>118</sup> The role of the state is to “create a large sphere of inviolate private activity and facilitat[e] the operations of the markets.”<sup>119</sup> This construction of a liberal state “creates conditions that

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*dox and Other Consequences of U.S. Colonialism*, 26 FLA. ST. U. L. REV. 1 (1998); Ediberto Román, *Empire Forgotten: The United States's Colonization of Puerto Rico*, 42 VILL. L. REV. 1119 (1997); Efrén Rivera Ramos, *The Legal Construction of American Colonialism: The Insular Cases (1901-1922)*, 65 REV. JUR. U.P.R. 225 (1996); Carlos Venator Santiago, *Porto Rico: Identity, Status of Spacer and the Law*, in STATES CITIZENS, AND QUESTIONS OF SIGNIFICANCE 205 (John Grigham & Richard Kevelson eds., 1997); see also Mary Romero, *Class Struggle and Resistance Against the Transformation of Land Ownership and Usage in Northern New Mexico: The Case of Las Gorras Blancas* (unpublished manuscript, on file with the author); Sylvia R. Lazos Vargas, *One Hundred Years of Solitude: The Link Between Construction of U.S. National Identity and Puerto Ricans as a Race* (unpublished manuscript, on file with author).

<sup>114</sup> See JOHN RAWLS, *POLITICAL LIBERALISM* 220-24 (1996) (providing framework for moral disagreement between free and equal participants in polity, without destabilizing or disunifying well-ordered society).

<sup>115</sup> See RONALD DWORKIN, *LAW'S EMPIRE* (1986); RONALD DWORKIN, *A MATTER OF PRINCIPLE* 228-32 (1985); RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* (1977).

<sup>116</sup> See WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP* 86-88 (1995).

<sup>117</sup> See Sylvia R. Lazos Vargas, *Democracy and Inclusion: Reconceptualizing the Role of the Judge in a Pluralist Democracy*, 58 MD. L. REV. 152 (1999).

<sup>118</sup> RICHARD A. POSNER, *OVERCOMING LAW* 24 (1995).

<sup>119</sup> *Id.*

experience teaches are necessary for personal liberty and economic prosperity.”<sup>120</sup>

Posner’s tie of the normative aspirations of classic liberal thought to market capitalism is highly contestable, as is his premise that free markets promote individual liberty. Liberal scholars with a more humanistic emphasis, like Rawls and Dworkin, have configured the nation state in radically different ways. As scholars like Rogers Smith points out, and Posner himself admits, liberalism does not delineate the nature of the nation state.<sup>121</sup> The “law and economics” approach to liberal thought should not remain uncontested as a foundational premise of liberalism. Rather, constructing the link between the liberal classical individual aspirations and the construction of the nation state is part of the larger debate, not only in liberal thought, but within democratic politics.<sup>122</sup> LatCrit’s focus on the antisubordination of both minority groups and minority individuals means that LatCrit is positioned to make important contributions to this important debate. The work in prior LatCrit symposia<sup>123</sup> and Celina Romany’s keynote address<sup>124</sup> indicates that LatCrit has already embarked on this project.

To conclude, all of the authors in this cluster have outlined important work that lies ahead. At the same time, the work in this final cluster underscores how far LatCrit has come in only four years. Each of these authors develops important guideposts in LatCrit work in the international arena, and has successfully outlined what LatCrit can and does contribute to the critique of globalization. Clearly, however, LatCrit has much more to do in order to ensure that globalization does not become coda for globalized subordination.

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<sup>120</sup> *Id.*

<sup>121</sup> See ROGERS M. SMITH, LIBERALISM AND AMERICAN CONSTITUTIONAL LAW 14-15 (1985) (stating that liberals did not fill in the blanks on legal and constitutional procedures); see also POSNER, *supra* note 118, at 25 (“Liberalism is not a complete philosophy of government and law.”).

<sup>122</sup> Many theoreticians engage in this ongoing debate. See, e.g., WENDY BROWN, STATES OF INJURY: POWER AND FREEDOM IN LATE MODERNITY (1995); WILLIAM E. CONNOLLY, THE ETHOS OF PLURALIZATION (1995); ANTONIO NEGAI, INSURGENCIES: CONSTITUENT POWER AND THE MODERN STATE (1999); SHELDON S. WOLIN, THE PRESENCE OF THE PAST: ESSAYS ON THE STATE AND THE CONSTITUTION (1990).

<sup>123</sup> See *supra* note 4 and accompanying text.

<sup>124</sup> See *supra* note 6 and accompanying text.