

# Global Finance and the International Monetary Fund's Neoliberal Agenda: The Threat to the Employment, Ethnic Identity, and Cultural Pluralism of Latina/o Communities

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Critical legal scholarship can be seen as a slowly evolving movement of inclusion, a movement that has expanded in scope and vision to include voices previously excluded from elite academic discourse.<sup>1</sup> For instance, LatCrit emerged in recent years as a movement that speaks for those who were not just subordinated by legal structures and processes, but also excluded by progressive scholars who preached inclusion and critical thinking.<sup>2</sup> Since the Critical Legal Studies movement was indicted for excluding critical race dialogue,<sup>3</sup> and just as RaceCrits were seen to exclude various shades of “nonwhites” from the black-white paradigm,<sup>4</sup> LatCrit

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<sup>1</sup> See Francisco Valdes, *Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 LA RAZA L.J. 1, 6 (1996).

<sup>2</sup> See Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 HARV. C.R.-C.L. L. REV. 301, 307 (1987).

<sup>3</sup> See Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561, 561-63 (1984).

<sup>4</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 (1993); Richard Delgado, *Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181 (1997); Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101, 106 (1997); Rachel Moran, *Neither Black Nor White*, 2 HARV. LATINO L. REV. 61 (1997); Deborah A. Ramirez, *It's Not Just Black and White Anymore, in THE LATINO/A CONDITION: A CRITICAL READER* 478 (Richard Delgado & Jean Stefancic eds., 1998); William R. Tamayo, *When the "Coloreds" Are Neither Black Nor Citizens: The United States Civil Rights Movement and Global Migration*, 2 ASIAN L.J. 1 (1995).

scholars are especially sensitive to the possibility that they might also become agents of exclusion by remaining silent about the plight of marginalized communities.<sup>5</sup> As a result, LatCrit remains a vibrant movement of inclusion, in part, by opening the door to embrace critical scholarship that recognizes the salience of socio-economic status to cultural identity while challenging the neoliberal tide which has swept over and further impoverished communities of various racial and ethnic identities both within and outside the United States.<sup>6</sup>

As critical scholars concerned with the subordination of Latina/o and other oppressed peoples, we bear a special responsibility to consider the legal mechanisms and institutions that create and reinforce such subordination.<sup>7</sup> We should be wary of remaining silent about legal mechanisms that serve to subordinate those who dwell in the so-called underclass and are faced daily with far greater hardships and indignities than nonwhites in our own professional class.<sup>8</sup> While some LatCrit scholars have recognized the pressing challenges that globalization presents to the integrity of ethnic identity and cultural pluralism,<sup>9</sup> such critiques must extend to the global financial system and the role of the International Monetary Fund ("IMF") as primary institutional vehicles that sub-

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<sup>5</sup> See Cheryl I. Harris, *Law Professors of Color and the Academy: Of Poets and Kings*, 68 CHI-KENT L. REV. 331 (1992).

<sup>6</sup> The inclusion of such critical voices could also be seen as coming full circle to a new synthesis that opens the door to include the original class-based focus of the Critical Legal Studies movement that spawned RaceCrit and LatCrit, but integrating that class-based critique within a more complex and culturally textured context that includes socio-economic identity. See CRITICAL LEGAL STUDIES: ARTICLES, NOTES, AND BOOK REVIEWS SELECTED FROM THE PAGES OF THE HARVARD LAW REVIEW (1986); THE POLITICS OF LAW (David Kairys ed., 1982); see also *infra* notes 136-41 and accompanying text.

<sup>7</sup> See Margaret E. Montoya, *Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis*, 2 HARV. LATINO L. REV. 349, 350 n.2 (1997) (arguing that LatCrit discourse must focus on experience and history of Latina/o communities and conditions in which they survive to "alleviate the misery and desperation in which too many Latinas/os live").

<sup>8</sup> See Harris, *supra* note 5.

<sup>9</sup> See 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) [hereinafter Romany Keynote Remarks at LatCrit IV]; see also Celina Romany, *Interrupting the Dinner Table Conversation: Critical Perspectives, Identity Politics and Deliberative Democracy*, Remarks to the American Society of International Law (March 1999) (on file with author) [hereinafter Romany, *Interrupting the Dinner Table Conversation*]. All references to Professor Romany's keynote address are based on my notes taken during her talk.

ordinate Latina/o people as well as people of all colors.<sup>10</sup> The IMF, along with other Western governmental and multilateral institutions, has formulated and advocated a distinctly neoliberal agenda that stresses the importance of private investment, while denigrating most public-sector oriented policy prescriptions. Such neoliberal policies include the liberalization of short-term portfolio capital flows, and harsh conditions for deficit countries, such as monetary and fiscal austerity, structural adjustment policies, and privatization schemes. These neoliberal policies help reinforce the existing hierarchies of power and subordination between and within nations.

This Article argues that the global monetary system, and the IMF in particular, systematically subordinates entire nations of color.<sup>11</sup> Such systematic subordination generates literally millions of unheard stories of oppression, but these stories are often marginalized, ignored, or pathologized by the way that dominant discourse blames the victim.<sup>12</sup> The same social relations, mechanisms, and patterns of thought that keep down people of color throughout the world also serve to keep down millions of people of all colors here in the United States.<sup>13</sup>

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<sup>10</sup> See *Colloquium: International Law, Human Rights, and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1996-1997); Romany Keynote Remarks at LatCrit IV, *supra* note 9. But see Romany, *Interrupting the Dinner Table Conversation*, *supra* note 9, at 4, 20 (arguing that "discursive reflections on stories told publicly within and between groups develops a normative language that names their injustice and narrates the suffering surrounding it").

<sup>11</sup> LatCrit has traditionally been concerned with understanding, analyzing, and struggling against the subordination of people of color. This antsubordination agenda extends to oppression that is expressly based on the person's racial or ethnic characteristics as well as unintentional discrimination that has a disparate impact on people of color. See Barbara J. Flagg, *Was Blind But Now I See: White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953 (1993). While it is debatable whether the global financial system in general and the IMF agenda in particular are implicitly designed to subordinate people based on racial or ethnic identity, there is little doubt that both have a disparate impact on people of color. See GUNNAR MYRDAL, *RICH LANDS AND POOR* 23-38, 50-66 (1957) (explaining how private market forces, global trading, and financial systems lead to growing economic inequalities along ethnic and racial lines); see also Kevin R. Johnson, "Aliens" and the U.S. Immigration Laws: *The Social and Legal Construction of Nonpersons*, 28 U. MIAMI INTER-AM. L. REV. 263, 289 (1996-1997) ("Though facially-neutral, restrictionist measures have disproportionate impacts on people of color.").

<sup>12</sup> See Timothy A. Canova, *Banking and Financial Reform at the Crossroads of the Neoliberal Contagion*, 14 AM. U. INT'L L. & POL'Y 1571, 1590-93 (1999).

<sup>13</sup> See Robert H. Frank, *What Victimless Income Gap?*, N.Y. TIMES, Apr. 12, 1999, at A27 (arguing that expansion of income gap between upper and middle classes is even if middle class earnings have risen slightly in absolute terms); James K. Galbraith & George Purcell, *The Butterfly Effect*, FOMC ALERT June 30-July 1, 1998 (discussing effect of Federal Reserve interest rate hikes on global currency instability); Judith Miller, *Globalization Widens Rich-Poor*

Part I of this Article will describe how the global monetary system systematically wrecks havoc on entire nations around the globe, undermines the material conditions of employment, sustainable economic growth and prosperity, and thereby also undermines the cultural integrity of racial, ethnic, and religious identity. Part II will place this discussion in the context of previous LatCrit scholarship that displays a tension concerning the appropriate means for resisting the IMF's neoliberal program. This Article argues that constructive engagement from within runs the risk of muting criticism of the basic direction of neoliberal policy. Material conditions have changed sufficiently that LatCrit scholars should adopt an increasingly critical stance towards the IMF, its policies, and the entire neoliberal project. Finally, Part III urges a continuing synthesis of critical legal scholarship to better analyze and understand the legal structures and processes that subordinate people based on race, ethnic identity, and culture, as well as socio-economic class.

#### I. THE INTERNATIONAL MONETARY FUND AS AGENT OF SYSTEMATIC SUBORDINATION

It is difficult to speak about the increasing threat to Latina/o culture and communities stemming from transnational capital without discussing the global financial system and the particular policies and agenda of the IMF.<sup>14</sup> In her keynote address to the Fourth Annual LatCrit Conference, Professor Celina Romany argued that the power of transnational capital has grown to domi-

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*Gap*, *U.N. Report Says*, N.Y. TIMES, July 13, 1999, at A8; cf. Chantal Thomas, Presentation to Concurrent Panel: LatCrit Perspectives on Culture, Political Economy, and Material Realities, Fourth Annual LatCrit Conference on Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections) (Apr. 30, 1999) [hereinafter LatCrit IV Conference] (discussing how globalization entrenches subordination in United States). See generally *Measuring 50 Years of Economic Change*, CURRENT POPULATION REPORTS 60-203 (Bureau of the Census, Current Population Survey, March 1998) (visited April 17, 2000) (on file with author) <<http://www.census.gov/prod/3/98pubs/p60-203.pdf>> (showing that over past decade in United States, income of Hispanics has fallen below incomes of Blacks).

<sup>14</sup> See Canova, *supra* note 12; see also ROBERT L. ROTHSTEIN, GLOBAL BARGAINING: UNCTAD AND THE QUEST FOR A NEW INTERNATIONAL ECONOMIC ORDER 77 n.32 (1979) (citing Paul Streeten, *World Trade in Agricultural Commodities and the Terms of Trade with Industrial Goods*, in AGRICULTURAL POLICY IN DEVELOPING COUNTRIES 207-23 (Nurul Islam ed., 1974)) (discussing arguments that less developed countries have suffered secular decline in terms of trade, which in turn has caused much of their poverty); Philip Turner, *Capital Flows in the 1980s: A Survey of Major Trends*, 30 BIS ECON. PAPERS 11 (1991) (describing how private capital movements punish deficit countries while serving to benefit surplus countries).

nate and weaken the traditional nation-state.<sup>15</sup> While Romany mentioned that structural adjustment programs and loan conditionalities present real challenges to debtor nations, she did not expressly name the IMF as the architect of such policies that undermine the integrity of ethnic identity and cultural pluralism in such countries.<sup>16</sup> But naming the IMF, its particular neoliberal agenda, and the adverse effects of IMF policies on the nation-state and on multicultural character and identity, is an important exercise in critical analysis and entirely consistent with Romany's endorsement of LatCrit methodologies to expose the subordination of ethnic cultural identity and to advance alternative epistemological accounts of such subordination.<sup>17</sup>

This Article views subordination through the prism of employment and income in order to better understand the various ways in which the IMF and its neoliberal program harms communities around the world while undermining identity formation.<sup>18</sup> This

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<sup>15</sup> See Romany Keynote Remarks at LatCrit IV, *supra* note 9. Romany argued that the nation-state undermines ethnic cultural identity by privileging certain elite interests and facilitating the prerogatives of global capital. See *id.* In calling for reform of the nation-state to permit greater democratic participation and a politics of inclusion, Romany implicitly recognized that the nation-state is an important protection for safeguarding ethnic cultural identity from the leveling influence of private transnational capital development. See *id.*; see also Romany, Interrupting the Dinner Table Conversation, *supra* note 9, at 16 (stating that "a humane global governance requires the enabling of institutions and structures which both at national and inter-national levels, prevents a community or a class from being systematically subordinated").

<sup>16</sup> See Romany Keynote Remarks at LatCrit IV, *supra* note 9. In particular, deficit nations following IMF prescriptions are effectively prevented from pursuing policies that promote full employment and social welfare. See *id.*

<sup>17</sup> See *id.* Chantal Thomas pointed out part of the challenge of extending LatCrit's antisubordination agenda to globalization: "[W]hile conditions of subordination are visible, the causative dynamics and law's complicity are often invisible." Thomas, *supra* note 13; see also *infra* notes 61-71 and accompanying text.

<sup>18</sup> Keeping employment at the center of our analysis is consistent with Berta Esperanza Hernández-Truyol's call for a holistic approach "that promotes the indivisibility and interdependence of our identities." Berta Esperanza Hernández-Truyol, *International Law, Human Rights, and LatCrit Theory: Civil and Political Rights — An Introduction*, 28 U. MIAMI INTER-AM. L. REV. 223, 225, 243 (1997). In addition, the United Nation's Universal Declaration of Human Rights "recognizes the rights to social security, full employment, fair working conditions, an adequate standard of living, education, and participation in the cultural life of the community." *Id.* at 235; see also PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT: 1944-1945, at 32, 41 (State of the Union Address, Jan. 11, 1944) (proposing second American Bill of Rights to include fundamental economic rights such as right to useful and remunerative employment for all Americans); cf. Daniel D. Bradlow, *The World Bank, the IMF, and Human Rights*, 6 TRANSNAT'L L. & CONTEMP. PROBS. 47 (1996) (urging IMF and World Bank to develop explicit human rights policy); Balakrishnan Rajagopal, *Crossing the Rubicon: Synthesizing the Soft International Law or the IMF and Human Rights*, 11 B.U. INT'L L.J. 81 (1993)

view, of course, is in sharp contrast to the narrow financial criteria used by the IMF to proclaim its programs a success.<sup>19</sup> By elevating employment as a primary indicator to evaluate the IMF program, we also recognize that people develop identity and derive deep meaning and purpose through their work. The condition of joblessness has significant material and spiritual costs. Not only does joblessness impoverish and weaken an individual, but it also undermines an individual's identity formation,<sup>20</sup> contributes to passive or negative identity, and leads to potentially destructive behavior.<sup>21</sup>

While the centrality of employment to an individual's and a community's sense of meaning and purpose should be self-evident, it may need repeating to those that have not recently, personally experienced the demoralization of joblessness or underemployment.<sup>22</sup> At the Bretton Woods Conference of 1944, which gave birth to the IMF and the World Bank, the United States and Great Britain attempted to construct a postwar global monetary order that would achieve several vital policy objectives.<sup>23</sup> The choice of objectives reflected the times. Policymakers understood that extremely high levels of unemployment had brought fascist dictators

(arguing that IMF must condition assistance on fundamental human rights, including the right to full human development).

<sup>19</sup> As long as a country manages to remain current in its payment obligations, IMF economists remain largely unconcerned about the so-called collateral damage of IMF austerity programs on the mass of a country's population. For instance, the IMF prematurely proclaimed success after the Mexican peso crash and \$51 billion bailout package for Mexico, and more recently after the \$41 billion assistance program for Brazil, based on narrow criteria of financial solvency while ignoring the large economic and social costs of the austerity medicine. See Canova, *supra* note 12, at 1586-87, 1600-02.

<sup>20</sup> See ERICH FROMM, *THE SANE SOCIETY* 180-81 (1969) (describing the workplace alienation that undermines individuals' sanity); ABRAHAM H. MASLOW, *TOWARD A PSYCHOLOGY OF BEING* 196-97 (1968) (arguing that identity is developed as individual achieves hierarchy of functional needs, culminating in self-actualization, requiring people to feel that her essential core is fundamentally accepted and respected by others and by herself).

<sup>21</sup> See ERIK H. ERIKSON, *DIMENSIONS OF A NEW IDENTITY* 108-09 (1974); Roxanne Rimstead, *Subverting Poor Me: Negative Constructions of Identity in Poor and Working-Class Women's Autobiographies*, in *THE LANGUAGE AND POLITICS OF EXCLUSION: OTHERS IN DISCOURSE* 249, 254-59 (Stephen Harold Riggins, ed. 1997).

<sup>22</sup> See Bertram Silverman, *The Rise and Fall of the Swedish Model*, *CHALLENGE* 69, 87-88 (Jan./Feb. 1998) (interviewing Rudolf Meidner and discussing how people often internalize the experience of joblessness and blame themselves); see also Romany, *Interrupting the Dinner Table Conversation*, *supra* note 9, at 17 (arguing that we must see "world history and contemporary social life from the perspective of radical equality of peoples in status, potential and rights") (citing ELLA SHOHAT & ROBERT STAM, *UNTHINKING EUROCENTRISM* 48 (1994)).

<sup>23</sup> See Robert W. Dimand, *Bretton Woods*, in *AN ENCYCLOPEDIA OF KEYNESIAN ECONOMICS* 50 (T. Cate et al. eds., 1997). The World Bank is officially known as the International Bank for Reconstruction and Development. See *id.* at 50-51.

to power, led to ethnic and religious scapegoating and persecution, and brought on the Second World War. Genuine full employment of human and industrial capacity was the overriding economic reality that lifted the Allied powers out of Depression and to military victory.<sup>24</sup> Article I of the IMF's Articles of Agreement (the Bretton Woods Agreement) mandated that the IMF's purpose was to contribute to "the promotion and maintenance of *high levels of employment and real income* and to the development of the productive resources of all members as primary objectives of economic policy."<sup>25</sup> Other provisions were designed to permit member countries to maintain their policy-making capabilities for the purpose of achieving full employment.<sup>26</sup>

However, in the decades since Bretton Woods, the IMF has pushed policies that are explicitly calculated to lead to very depressed levels of employment and real income as part of its systematic program of downward adjustment.<sup>27</sup> The Articles of Agree-

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<sup>24</sup> By the end of the Second World War, the unemployment rate in the United States was less than two percent, a level reflecting mere frictional unemployment. The rate of industrial capacity utilization was also at full employment, and for some industries exceeded 100 percent of the prewar capacity estimates. See LYNN TURGEON, *BASTARD KEYNESIANISM: THE EVOLUTION OF ECONOMIC THINKING AND POLICYMAKING SINCE WORLD WAR II*, at 5, 125 n.2 (1996). At genuine full employment there is only frictional unemployment that reflects the short amount of time that it would take anyone in the labor force to change jobs. See JAMES K. GALBRAITH & WILLIAM DARITY, JR., *MACROECONOMICS* 20 (1994).

<sup>25</sup> Articles of Agreement of the International Monetary Fund, Dec. 27, 1945, 60 Stat. 1401, 2 U.N.T.S. 39, Article I(ii) [hereinafter Articles] (emphasis added). According to the Articles, the IMF would contribute to full employment and economic development by facilitating "the expansion and *balanced growth* of international trade." See *id.* (emphasis added to reflect idea that balanced growth would contemplate certain limits, such as limits to free flow of short-term capital).

<sup>26</sup> For instance, Article VI permits member nations to impose restrictions on capital transfers, a potentially potent weapon against destabilizing speculative capital flows. See Articles, *supra* note 25, 2 U.N.T.S. at 39. Article VII the "scarce currency clause," could be invoked to spread the burdens of adjustment to surplus countries by encouraging them to recycle their surpluses. See Articles, *supra* note 25, 2 U.N.T.S. at 39; Canova, *supra* note 12, at 1610-13, 1636-39, 1642-43.

<sup>27</sup> IMF austerity programs typically involve fiscal and monetary austerity, currency devaluation, rising interest rates, sharply higher unemployment, and declining real income levels. See Canova, *supra* note 12, at 1578, 1590, 1596; Enrique R. Carrasco & Randall Thomas, *Encouraging Relational Investment and Controlling Portfolio Investment in Developing Countries in the Aftermath of the Mexican Financial Crisis*, 34 COLUM. J. TRANSNAT'L L. 539, 565-71 (1996). For further discussion of the rationale of downward adjustment, see *infra* notes 39-40 and accompanying text. The IMF's neoliberal policies may actually undermine the Bretton Woods Agreement's objective of open trade by contributing to currency and macroeconomic instability. See Roger Cohen, *Poland's Glossy Capitalism Displays a Darker Underside*, N.Y. TIMES, Sept. 30, 1999, at A1, A8 (reporting that "the Russian [currency and financial] crisis has hit Poland hard, effectively removing important export market for farm goods and other products").

ment provide the IMF with explicit powers of “surveillance” to monitor and supervise the economic policies of member nations.<sup>28</sup> In practice, these IMF surveillance powers have been used to advance a particularly neoliberal agenda. According to Jerome I. Levinson, a former official of the Inter-American Development Bank:

The debt crisis afforded an unparalleled opportunity to achieve, in the debtor countries, the structural reforms favored by the Reagan administration. The core of these reforms was a commitment on the part of the debtor countries to reduce the role of the public sector as a vehicle for economic and social development and rely more on market forces and private enterprise, domestic and foreign.<sup>29</sup>

While it may have been possible to view the IMF’s agenda in somewhat partisan terms during the Reagan years, there should now be no doubt of the complicity of Democrats in the new freedom of contract for owners of financial capital.<sup>30</sup> In many ways, the neoliberal agenda has been championed more by the Clinton administration than it was by its Republican predecessors.<sup>31</sup> This neoliberal agenda promises greater liberty, but only for the owners of financial capital, while the agenda results in less freedom for those who must rely on wages and salaries, rather than interest on capital

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<sup>28</sup> Article VIII requires members to consult with and to obtain the approval of the IMF to impose restrictions on current transactions. See Articles, *supra* note 25, 2 U.N.T.S. at 39. Article IV gives the IMF more general surveillance powers over a wide range of members’ economic and financial policies. See *id.*

<sup>29</sup> See DOUG HENWOOD, *WALL STREET: HOW IT WORKS AND FOR WHOM* 294-95 (1997).

<sup>30</sup> My perception of Democratic complicity is based in part on first-hand observation. In the early 1980s I served as a legislative staffer to former United States Senator Paul Tsongas, who helped move the Democratic Party in a distinctly neoliberal direction. See generally PAUL TSONGAS, *THE ROAD FROM HERE: LIBERALISM AND REALITIES IN THE 1980S*, at 135, 202-03, 233 (1981); see also Norman Birnbaum, *Elections 2000 — A Bad Dream?*, 269 *NATION*, Aug. 9-16, 1999, at 28 (arguing that Vice President Al Gore’s position in Clinton administration and background in neoliberal Democratic Leadership Council leads to conclusion that Gore’s call for “practical idealism” is “[a] euphemism for the continuing and purposeful degradation of the New Deal tradition, its reduction to clientelism and ineffectual incrementalism”).

<sup>31</sup> See BOB WOODWARD, *THE AGENDA: INSIDE THE CLINTON WHITE HOUSE* 165 (1994); Canova, *supra* note 12, at 1598; Nicholas D. Kristof & David E. Sanger, *How U.S. Wooded Asia To Let Cash Flow In*, *N.Y. TIMES*, Feb. 16, 1999, at A1. This transformation to complete reliance on the private sector was a major departure from the post-World War II development of mixed-market economies. See ANDREW SHONFIELD, *MODERN CAPITALISM: THE CHANGING BALANCE OF PUBLIC AND PRIVATE POWER* 358-75 (1965).



holdings, for their means of livelihood.<sup>32</sup> The disturbing results of this neoliberal agenda include: the century's highest sustained real interest rates,<sup>33</sup> a widening disparity in wealth and income between the rich and the not rich,<sup>34</sup> growing poverty and hardship for millions, and an unemployment crisis throughout much of the Third World,<sup>35</sup> including the Third World within the First World.<sup>36</sup>

Unfortunately, the dominant response to such mass subordination is neoliberal hand wringing, combined with a large dose of "blaming the victim" to ensure that the foundations of the neoliberal order will not be threatened. These foundations include the neoliberalization of private short-term capital transfers (i.e., "hot money flows") between countries and a commitment to impose the burdens of adjustment solely on deficit countries.<sup>37</sup> The proliferation of hot money speculative capital flows undermines the financial position of less developed countries. Thus, while imposing the

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<sup>32</sup> More than half a century ago the great British economist John Maynard Keynes criticized the "cumulative oppressive power of the capitalist to exploit the scarcity value of capital" and warned of the dangers of basing society upon the protection of the money-motives of a "rentier" class that lives solely on income derived from interest. See JOHN MAYNARD KEYNES, *THE GENERAL THEORY OF EMPLOYMENT INTEREST AND MONEY* 376 (1964) (arguing that owner of capital can obtain excessive interest because capital is kept scarce by convention and central bank policy, although "there are no intrinsic reasons for the scarcity of capital"); JOAN ROBINSON, *ECONOMIC PHILOSOPHY* 19-20 (1962) (quoting from Keynes's *Essays in Persuasion*). Writing during the Great Depression, Keynes predicted that the eventual "euthanasia of the rentier, of the functionless investor, will be nothing sudden, merely a gradual but prolonged continuance of what we have seen recently . . . and will need no revolution." KEYNES, *supra*, at 376. In the decades since, the rentier has not just refused to disappear, but has come to once again predominate over enterprise by dominating the interest rate and monetary policy-making process. See JAMES MEDOFF & ANDREW HARLESS, *THE INDEBTED SOCIETY* 46-53 (1996).

<sup>33</sup> See SIDNEY HOMER & RICHARD SYLLA, *A HISTORY OF INTEREST RATES* 386 (1991) (providing data on historically high level of real interest rates).

<sup>34</sup> See MEDOFF & HARLESS, *supra* note 32; Canova, *supra* note 12, at 1632 n.255 (discussing America's increasingly unequal distribution of income).

<sup>35</sup> See World Employment Report 1998-99 (International Labour Office, Geneva, 1998) (last modified Sept. 24, 1998) (visited April 17, 2000) (on file with author) <<http://www.ilo.org/public/english/bureau/inf/pkits/wer98/wer98int.htm>>; Canova, *supra* note 12, at 1596 n.99-100; see also Miller, *supra* note 13 (discussing growing income disparities stemming from globalization).

<sup>36</sup> For a discussion of the employment crisis within the First World, see *infra* note 77 and accompanying text. Celina Romany refers to the Third World conditions of poverty that exist within the First World as the "South within the North." See Celina Romany, *Claiming a Global Identity: Latino/a Critical Scholarship and International Human Rights*, 28 U. MIAMI INTER-AM. L. REV. 215, 221 (1997).

<sup>37</sup> See Canova, *supra* note 12, at 1596, 1610-18. Economists often refer to short-term portfolio capital flows as "hot money" because of the speed and unpredictability by which such investment capital can move out of the country. Such short-term portfolio investments usually takes the form of highly liquid stocks and bonds that can be sold quickly. See *id.*

burdens of adjustment solely on deficit countries, the neoliberal agenda ensures that the First World will continue to enjoy the fruits of cheap labor and commodity prices by keeping the terms of trade stacked against popular aspirations in the Third World.<sup>38</sup>

The IMF's Structural Adjustment Program ("SAP") is the major vehicle for imposing asymmetrical adjustment burdens.<sup>39</sup> SAP is intended to drive wages down to a level where they would be internationally competitive, so that the deficit country may export its way out of debt, or at least export its way to repaying interest and principal as they come due. As more and more deficit countries are fed the medicine of downward adjustment, a classic "race to the bottom" ensues, in which the competitive wage is continually redefined downward.<sup>40</sup> Of course, we have other alternatives ("WHOA"): the Articles of Agreement explicitly empower the IMF to place adjustment burdens on countries in chronic trade and payments surplus. Such a reform could encourage such countries to transfer their surpluses through foreign aid like the Marshall Plan grants that recycled the U.S. surplus to rebuild Western Europe after the Second World War.<sup>41</sup>

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<sup>38</sup> See Michael Bleaney, *Liberalisation and the Terms of Trade of Developing Countries: A Cause For Concern?*, 16 *WORLD ECON.* 453, 464 (July 1993).

<sup>39</sup> See Carrasco & Thomas, *supra* note 27, at 565-71 (describing Mexico's IMF-led downward adjustment); see also Silvia Federici, *The Debt Crisis, Africa and the New Enclosures*, in *MIDNIGHT OIL: WORK, ENERGY, WAR, 1973-1992*, at 308 (Midnight Notes Collective ed., 1992) (reprinted from *THE NEW ENCLOSURES* 10, 13 (Midnight Notes Collective ed., 1990)) (reporting that SAP's stated objective is "to create an environment more congenial to business investment, and to make [Third World] labor competitive on the international market").

<sup>40</sup> For instance, the collapse of the Mexican peso in 1994-1995 helped drive the Mexican wage rate downward. See Michael W. Gordon, *Discussion: The Mexican Maquiladora: Rumors of Its Death Are Premature*, 7 *U.S.-MEX. L.J.* 204, 219 (1999). The "race to the bottom" metaphor, first introduced in corporate law scholarship, has wide application to transnational financial developments. Cf. Timothy A. Canova, *The Transformation of U.S. Banking and Finance: From Regulated Competition to Free-Market Receivership*, 60 *BROOK. L. REV.* 1295, 1306-09 (1995); William J. Cary, *Federalism and Corporate Law: Reflections Upon Delaware*, 83 *YALE L.J.* 663, 705 (1974).

<sup>41</sup> See Canova, *supra* note 12, at 1636-43. "We Have Other Alternatives!" (WHOA!) is a response that we must continue to repeat to proponents of TINA ("There Is No Alternative"). See Timothy A. Canova, *The Disorders of Unrestricted Capital Mobility and the Limits of the Orthodox Imagination: A Critique of Robert Solomon, Money on the Move: the Revolution in International Finance Since 1980*, 9 *MINN. J. GLOBAL TRADE* 219, 228 n.43, 230 n.52 (2000); see also *infra* notes 93, 102 and accompanying text. West European countries may have been considered deserving of Marshall Plan aid by United States elites and policymakers, who were able to "positively identify" with white victims of war dwelling in their own ancestral homelands. This is in marked contrast to the paltry United States assistance to the pressing needs of Latin America and the Third World, "nonwhite" lands that United States elites have failed to identify with. See Robert Chang, *The Nativist's Dream of Return*, 9 *LA RAZA L.J.* 55, 57 (1996)

One important function of the IMF, therefore, is to decide which nations “merit” success and which should be disciplined with economic austerity in the supposedly colorblind system of neoliberal law and economics. In this way, the IMF has helped enforce the Western backlash against the 1970’s economic gains of the Third World.<sup>42</sup> As with other politics of backlash closer to home, this backlash reflects a yearning for a merit that never was.<sup>43</sup> The history of European exploitation of Latin America and other parts of the Third World gives proof to the lie that the privileged position of the privileged classes in the West has been properly earned and is justified by merit.<sup>44</sup>

Today’s legal regimes serve to further reinforce that dominance by subverting the terms of trade against Third World nations.<sup>45</sup> The IMF’s “objective” markers of merit, including idle stockpiles of foreign currency reserves and private investor confidence, are socially constructed. Likewise, trade surpluses are largely the product of the institutions that enforce a particular imbalance in the terms of trade, which strongly favored advanced countries over less developed countries. And unfavorable terms of trade, like the decision to open one’s currency to the vagaries of private speculative forces, are social constructions that serve to benefit an elite class while justifying structural adjustment for subordinated peoples and

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(arguing that even labels of Asian-American, Latin-American, and African American connote that their “true home lies elsewhere”); see also Stephen Hellinger, *The Wrong Hurricane Relief*, N.Y. TIMES, Dec. 7, 1998, at A22 (arguing that debt relief to Central American nations ravaged by Hurricane Mitch must not be conditioned upon adoption of IMF “structural adjustment” policies, and that such loan conditionalities will only increase economic dependence and suffering in the region).

<sup>42</sup> See Leslie Espinoza, *Comments by Leslie Espinoza*, 9 LA RAZA L.J. 33 (1996) (discussing politics of backlash against recent gains of women, people of color, and sexual minorities in American society).

<sup>43</sup> See Keith Aoki, *The Scholarship of Reconstruction and the Politics of Backlash*, 81 IOWA L. REV. 1467, 1469-70, 1473 (1996); Valdes, *supra* note 1. The neoliberal policy of liberalizing markets to empower propertied and privileged interests and people should also be viewed as a politics of backlash that seeks an imaginary status quo ante and invoke false justifications based on colorblind merit. Decisions by local elites within the Third World to liberalize markets and privatize national resources are the twin *vendido* policies by which the backlash operates.

<sup>44</sup> See generally EDUARDO GALEANO, *OPEN VEINS OF LATIN AMERICA: FIVE CENTURIES OF THE PILLAGE OF A CONTINENT* (1973). Colonial exploitation cannot be dismissed as merely a thing of the past since First World dominance often rests on the fruits of past takings. See *id.*

<sup>45</sup> For instance, Keith Aoki demonstrates how the institution of intellectual property law has been constructed to benefit the more technologically advanced. Keith Aoki, *Neocolonialism, Anticommons Property, and Biopiracy in the (Not-So-Brave) New World Order of International Intellectual Property Protection*, 6 IND. J. GLOBAL LEGAL STUD. 11 (1998).

enforcing a racialized, ethnicized, and gendered construction of economic and financial merit.<sup>46</sup> Global financing decisions should not be based on biased questions. Instead we should ask what makes a successful economy and what criterion should be used to label an economy as successful and deserving of merit and credit.<sup>47</sup>

It has been estimated that developing countries struggling under the IMF's Structural Adjustment Programs have transferred nearly \$200 billion to western financial institutions from 1984 to 1990.<sup>48</sup> This wealth transfer has only intensified during the 1990s in the form of "hot money" outflows of short-term capital, i.e., capital flight from submerging markets that contributed to the global currency contagion.<sup>49</sup> This transfer of immense resources from submerging to advanced countries<sup>50</sup> prompted a former World Bank official to remark: "Not since the conquistadors plundered Latin America has the world experienced such a flow in the direction we see today."<sup>51</sup> Such historical imagery of European exploitation and subjugation of indigenous populations should not be lost on Lat-Crits concerned with the present day subordination of Latina/o peoples.

The IMF's downward adjustment for deficit countries directly reinforces the poverty of the most vulnerable segments of subordinated populations (i.e., the Third World within the Third World)

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<sup>46</sup> This analysis borrows from Leslie Espinoza's critique of the social construction of merit in another context. See Espinoza, *supra* note 42, at 34, 36-37; see also Leslie Espinoza, *The LSAT: Narratives and Bias*, 1 AM. U. J. GENDER & L. 121 (1993).

<sup>47</sup> See *id.* The great iconoclastic British economist Joan Robinson raised the question of what allocation of resources would best contribute to human welfare. She noted that "the best reply that laissez-faire ideology can offer is not to ask the question." ROBINSON, *supra* note 32, at 138. Others have written critically of the biased way that legal structures permit financial markets to allocate resources. See Anthony D. Taibi, *Racial Justice in the Age of the Global Economy: Community Empowerment and Global Strategy*, 44 DUKE L.J. 928 (1995); Fred Galves, *Giving Credit Where Credit Is Due: The Economic and Moral Case for Reforming Traditional Lending Criteria and Making Fair Lending a Reality*, Work-in-Progress, LatCrit IV Conference, *supra* note 13; see also Martha Albertson Fineman, *The Inevitability of Dependency and the Politics of Subsidy*, 9 STAN. L. & POL'Y REV. 89 (1998) (questioning conceptualization of "subsidy" and "dependency").

<sup>48</sup> See Asad Ismi, *Plunder with a Human Face*, Z MAG., Feb. 1998.

<sup>49</sup> See Canova, *supra* note 12, at 1584-86, 1598, 1612-18.

<sup>50</sup> Third World nations were once commonly referred to as less-developed countries (LDCs). But in today's neoliberal discourse, we have come to refer to them as "emerging market economies," a euphemism that often gives the false impression of progress and hope. It would often be more accurate to characterize these countries as "submerging market economies," a term that better conveys the pain and despair that has descended upon many of the citizens of these countries as a result of the IMF's neoliberal agenda. See Canova, *supra* note 12, at 1600, 1604.

<sup>51</sup> See Ismi, *supra* note 48; see also Galeano, *supra* note 44.

by recreating conditions of recession and austerity. Previously sovereign nations have surrendered their policy-making capabilities by losing effective control over both monetary and fiscal policies.<sup>52</sup> The resulting conditions are far from what the architects of the Bretton Woods system had originally envisioned.<sup>53</sup> Instead of empowering IMF member nations to promote and maintain "high levels of employment and real income" and develop their productive resources "as primary objectives of economic policy,"<sup>54</sup> the IMF has helped fuel an employment and income crisis that has exacerbated poverty, despair, and broken dreams throughout Latin America and much of the rest of the Third World.<sup>55</sup>

Critical legal scholars should understand and appreciate the relationship of this global employment crisis to the subordination of ethnic identity and cultural pluralism. The profound alienation stemming from unemployment undermines the formation and development of the same individual identity that would be necessary to question the larger social forces that contribute to the reality of weak labor markets, mass unemployment, and pervasive underemployment.<sup>56</sup> In addition, socio-economic conditions of mass poverty and joblessness undermine the formation and development of individual identity for poor and economically subordi-

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<sup>52</sup> See Ilene Grabel, *Crossing Borders: A Case for Cooperation in International Financial Markets*, in *CREATING A NEW WORLD ECONOMY: FORCES OF CHANGE AND PLANS OF ACTION* 70 (G. Epstein et al. eds., 1993) (describing how asset markets increasingly dictate monetary policy).

<sup>53</sup> In concluding that the Bretton Woods negotiators were largely unconcerned with issues related to income equity and poverty, scholars must rewrite history to overlook the original full employment objectives and powers of the IMF. Cf. Canova, *supra* note 12, at 1610-12 n.169, 1642-43; Enrique R. Carrasco & M. Ayhan Kose, *Income Distribution and the Bretton Woods Institutions: Promoting an Enabling Environment for Social Development*, 6 *TRANSN'L L. & CONTEMP. PROBS.* 1, 5 (1996). See generally Gloria Valencia-Weber, *American Indian Law and History: Instructional Mirrors*, 44 *J. LEGAL EDUC.* 251, 261 (1994) (warning of "the consequences of flawed history").

<sup>54</sup> See Articles, *supra* note 25, at Art. I(ii).

<sup>55</sup> See *Global Financial Crisis Will Trigger Jump in World Unemployment*, Press Release on the ILO World Employment Report (last modified Sept. 24, 1998) (visited April 17, 2000) <<http://www.ilo.org/public/english/region/eurpro/ankara/eng3.htm>> (on file with author); Paul Lewis, *World Bank Says Poverty Is Increasing*, *N.Y. TIMES*, June 3, 1999, at C7; David E. Sanger, *U.S. and I.M.F. Made Asia Crisis Worse*, *World Bank Finds*, *N.Y. TIMES*, Dec. 3, 1998, at A1; *World of Trouble: Crumbling Economies Burying Workers Everywhere*, *ALBUQUERQUE J.*, Nov. 1, 1998, B10 (reporting on mass economic hardship in Mexico, Russia, and Japan); see also *infra* note 39 and accompanying text.

<sup>56</sup> See ERICH FROMM, *ESCAPE FROM FREEDOM* 132-35 (1941). Fromm wrote: "[C]apitalistic economy put the individual entirely on his own feet. What he did, how he did it, whether he succeeded or whether he failed, was entirely his own affair." *Id.* at 108.

nated people.<sup>57</sup> As a result, these material realities also undermine the formation and development of group identities that can effectively address the real concerns of oppressed people of color.

For instance, in the spring of 1999, Guatemalan voters rejected a constitutional referendum that would have offered official recognition to the country's twenty-four Indian groups, required the Guatemalan Congress to consult with Indian groups before passing legislation affecting them, insured Indian access to sacred grounds, and required government services to be provided in indigenous languages.<sup>58</sup> Reportedly, voters defeated the ballot measure because many Indians living in poverty had to focus on meeting their basic needs, rather than expend their limited time and resources to actively support the initiative.<sup>59</sup> During the debate, opponents of the referendum argued that the measure's reforms would cost the country hundreds of millions of dollars.<sup>60</sup>

Fiscal austerity, the IMF's favored solution to all Third World balance of payments problems, therefore undermined efforts to safeguard Guatemalan Indian identity. Fiscal austerity directly impeded Indian efforts by giving support to arguments that the government could not afford the budget outlays for the Indian recognition measures. Such austerity also undermined Indian efforts indirectly, by contributing to the poverty that kept many Indians from participating in the campaign and voting in the referendum.<sup>61</sup>

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<sup>57</sup> See *infra* notes 20-22 and accompanying text. The global employment crisis has also contributed to an increase in illegal immigration to the United States as many people desperately seek work far from home, often in unsafe conditions. See Canova, *supra* note 12, at 1587 n.62; Nancy Simmons, *The Mexican Immigrant Moving North Can Be an Easy Mark for Exploitation*, ALBUQUERQUE TRIB., Aug. 4, 1999, C1; see also Kevin R. Johnson, *An Essay on Immigration, Citizenship, and U.S./Mexico Relations: The Tale of Two Treaties*, 5 SW. J.L. & TRADE AM. 121, 140 (1998) (arguing that "economic disparities between the United States and Mexico increase migration pressures"); Fen Montaigne, *Deporting America's Gang Culture*, MOTHER JONES, July-Aug. 1999, at 44 (photographs by Donna DeCesare).

<sup>58</sup> See *Guatemalan Indians Lament Recognition Measure's Defeat*, N.Y. TIMES, May 18, 1999, at A5 (reporting suppression of Mayan Indian languages in Guatemalan schools under Spanish rule and after independence); see also Romany, *Interrupting the Dinner Table Conversation*, *supra* note 9, at 19 (citing CHARLES TAYLOR, *The Politics of Recognition, in MULTICULTURALISM AND THE POLITICS OF RECOGNITION* 25-73 (Amy Gutman ed., 1992)) (arguing that real inclusion is basic element of justice, requiring politics of recognition for cultural groups).

<sup>59</sup> See *Guatemalan Indians Lament Recognition Measure's Defeat*, *supra* note 58, at A5.

<sup>60</sup> See *id.* (noting that Guatemalan voters "also rejected proposals to strengthen civilian control over police forces, limit presidential powers and bolster the judiciary").

<sup>61</sup> The IMF can be seen as playing the role of the Church during the Inquisition by enforcing the officially sanctioned free-market religion and preventing movements for social reform by imposing punishing conditions. See JAIME SUCHLICKI, *MEXICO: FROM MONTEZUMA*

According to David Maybury-Lewis, "Genocide, the physical extermination of a people, is universally condemned. But ethnocide, the destruction of a people's way of life, is not only not condemned when it comes to indigenous peoples, it is advocated as appropriate policy."<sup>62</sup>

Likewise, some critical scholars have viewed the debt crisis and IMF structural adjustment programs as mechanisms designed to force the reform and redefinition of land ownership from communal land relations to private ownership in parts of Africa.<sup>63</sup> IMF-imposed policies have left many postcolonial and postapartheid governments in such desperate conditions and vulnerable positions that they lack the capabilities to pursue any progressive social policies, including progressive land policies. For instance, in Zimbabwe, IMF structural adjustment programs resulted in forty-five percent interest rates for peasant farmers and small entrepreneurs, fifty percent unemployment rate for high school graduates, and a sixty percent drop in real wage incomes.<sup>64</sup> As a result, the country has also experienced steep declines in public health and education facilities, as well as violent food riots, a pattern replicated in other African countries on IMF adjustment programs.<sup>65</sup>

The employment and income crisis that has spread throughout Latin America and the Third World provides the context for count-

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TO NAFTA, CHIAPAS, AND BEYOND 37, 39 (1996) ("The Church was a wealthy and powerful institution, and priests shared the psychology of the landed classes in Mexico, which induced obedience among the workers and exploitation of the native population. . ."). Suchlicki adds that "[t]he Crown also used the Inquisition as an instrument of royal control to investigate both political and religious dissidents and to ensure loyalty and obedience to Spain." *Id.*

<sup>62</sup> See Wade Davis, *Vanishing Cultures: The Issue Is Whether Ancient Cultures Will Be Free to Change on Their Own Terms*, 196 NAT'L GEOGRAPHIC 62, 76 (1999). Maybury-Lewis is a professor of anthropology at Harvard and president of Cultural Survival, a nonprofit organization that works with indigenous peoples. See *id.*; see also Christine Zuni Cruz, *[On The] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557 (1999) (warning that client-oriented lawyering, as opposed to community lawyering, poses threats to indigenous cultural identity).

<sup>63</sup> See Federici, *supra* note 39, at 304-07; see also John E. Peck, *Asian Meltdown Hits Zimbabwe*, Z MAG., Sept. 1998 (visited April 17, 2000) (on file with author) <<http://www.lol.shareworld.com/zmag/articles/pecksept98.htm>> (reporting that western financial institutions have impeded land reform efforts by threatening "to hold future credit hostage if private property rights are not respected in Zimbabwe"). In addition, IMF-imposed budget cutbacks decimated the ranks of Zimbabwe's national park rangers, triggering a poaching "free-for-all" of the country's already endangered black rhino population. See *id.*

<sup>64</sup> See Peck, *supra* note 63.

<sup>65</sup> See DAN DIMANDESCU, DEFERRED FUTURE 127 (1983) (discussing IMF-inspired food riots).

less untold stories of subordination and resistance, such as the student strike that closed classrooms six months for 270,000 students at Mexico's largest university, the National Autonomous University in Mexico City. The students protested against a proposed tuition increase from the equivalent of twenty cents to about \$120 per semester that came out of the government's IMF-backed austerity measures.<sup>66</sup> Likewise, in Argentina, nationwide student protests were sparked by government plans to cut \$280 million from the Education Ministry as part of an agreement with the IMF to cut \$1.4 billion in overall spending.<sup>67</sup> Finally, in Brazil, a coalition of opposition political parties and labor unions drew as many as 100,000 protesters to the streets demanding the end of an IMF-backed fiscal austerity program and the privatization of state-owned companies.<sup>68</sup>

The IMF's structural adjustment punishment should be seen as a direct threat to Latin American cultural values.<sup>69</sup> The IMF's one-size-fits-all solution of downward adjustment has "a leveling effect" on local political cultures and social progress. Some Latin Americans have referred to this leveling trend as "the Americanization of Latin values."<sup>70</sup> For instance, IMF-imposed austerity threatens Argentina's state-provided health care, free public universities, legal protections from layoffs, and six-month maternity leave.<sup>71</sup> In Mexico, IMF-imposed austerity and recession has resulted in the elimination or drastic cutback of subsidies for food (including the tor-

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<sup>66</sup> See Richard Chacon, *Tuition Hike Sparks Fight Over Mexico University's Mission*, BOSTON GLOBE, Apr. 25, 1999, at A3; Julia Preston, *Student Strike in Capital Jarring All Mexico*, N.Y. TIMES, June 25, 1999, A8 (observing that after university's governing council decided to cancel tuition increase, protests expanded to oppose role of private enterprise in Mexican society). This story of Mexican student resistance has been underreported in the United States press and first came to my attention weeks after the start of the student strike via a solitary e-mail from a student in Mexico City.

<sup>67</sup> See Clifford Krauss, *Argentina: Students Protest Cuts*, N.Y. TIMES, May 7, 1999, at A6.

<sup>68</sup> See *Brazil: Protesters on the March*, N.Y. TIMES, Aug. 27, 1999, at A6; see also Mike Dano, *Laureate Says Debt Hurts Peace*, 104 DAILY LOBO, Mar. 10, 2000, at 1 (commenting on Nobel Peace Prize recipient Adolfo Pérez Esquivel's warning of globalization's negative consequences); Larry Rohter, *Venezuelan Congress Stripped of Its Last Remaining Powers*, N.Y. TIMES, Aug. 31, 1999, at A7 (reporting on political crisis unfolding in Venezuela after several years of IMF-imposed austerity and economic hardship).

<sup>69</sup> See generally International Monetary Fund (visited April 17, 2000) <<http://www.imf.org/external/np/loi/mempub.htm>> (on file with author) (providing copies of some of the Letters of Intent which includes many of the austerity policies that submerging countries promise to undertake in exchange for IMF assistance).

<sup>70</sup> Frederico Grayeb, *Argentina's Values*, N.Y. TIMES, Feb. 13, 1998, at A26.

<sup>71</sup> See *id.*



tilla food staple) and energy,<sup>72</sup> and the closing of the country's finest modern art museum.<sup>73</sup>

The global employment crisis also results in even more destructive and self-destructive behavior. In South Africa, the transition from apartheid has been marred and jeopardized by an unemployment rate among young black men of approximately fifty percent. According to Dr. Mamphela Ramphele, the vice chancellor of the University of Cape Town, the employment crisis "is a much deeper problem than material deprivation. It's a spiritual depravity — giving up on humanity. You see it in the levels of the abuse of women."<sup>74</sup> One is struck by the parallels of these stories to the subordination of the Third World within the First World. In many U.S. communities, a lack of education, job training, and employment opportunities have contributed to rampant alcoholism, drug addiction and abuse, and violence.<sup>75</sup>

Critical scholars must also consider the obvious connection between high levels of joblessness and ethnic scapegoating and violent conflict.<sup>76</sup> The tragic breakup of Yugoslavia and ensuing violence throughout the Balkans can be seen as further proof of IMF policies' failures, regardless of one's political views on the war in Kosovo and NATO's spring 1999 bombing. One can easily forget

<sup>72</sup> See Henry Tricks, *Mexico May End Food Subsidies*, FIN. TIMES, Nov. 6, 1998, at 5.

<sup>73</sup> See Julia Preston, *A Museum In Mexico Suddenly Shuts Down*, N.Y. TIMES, Sept. 23, 1998, at B1. For more on the adverse impact of IMF policies on Mexican society, including increased unemployment and a relentless wave of crime and kidnappings, see Canova, *supra* note 12, at 125 nn.98-100, Julia Preston, *Mexico: Mayor Associate Ransomed*, N.Y. TIMES, July 15, 1999, at A6, and Joseph B. Treaster, *Both Cops and Robbers Feel The Iron Hand of New Chief*, N.Y. TIMES, Sept. 18, 1999, at A6.

<sup>74</sup> See Anthony Lewis, *South African Reality*, N.Y. TIMES, Aug. 9, 1999, at A19; see also Elizabeth Olson, *Free Markets Leave Women Worse Off, UNICEF Says*, N.Y. TIMES, Sept. 23, 1999, at A5 (reporting that neoliberalization of markets has brought great social and economic harm to women and girls in much of Eastern Europe and former Soviet Union).

<sup>75</sup> See Canova, *supra* note 41, at 1340 n.146 (noting that rising levels of unemployment correlate with "increases in homicide, suicide, admissions to state mental hospitals and deaths from cirrhosis of the liver associated with alcoholism"); Steve Devitt, *Grave Reservations: Death and Detox in Indian Country*, WKLY. ALIBI (Albuquerque, N.M.), Aug. 12-18, 1999, at 16, 18 (estimating that unemployment rate of 42% and average per capita income of about \$7000 have contributed to despair, alcoholism, and violence in Navajo Nation); Peter T. Kilborn, *Clinton, Amid the Squalor on a Reservation, Again Pledges Help*, N.Y. TIMES, July 8, 1999, at A12 (reporting estimates of 85% unemployment rate on Oglala Lakota Sioux Indian reservation, rampant alcoholism, diabetes, and suicide, and male life expectancy rate of 56.5 years).

<sup>76</sup> For instance, recessions in Japan and Germany have revived xenophobic fantasies in those countries. See Howard W. French, *Japan Now Officially Hails The Emperor and a Rising Sun*, N.Y. TIMES, Aug. 10, 1999, at A3; Amy Harmon, *Internet Sale of Nazi Books in Germany Assailed*, N.Y. TIMES, Aug. 9, 1999, at C12.

that not so long ago Yugoslavia was hailed as an economic and social miracle, a remarkable example of a multi-ethnic, multinational, multireligious, nation-state, with one of the fastest growing economies in the world.<sup>77</sup> For several decades Yugoslavia also did a fairly good job of preserving diverse ethnic identities and cultural pluralism, in large part because its economy was marked by decentralized worker self-management.<sup>78</sup>

Many analysts have concluded that Yugoslavia's fortunes changed for the worse with the introduction of IMF austerity programs, and particularly with the strict loan conditionality of the IMF's structural adjustment programs.<sup>79</sup> Rather than the natural workings of free-market discipline, the punishment inflicted upon Yugoslavia, like the punishment inflicted upon Latin American and other Third World nations, was the result of political decisions made at the highest levels of government and finance.<sup>80</sup>

Throughout the 1980s, unemployment increased dramatically throughout the Yugoslav confederation. By the start of the 1990s, reported unemployment reached nearly twenty percent nationwide, but much higher in some of the provinces. In addition, as real income and economic activity plummeted, there was a marked increase in income inequality; and then the economy fell further downward into a freefall.<sup>81</sup> This economic crisis, in turn, led to the rise of secessionist movements, as well as the xenophobic appeal of Slobodan Milosovic and the continuing violent breakup of the

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<sup>77</sup> See THE BANK FOR INTERNATIONAL SETTLEMENTS, 61ST ANNUAL REPORT 53 (1991) (reporting that average annual growth rates for Yugoslavia declined from double digits in the 1950s to 6.7% in the 1960s, 5.8% in the 1970s, and to negative growth in the 1980s and 1990s).

<sup>78</sup> See Romany Keynote Remarks at LatCrit IV, *supra* note 9, at 53 (calling for labor rights as center of international human rights discussion).

<sup>79</sup> See *id.*

<sup>80</sup> In 1982 the Reagan administration decided to treat the debt crisis of four particular countries — Yugoslavia, Mexico, Brazil, and Argentina — as financial problems that merited IMF-backed austerity programs. See STEVEN SOLOMON, *THE CONFIDENCE GAME: HOW UNELECTED CENTRAL BANKERS ARE GOVERNING THE CHANGED GLOBAL ECONOMY* 223, 240 (1995). Yugoslavia was also the site of former Federal Reserve Board Chairman Paul Volcker's conversion to monetarism. He rushed back from the 1980 IMF-World Bank annual meeting in Belgrade to embark on his monetarist experiment. The result, according to former German Chancellor Helmut Schmidt, was "the highest real interest rate since the birth of Christ." ROBERT L. BARTLEY, *SEVEN FAT YEARS, AND HOW TO DO IT AGAIN* 84 (1992); PAUL VOLCKER & TOYOO GYOHTEN, *CHANGING FORTUNES* 168-81 (1992).

<sup>81</sup> World Employment Report, *supra* note 35; *Global Financial Crisis Will Trigger Jump in World Unemployment*, *supra* note 55; see also Aleksa Djilas, *Imagining Kosovo*, 77 FOREIGN AFFAIRS 124, 130 (Sept./Oct. 1998) (reporting unemployment among Albanians in Kosovo at approximately 50%).

country.<sup>82</sup> In just a few years, the awesome power of transnational capital undermined Yugoslavia's sovereignty and swept away the very idea of Yugoslavia as an inclusive, pluralist nation-state.<sup>83</sup> The IMF's neoliberal program directly contributed to the economic crisis conditions that swept away the authority of Yugoslavia, a nation-state that both restrained and preserved ethnic identities and cultural pluralism for several decades.<sup>84</sup>

As private finance and IMF adjustment programs have gone global in recent years, so have conditions of mass unemployment. Throughout 1998 and 1999 the World Bank and the International Labour Organization reported dramatic increases in worldwide poverty and unemployment as a result of the currency contagion and IMF structural adjustment programs.<sup>85</sup> More than one billion people, representing one-third of the world's labor force, are either unemployed or dangerously unemployed in below-poverty-

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<sup>82</sup> Comparisons of Serbian atrocities to the Jewish Holocaust and the demonization of Milosovic as another Hitler will certainly strike some observers as overstatements. But one analogy to Nazi Germany is accurate. In both 1930s Germany and 1980s Yugoslavia, mass unemployment led to ethnic scapegoating and xenophobic leaders coming to power. Dr. Martin Luther King, Jr. once argued that when you deny a person a job, you are in essence telling that person that he or she has no right to exist. See THE WORDS OF MARTIN LUTHER KING 45 (Coretta Scott King ed., 1983). But when a man's existence is threatened, he will find his enemies. See ERICH FROMM, MAN FOR HIMSELF: AN INQUIRY INTO THE PSYCHOLOGY OF ETHICS 110 (1947) (stating that "the impulse to destroy others follows from the fear of being destroyed by them"). In the case of Yugoslavia, the unemployed and desperate citizens of a once-proud republic did not look all the way to IMF policymakers in Washington or foreign exchange traders in New York, London, or Frankfurt. There were more convenient scapegoats much closer to home: Croats, Slovenes, Serbs, Albanians, and Bosnians all blamed each other.

<sup>83</sup> See Romany Keynote Remarks at LatCrit IV, *supra* note 9, at 220-21 (warning of power of transnational capital to undermine nation-state).

<sup>84</sup> The rebalkanization of the Balkans was entirely predictable.

Back in 1982, the Wall Street Journal's Amity Shlaes filed a story on the upheaval caused by an IMF austerity program in Yugoslavia. The program was causing unrest, especially in a small province in Kosovo. No one would argue that the IMF program led directly to today's war. But it would be equally foolish to dismiss the dangers of a huge multilateral institution pushing policies that aggregate a country's natural problems.

Claudia Rosett, *The World's Poor Pay the Price for the IMF's Failures*, WALL STREET J., Apr. 22, 1999, at A22. While the IMF austerity programs did not lead directly to war, they did lead directly to sharply higher unemployment rates, which led to ethnic scapegoating, the political polarization of ethnic groups, and the rise of xenophobic politicians to positions of power. From there it was not a huge leap to violent hostilities.

<sup>85</sup> As a result of the global currency contagion and misguided adjustment programs and austerity policies, the number of people living on less than one dollar per day rose from 1.2 billion to 1.5 billion between 1987 and 1999. See Paul Lewis, *World Bank Says Poverty Is Increasing*, N.Y. TIMES, June 3, 1999, at C7.

wage jobs.<sup>86</sup> For example, the world has seen a very disturbing escalation in ethnic and religious violence in the Balkans, in northern Africa, in sub-Saharan Africa, throughout large parts of Eastern Europe and Asia, an economic downturn in South and Central America, and a rise in white supremacist movements in the U.S. The lesson, worth repeating once again, is that a high level of employment is a necessary, if not always sufficient, condition to the safeguarding of ethnic identity and cultural pluralism.

Of course there are a great many other untold stories that remain hidden behind the neoliberal pretense that the market objectively determines merit and that institutions like the IMF objectively determine who is deserving of the punishment of fiscal austerity and fiscal discipline.<sup>87</sup> Therefore, LatCrit is confronted by a neoliberal global financial regime, monitored and supervised by the IMF, that serves to reinforce the subordination of entire nations of Latina/o peoples and other peoples of color, and that undermines ethnic identity and cultural pluralism at home and around the world.

## II. IN SEARCH OF A CRITICAL DISTANCE

This Article argues that the global financial system, and the IMF in particular, systematically subordinates a great many people while undermining ethnic identity and cultural pluralism. While LatCrit

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<sup>86</sup> See *Global Financial Crisis Will Trigger Jump in World Unemployment*, *supra* note 55; see also Blagovesta Doncheva, *In Bulgaria, 10 Years of Misery*, N.Y. TIMES, Nov. 11, 1999, at A27 (arguing that IMF program has undermined employment, economic activity, and transition to democracy in Bulgaria).

<sup>87</sup> In reading the education budget cutbacks throughout Latin America, I am reminded of similar neoliberal policies that I witnessed nearly a decade ago in New York. I recall the night watchman of the apartment building where I lived in Manhattan: a young, African-American man, who usually could be found at his post very late at night studying engineering texts and complex math problems and quoting scripture. He lived in East New York, a very poor neighborhood that was besieged at the time by drive-by shootings. He was a student at New York Polytechnic University in Brooklyn and was bringing home As and Bs in his courses, working day and night to pay his bills, care for his aging mother, and stay in school. Through his dedication and work ethic, he demonstrated an abiding faith that through his own efforts he would someday raise himself out of the harshness of his present circumstances and environment. But by 1990-1991, fiscal austerity was the order of the day. New York's governor, Mario Cuomo, once the great political hope and darling of the neoliberal crowd, was forced to raise state tuitions, cut the state's tuition assistance program, and cut financial aid to public and private university students. As a result, the young night watchman could no longer afford to stay in school. See Peter Edelman, *The Worst Thing Bill Clinton Has Done*, ATLANTIC MONTHLY, Mar. 1997 (arguing that we must create opportunities and clear pathways to opportunities to develop our youth and help prevent negative outcomes).

and other legal scholars increasingly criticize the dynamics of such subordination, there is some inherent tension about the appropriate means for resisting and reversing the inequities of the neoliberal program. Seeking reform from the outside by challenging the basic premises of neoliberal policy may offer the appeal of maintaining intellectual consistency and ideological purity. On the other hand, seeking reform from within by assisting in the policy implementation process has the appeal of engagement, but may also underestimate the threat of being co-opted into accepting the basic direction of neoliberal policy. Yet, these two inclinations could be seen as complementary: both approaches are necessary, but neither is sufficient to bring about real reform in the dominant regime.

Professor Enrique Carrasco has articulated the case for engagement and for seeking reform from within. In an October 1996 LatCrit colloquium entitled *International Law, Human Rights, and LatCrit Theory*,<sup>88</sup> Carrasco called on LatCrits with an interest in law and development to “cautiously support the neoliberal policies of the International Monetary Fund and World Bank.”<sup>89</sup> He counseled an incrementalist approach to bring about the reform of multilateral institutions like the IMF from within.

Other LatCrit scholars, while advocating changes in IMF and World Bank policies, have also been critical of the foundations of the neoliberal policy agenda.<sup>90</sup> For instance, Professor Elizabeth Iglesias has recognized the World Bank’s structural adjustment loans as “major incursions into the domestic policy making prerogatives of the state,” which have adversely affected local communities and escalated political instability throughout Latin America.<sup>91</sup> Likewise, Professor Irwin Stotzky has referred to the oppressive

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<sup>88</sup> See *International Law, Human Rights, and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 223 (1997).

<sup>89</sup> See Enrique Carrasco, *Opposition, Justice, Structuralism, and Particularity: Intersections Between LatCrit Theory and Law and Development Studies*, 28 U. MIAMI INTER-AM. L. REV. 313, 329 (1997).

<sup>90</sup> See Canova, *supra* note 12, at 1614-18; see also Jose E. Alvarez, *Critical Theory and the North American Free Trade Agreement’s Investment Chapter Eleven*, 28 U. MIAMI INTER-AM. L. REV. 303 (1997) (articulating strong critique of investment rights regime of North American Free Trade Agreement).

<sup>91</sup> See Elizabeth M. Iglesias, *Global Markets, Racial Spaces and the Role of Critical Race Theory in the Struggle for Community Control of Investments: An Institutional Class Analysis*, 45 VILL. L. REV. (forthcoming 2000); see also Diane E. Moller, *Intervention, Coercion, or Justifiable Need? A Legal Analysis of Structural Adjustment Lending in Costa Rica*, 2 SW. J.L. & TRADE AM. 483 (1995).

nature of structural adjustment in the context of Haiti's attempts to attract private investment and foreign aid.<sup>92</sup>

Professor Carrasco's skepticism of such frontal assaults on the dominant orthodoxy is based on disillusionment with the substantive position of critics. For instance, he asserts that "oppositional" voices have fallen in the past because of "flawed scholarship" and the futility of "a grand counter-hegemonic strategy."<sup>93</sup> Yet, there may be more compelling explanations for the decline of oppositional voices.<sup>94</sup> The New International Economic Order ("NIEO"), the most visible oppositional effort, was a collective yet often uncoordinated project with impressive theoretical and empirical support that was constructed by leading scholars in both the Third World and the First World.<sup>95</sup> Far from displaying flawed scholarship, the NIEO's critique effectively analyzed and explained the

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<sup>92</sup> See Irwin P. Stotzky, *Suppressing the Beast*, 53 U. MIAMI L. REV. 883, 899 n.33 (1999); see also *IMF Concludes Article IV Consultation with Haiti*, Public Information Notice No. 99/92 (last modified Sept. 24, 1999) (visited April 17, 2000) <<http://www.imf.org/external/np/sec/pn/1999/PN9992.htm>> (on file with author) (outlining IMF's policy agenda for Haiti).

<sup>93</sup> See Carrasco, *supra* note 89, at 328; see also Carrasco & Kose, *supra* note 53, at 12-17 (articulating a narrative that blames the nation-state while overlooking the global monetary system's structures of subordination). Carrasco mischaracterizes NIEO demands as crass redistribution while ignoring the NIEO's underlying theoretical bases that were directed at solving the global "transfer" problem (i.e. recycling of surpluses) by designing a more effective, economically efficient, and growth-oriented adjustment mechanism. See generally Dimand, *supra* note 23, at 50-54 (discussing how architects of original Bretton Woods Agreement sought to redress imbalances between nations to empower countries to pursue progressive social and economic policies at home); John Maynard Keynes, *National Self-Sufficiency*, in *THE COLLECTED WRITINGS OF JOHN MAYNARD KEYNES* 223, 236 (D. Moggridge ed., 1982).

<sup>94</sup> Carrasco's argument against the NIEO rests on his criticism that developing countries failed to remedy domestic income inequalities. See Carrasco & Kose, *supra* note 53, at 12-17, 41. But this view ignores the role of United States national security agencies in keeping local elites entrenched against popular redistributionist movements throughout the Third World. See WILLIAM KREHM, *DEMOCRACIES AND TYRANNIES OF THE CARIBBEAN* (1984). It also fails to appreciate the sea-change that took place in the United States development policy, from 1960s Alliance for Progress assistance that sought social reform to the 1970s IMF-led structural adjustment that sought only market reforms. See PETER COLLIER & DAVID HOROWITZ, *THE ROCKEFELLERS* 414-17 (1976); MYER KUTZ, *ROCKEFELLER POWER* 220-31 (1974).

<sup>95</sup> See *ECONOMICS AND WORLD ORDER: FROM THE 1970S TO THE 1990S* (Jagdish N. Bhagwati ed., 1972); MAHBUB UL HAQ, *THE POVERTY CURTAIN: CHOICES FOR THE THIRD WORLD* 153-68 (1976) (referring to Old Economic Order); *NORTH-SOUTH: A PROGRAM FOR SURVIVAL* (Independent Commission on International Development Issues, 1980) (explaining that commission, chaired by Willy Brandt, included top economists and political leaders from around globe, including Latin America); *THE NEW INTERNATIONAL ECONOMIC ORDER: THE NORTH-SOUTH DEBATE* (Jagdish N. Bhagwati ed., 1977); *RESHAPING THE INTERNATIONAL ORDER: A REPORT TO THE CLUB OF ROME* (Antony J. Dolman ed., 1976) (study coordinated by Jan Tinbergen, former Nobel laureate in economics).

unfolding global economic crisis, from the Third World debt crisis and declining terms of trade,<sup>96</sup> to the breakdown of the Bretton Woods regime of exchange rate stability, and the rise of global financial speculation.<sup>97</sup> The NIEO also offered alternative innovative solutions including proposals to reform the IMF, the global monetary system, and the asymmetrical burdens of adjustment.<sup>98</sup>

Carrasco has also recognized that oppositional critiques were abandoned to neoliberalism as a result of the debt crisis and the disintegration of the Soviet Union and socialist bloc in Eastern Europe.<sup>99</sup> This recognition is an important concession. If the debt crisis made the Third World more vulnerable to the political backlash of the First World,<sup>100</sup> which it did, then blaming the NIEO for falling on deaf ears and then collapsing because of its political vulnerability is a classic example of today's dominant neoliberal discourses which "blame the victim."<sup>101</sup> Such narratives have advanced hand-in-hand with neoliberal policies in a mutually reinforcing dynamic. Furthermore, these narratives border on defeatist by accepting the dominant discourses that constantly tell us that "there is no alternative" to the IMF's neoliberal project.<sup>102</sup> Such a

<sup>96</sup> See JAGDISH BHAGWATI, *THE ECONOMICS OF UNDERDEVELOPED COUNTRIES* 55-68 (1966); HAQ, *supra* note 95, at 113-14, 137-204; NORTH-SOUTH: A PROGRAM FOR SURVIVAL, *supra* note 95, at 141-47; John A. Edelman & Hollis B. Chenery, *Aid and Income Distribution, in THE NEW INTERNATIONAL ECONOMIC ORDER* 27 (1979).

<sup>97</sup> See WILLIAM R. CLINE, *INTERNATIONAL MONETARY REFORM AND THE DEVELOPING COUNTRIES* 1-8 (1976); NORTH-SOUTH: A PROGRAM FOR SURVIVAL, *supra* note 95, at 201-06.

<sup>98</sup> See CLINE, *supra* note 97; NORTH-SOUTH: A PROGRAM FOR SURVIVAL, *supra* note 95, at 206-20; Peter B. Kenen, *Debt Relief as Development Assistance, in THE NEW INTERNATIONAL ECONOMIC ORDER*, *supra* note 96, at 50-77; John Williamson, *SDRs: The Link, in THE NEW INTERNATIONAL ECONOMIC ORDER*, *supra* note 96, 81-100.

<sup>99</sup> See Carrasco, *supra* note 89, at 327.

<sup>100</sup> See Daniel P. Moynihan, *The United States in Opposition*, COMMENTARY, Mar. 1975 (espousing early justification for backlash). The Reagan administration effectively used the debt crisis to pressure nonaligned nations in Latin American and the Third World to change their politics by abandoning opposition to market reforms. See SOLOMON, *supra* note 80, at 223, 240. In the early and mid-1980s, the Reagan administration also accelerated the fall in oil prices with the objective of collapsing the Soviet economy. See PETER SCHWEIZER, *VICTORY* (1994); SOLOMON, *supra* note 80, at 160-61.

<sup>101</sup> It seems unfair to continue blaming NIEO and import substitution strategies for today's growing inequalities within the Third World. See Carrasco & Kose, *supra* note 53, at 14-15, 26. NIEO strategies have been dead for nearly two decades, and replaced by the dominant IMF neoliberal agenda, yet today wealth and income is more inequitably distributed within the Third World than during the hey days of the NIEO. See *id.* at 2, 29.

<sup>102</sup> Former British Prime Minister Margaret Thatcher used the phrase "there is no alternative" so often that her opponents took to calling her by the acronym "TINA." See DANIEL SINGER, *WHOSE MILLENNIUM? THEIRS OR OURS?* (1999). TINA lovers may long for a kinder, gentler austerity, but an austerity nonetheless. See NEIL YOUNG, *ROCKIN' IN THE FREE WORLD* (Reprise Records 1989) ("We got a thousand points of light/ For the homeless man/ We got

view ignores the very rich literature of heterodox critiques of neoliberal economics and policy,<sup>103</sup> marginalizes and pathologizes the NIEO and overlooks authentic Latin American voices and values,<sup>104</sup> while undermining the credibility of other serious alternatives to the neoliberal agenda.<sup>105</sup>

However, scholars need not tear down yesterday's counter-hegemonic strategies to make the case against critical disengagement. Carrasco is on stronger ground when he seeks to justify his constructive engagement as necessary to maintain mainstream credibility.<sup>106</sup> His inclination is to protect vulnerable groups within Latin America, and elsewhere, by building distributive justice into the IMF program.<sup>107</sup> But Carrasco may be overly optimistic about the ability of both scholars and policymakers to maintain their

a kinder, gentler machine gun hand." But "We Have Other Alternatives!" (WHOA!). See *infra* note 41; see also Richard Michael Fischl, *The Question That Killed Critical Legal Studies*, L. & SOC. INQUIRY 779, 820 (1993) (criticizing "the classic liberal division of the realm of the possible into dichotomous choices"); Johnson, *supra* note 57, at 140 (arguing for consideration of other alternatives to promote economic development in Mexico as means to reduce immigration pressures and anti-immigration backlash).

<sup>103</sup> See, e.g., ROBERT GUTTMANN, *HOW CREDIT-MONEY SHAPES THE ECONOMY: THE UNITED STATES IN A GLOBAL SYSTEM* (1994) (articulating critique of neoliberal global integration and suggesting heterodox alternatives to reform global monetary system and restructure United States economic development); Canova, *supra* note 12, at 1594-95; J. A. Kregel, *Derivatives and Global Capital Flows: Applications to Asia*, 22 CAMBRIDGE J. ECON. 677 (1998) (explaining Asian financial crisis as result of activities of Western banks and derivatives contracts, rather than mismanagement by debtor nations); Charles R. P. Pouncy, *Contemporary Financial Innovation: Orthodoxy and Alternatives*, 51 SMU L. REV. 505 (1998) (articulating critique of neo-classical justifications of financial innovation and suggesting heterodox alternatives to incremental models of financial derivative regulation); Lance Taylor, *Capital Market Crises: Liberalisation, Fixed Exchange Rates and Market-Driven Destabilisation*, 22 CAMBRIDGE J. ECON. 663 (1998) (explaining financial crises as result of short-term speculation rather than mismanagement by debtor nation and concluding that therefore IMF interventions are counter-productive).

<sup>104</sup> See Ricardo French-Davis et al., *Capital Movements, Export Strategy, and Macroeconomic Stability in Chile*, in *COPING WITH CAPITAL SURGES: THE RETURN OF FINANCE TO LATIN AMERICA* 99 (Ricardo French-Davis et al. eds., 1995); *Tough Times: Labor in the Americas*, 32 NACLA REP. AM. 14 (1999) (reports on labor by Latin American voices for the North American Congress on Latin America). Traditional Latin religious culture is consistent with progressive alternatives to neoliberal policies. See IAN MCCRAE, *GLOBAL ECONOMICS: SEEKING A CHRISTIAN ETHIC* (1989); Canova, *supra* note 41, at 1336 n.136; Elizabeth M. Iglesias & Francisco Valdes, *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. 503 (1998); *Reaffirming the Church's Doctrine Against the Taking of Interest, Christian Cooperatives, Malinalco, Mexico* (1993) (on file with author).

<sup>105</sup> See Canova, *supra* note 12, at 1594-95, 1622-45.

<sup>106</sup> According to Carrasco, opposition to the IMF's neoliberal tide would pose the risk that "policymakers would not take our work seriously." See Carrasco, *supra* note 89, at 328.

<sup>107</sup> See Enrique R. 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 (1994).



critical distance after they have entered the IMF's orbit of neoliberal assumptions.<sup>108</sup>

Constructive engagement constantly runs the risk of being co-opted by muting criticism to make it more acceptable to policy-makers. For instance, Carrasco repeats as fact the IMF's own description that it insists on "high quality" economic growth, macroeconomic stability, good governance, more equitable income distribution, social safety nets for the poor, and increased employment.<sup>109</sup> He urges LatCrit to make sure that the IMF comply with its "own policy and rhetoric."<sup>110</sup> Critical scholars, according to Carrasco, can accomplish this task by "radically rigorous monitoring"<sup>111</sup> of the IMF, a concept that is hard to get our hands around, particularly if we choose to support the basic direction of the IMF's neoliberal agenda and policies.<sup>112</sup>

Professor Iglesias's insights on the World Bank's Inspection Panel may also suggest the limits of constructive engagement and incremental reform efforts. According to Iglesias, none of the ten Requests for Inspection reported in the panel's first two years dealt with any claim arising out of a World Bank structural adjustment loan.<sup>113</sup> Reform from within, in the particular context of the World Bank's Inspection Panel, seems limited to ensuring that World

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<sup>108</sup> Cf. Enrique R. Carrasco, *Collective Recognition as a Communitarian Device: Or, Of Course We Want to be Role Models!*, 9 LA RAZA L.J. 81, 95-96 (1996) (observing that "the connected critic lives in a thick moral world, and her job is to generate a critical interpretation of that world. Social criticism, however, requires 'critical distance'"); Richard Delgado, *Affirmative Action as a Majoritarian Device: Or, Do You Really Want to be a Role Model?*, 89 MICH. L. REV. 1222 (1991) (warning that assimilation is incompatible with role of cultural or economic nationalist, separatist, or radical reformer).

<sup>109</sup> See Carrasco, *supra* note 89, at 330; see also Carrasco & Kose, *supra* note 53, at 4, 31 (repeating IMF line that it takes account of distributional issues when dispensing policy advice, while downplaying adverse effects of IMF structural adjustment policy on distribution); see also ROBINSON, *supra* note 32, at 1, 25 (arguing that orthodox economics serves as "a vehicle for the ruling ideology . . . [that] limps along with one foot in untested hypotheses and the other in untestable slogans").

<sup>110</sup> See Carrasco, *supra* note 89, at 331.

<sup>111</sup> See *id.*

<sup>112</sup> Carrasco's call for "radically rigorous monitoring" would be easier to embrace if such monitoring also included criticism of the fundamental direction of neoliberal economic reforms, including both the liberalization of hot money capital flows and IMF-imposed asymmetrical burdens of adjustment. Unfortunately, such critiques are too often prematurely dismissed as hopeless "frontal attack[s] on neoliberalism." See Elizabeth M. Iglesias, *Foreword: International Law, Human Rights, and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177, 200 n.24 (1997) (recognizing that Carrasco's lessons are not entirely uncontested, and arguing for reconfiguration of power relations to lead to real redistribution of economic resources).

<sup>113</sup> See Iglesias, *supra* note 91.

Bank projects are implemented in a manner consistent with the Bank's own policies, rather than any criticism or even discussion about the Bank's underlying policy direction. As Iglesias concluded:

While a number of Latin American governments have tried to address popular concerns through a constructive national dialogue and to resist the conditionalities imposed by World Bank structural adjustment loans, neither dialogue nor resistance has been very effective, in large part, because the terms of World Bank structural adjustment loans are, in effect nonnegotiable.<sup>114</sup>

One may conclude that in addition to burrowing from within to claim a place in the policy implementation process, critics must also be free to criticize the direction and foundations of such policy.<sup>115</sup> But by offering such criticism, critics may run the risk of being excluded and disengaged from the implementation process.<sup>116</sup>

A more optimistic way to view the stance of critical disengagement is one that recognizes the importance of maintaining intellectual independence. When MIT economist Paul Krugman broke ranks in mid-1998 with the IMF over his support for Malaysia's go-it-alone program of exchange controls on currency and capital transactions, Krugman certainly ran the risk of isolation and even

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<sup>114</sup> See *id.*

<sup>115</sup> See *id.* (arguing that structural adjustment policies "are driven by the self-serving ideology of the rich, which proclaims . . . that unregulated private markets will produce higher standards of living in the long run, despite abundant evidence that the 'long run' has come and gone, leaving only an increasing concentration of wealth among elites across the globe, the further immiseration of the poor and the degradation of their standards of living and the spaces they inhabit").

<sup>116</sup> Carrasco has showed an admirable willingness to question the pace of liberalization of hot money capital flows by endorsing the idea of long-term "relational investment" and the specific approaches of Chile and Thailand in restricting capital inflows. See Carrasco & Thomas, *supra* note 27, at 597, 605 (calling for alterations to pace, but not direction, of neoliberal policy reform). Chile's experiment with such "prudential" capital controls is emblematic of the country's transition from a radical neoliberalism to a soft or pragmatic neoliberalism. But even this softer strain of neoliberalism has failed to seriously question the fundamental assumptions that impede social progress and more equitable distributions of income and economic opportunity. EDUARDO SILVA, *THE STATE AND CAPITAL IN CHILE: BUSINESS ELITES, TECHNOCRATS, AND MARKET ECONOMICS* 234-35 (1996) (arguing that Chile's neoliberal democracy "places constraints on anything but a mildly reformist path that reinforces liberal welfare statism," and necessarily fails to address basic issues such as "a highly skewed income distribution," low wages, and lack of affordable education, medical services, and housing).

derision by Western policymakers.<sup>117</sup> One could argue that only an economist of Krugman's pedigree and stature could risk the wrath of established opinion makers, or conversely that Krugman had much more to lose than many lesser-known quantities. In any event, within a year of Krugman's defection, the IMF was forced to concede that Malaysia's exchange controls had produced positive results, and Krugman's views were still taken seriously, though not always concurred with by policymakers.<sup>118</sup>

The World Bank's unprecedented criticism of IMF policy helped buttress critics like Krugman, and kept the pressure on the IMF to soften its opposition to Malaysia's exchange control program.<sup>119</sup> The World Bank's critical position was due in large measure to the views of its president, James Wolfensohn, and its chief economist, Joseph Stiglitz, two anomalies — people in powerful positions who remained critically engaged while resisting co-option by other institutions.<sup>120</sup> Without the high profile of Krugman's critique, as well as the World Bank criticism, the IMF may have been less inclined to acknowledge the shortcomings of its own approach and more inclined to ignore the mounting evidence of Malaysia's relative success.

Throughout much of the Asian financial crisis, Stiglitz represented the promise of an insider articulating outsider criticism of the orthodox model. Yet, eventually Stiglitz felt constrained in such a role and was forced to choose between muzzling his criticism or quitting his official World Bank position. He chose the

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<sup>117</sup> See Paul Krugman, *Saving Asia: It's Time to Get Radical*, FORTUNE, Sept. 7, 1998, at 75; Paul Krugman, *An Open Letter to Prime Minister Mahathir* (last modified Sept. 1, 1998) (visited April 17, 2000) <<http://web.mit.edu/krugman/www/mahathir.html>> (on file with author) (arguing in favor of capital and exchange controls to promote "a recovery of the real economy").

<sup>118</sup> See Mark Landler, *The Ostrich that Roared: Did Malaysia, Its Head in the Sand, Duck the Asian Crisis?*, N.Y. TIMES, Sept. 4, 1999, at B1; Michael Phillips, *IMF Concedes That Malaysia's Controls Over Capital Produced Positive Results*, WALL STREET J., Sept. 9, 1999, at A21.

<sup>119</sup> See Canova, *supra* note 12, at 1609; David E. Sanger, *As Economies Fail, the I.M.F. Is Ripe with Recriminations*, N.Y. TIMES, Oct. 2, 1998, at A1; Sanger, *supra* note 55, at A1.

<sup>120</sup> See Joseph Stiglitz, *The Role of the Financial System in Development*, Presentation at the Fourth Annual Bank Conference on Development in Latin America and the Caribbean, San Salvador, El Salvador (visited Apr. 28, 2000) <<http://www.worldbank.org/html/extdr/extme/jssp062998.htm>> (on file with author); James D. Wolfensohn, *The Other Crisis*, (last modified Oct. 6, 1998) <<http://www.worldbank.org/html/extdr/am98/jdw-sp/am98-en.htm>> (on file with author). The International Labour Organization also contributed to the critical climate by reporting the dramatically worsening social and economic conditions throughout Asia. See Mark Landler, *Grim Assessment by U.N. of Economic Slide in Asia*, N.Y. TIMES, Dec. 3, 1998, at A8.

latter.<sup>121</sup> As one commentator reported, Stiglitz's dilemma raised the question "of what an economist who takes a job in Washington should do when his expertise tells him that policy decisions are bad economics. Should he go public, or should he confine his disagreement to closed-door discussions with other officials and then, once the decision is made, remain silent?"<sup>122</sup> By going public with his disagreements with IMF and Treasury policy, Stiglitz apparently invited strenuous opposition of more orthodox insiders.<sup>123</sup> In his defense, Stiglitz claimed that less visible dissent is appropriate when there is time for gradual change, but that "working from the inside was not leading to responses at the speed which responses were needed."<sup>124</sup> While Stiglitz's insider criticism ultimately led to his resignation, during a crucial period it also may have served to temper the worst excesses of IMF policy.

The major benefit of mounting a frontal assault on the neoliberal orthodoxy and articulating an alternative vision is that the cumulative effect of such criticism may help create a more conducive climate for reform efforts. Neither the critically engaged Krugman nor the constructively engaged dynamic duo at the World Bank may have turned so critical so quickly without the prodding of others. Each built upon the groundswell of criticism expressed by lesser-known and lesser-engaged critics.<sup>125</sup> This suggests that when critical scholars maintain their critical distance from policymakers, they alter the quality of public discourse, though in unquantifiable terms. LatCrit scholars have maintained their critical distance, and hence their critical independence, in matters close to the heart.<sup>126</sup>

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<sup>121</sup> See Louis Uchitelle, *World Bank Economist Felt He Had to Silence His Criticism or Quit*, N.Y. TIMES, Dec. 2, 1999, at C1. According to Stiglitz, when dealing with policies "as misguided as I believe these policies were, you have to either speak out or resign." See *id.* at C6.

<sup>122</sup> See *id.* at C6.

<sup>123</sup> United States Treasury Secretary Lawrence Summers may have pressed World Bank President James Wolfensohn to silence Stiglitz. Wolfensohn began to publicly criticize his chief economist in October 1999, little more than a month before Stiglitz chose to resign. See *id.* at C1, C6.

<sup>124</sup> See *id.* at C6.

<sup>125</sup> Likewise, in *The General Theory of Employment, Interest, and Money*, which swept aside the laissez-faire orthodoxy of his own day, Keynes reflected and was often responding to the increasingly prevalent criticism of other economists. See LYNN TURGEON, BASTARD KEYNESIANISM xi, xv (1996); Robert A. Black, *Cambridge Circus*, in AN ENCYCLOPEDIA OF KEYNESIAN ECONOMICS 87, 89 (Thomas Cate ed., 1997).

<sup>126</sup> For instance, LatCrits would not accept the argument that we should support Propositions 187 or 209, or English-only proposals to maintain our credibility with policymakers; or that if we lacked a particular expertise in constitutional or immigration law, then we should form no opinion on such Propositions and instead accommodate those regressive

Yet, it may be more difficult to resist the argument that in matters closer to our wallets, in the area of money and finance, we should follow the lead of self-proclaimed policy experts.<sup>127</sup> But there is no reason to accept a different ethic of responsibility when discussing money issues.<sup>128</sup>

The failures, contradictions, and injustices of the neoliberal program have become more apparent in recent years, and have divided leading economists on such fundamental questions as capital mobility and the distribution of adjustment burdens.<sup>129</sup> IMF policies continue to bring austerity and economic deprivation to millions of people throughout Latin America and the Third World,<sup>130</sup>

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policy initiatives. See, e.g., Kevin R. Johnson, *Immigration Politics, Popular Democracy, and California's Proposition 187*, in *THE LATINO/A CONDITION: A CRITICAL READER*, *supra* note 4, at 110-16 (refusing to support initiative that will further subordinate immigrants despite fact that it was passed by majority of voters). Likewise, we would not expect LatCrit scholars to temper their resistance to the English-only views of Linda Chavez, the director of the United States Commission on Civil Rights during the Reagan administration, or risk Chavez not taking their work seriously. See Linda Chavez, *A Long-Standing Commitment*, in *THE LATINO/A CONDITION: A CRITICAL READER*, *supra* note 4, at 491, 492 (opposing implementation of regulations to mandate bilingual education).

<sup>127</sup> Citizens are socialized to believe that they are not capable of understanding the complexities of banking and finance, and that they must trust the experts on public issues concerning matters of money and finance. See WILLIAM GREIDER, *SECRETS OF THE TEMPLE: HOW THE FEDERAL RESERVE RUNS THE COUNTRY* 267 (1987); HENWOOD, *supra* note 29, at 97, 102. The self-proclaimed experts are often dramatically wrong. For instance, in 1997 Myron Scholes and Robert Merton were awarded the Nobel Prize in economics for making possible "more efficient risk management in society." A year later, their option pricing methods drove the Long-Term Capital Management hedge fund to the brink of insolvency, thereby spreading increased risk throughout the United States and global financial markets, and necessitating a Federal Reserve-brokered bailout of the hedge fund. See Edward Tenner, *The Icarus Complex*, N.Y. TIMES, Oct. 13, 1998, at A23 (mentioning this hedge fund as example of how brilliance "tempts those who have it to pronouncements that outrun experience and common sense").

<sup>128</sup> We often think of ourselves as more sophisticated than those who lived a generation or a century ago. But for much of the nation's history, prior to the delegation of money issues to the Federal Reserve, millions of people "knew that money was politics and that democracy depended on it." See GREIDER, *supra* note 127, at 242-67 (discussing history of First and Second Banks of United States, rise of Populism, Greenback Party, Free Silver, and other mass movements concerned with money questions); see also JOHN KENNETH GALBRAITH, *MONEY: WHENCE IT CAME, WHERE IT WENT* 44 (1995) (arguing that challenge to monied class "was to dominate politics for the first century and a half" of United States history and that "[o]nly the politics of slavery would divide [people] more angrily than the politics of money").

<sup>129</sup> See Canova, *supra* note 12.

<sup>130</sup> For instance, the IMF-backed neoliberalization of short-term speculative capital flows provided the mechanism for the currency contagion to transmit similar suffering on a global scale: the Mexican peso crash led to the so-called "Tequila Effect" which brought on the Asian flu, felled the Russian bear, and is once again knocking on the door of Latin America. See Canova, *supra* note 12.

while contributing to growing ethnic conflict and undermining cultural diversity.<sup>131</sup> These sorry developments may provide an opening for resistance to the supra-national legal regime that subordinates for private profit, and the context for more penetrating criticism of the IMF's neoliberal policy agenda in the future. The role of critical scholars in such a resistance, in criticizing the neoliberal orthodoxy, and in articulating an alternative vision, is a challenging one that continually demands the critical scholar to strike a balance between the appeals of constructive engagement and the need to maintain a critical distance.

### III. CONCLUSION: TOWARDS A NEW CRITICAL LEGAL SYNTHESIS

The LatCrit movement has derived much strength and vitality from its inclusive character and its commitment to a broad anti-subordination agenda that resists assimilation and oppression of Latina/o identity.<sup>132</sup> Latina/o identity is often discussed in terms as a "species of race in American society,"<sup>133</sup> but not often as a species of class in American society. Race can also be contextualized within an account of socioeconomic class and an indictment of the institutions that serve to reinforce the socio-economic subordination of racial and ethnic minorities. But if we focus our critiques on the class aspects of power, we are in danger of dividing Latina/o scholars of various different ideological perspectives.<sup>134</sup> And yet the avoidance of ideological arguments itself entails the acceptance of certain unspoken normative assumptions, many of which are highly ideological and deserving of our critical analysis.<sup>135</sup>

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<sup>131</sup> See *supra* notes 60-75, 81-86, 118-119 and accompanying text.

<sup>132</sup> See Fact Sheet: LatCrit, in LatCrit Primer (unpublished materials distributed to participants at LatCrit IV, 1999) ("LatCrit includes Chicanas/os, Cubanas/os, Puertorriquenas/os, mestizas/os, Central and South Americans as well as significant numbers of African Americans, Asian Americans, and some native/indigenous peoples.").

<sup>133</sup> See Angel Oquendo, *Comments by Angel Oquendo*, 9 LA RAZA L.J. 43 (1996).

<sup>134</sup> See Johnson, *supra* note 4, at 131-34 (discussing intra-Latina/o ideological and political differences); Celina Romany, *Gender, Race/Ethnicity and Language*, 9 LA RAZA L.J. 1, 17 (1996) (urging that we "seize commonalities among Latinas while respecting the differences"); Iglesias, *supra* note 112, at 198 (suggesting that realization of fundamental economic, political, and cultural rights has been "captive to a profoundly ideological debate").

<sup>135</sup> Cf. Enrique R. Carrasco, *Critical Issues Facing the Bretton Woods System: Can the IMF, World Bank, and the GATT/WTO Promote an Enabling Environment for Social Development?*, 6 TRANSNAT'L L. & CONTEMP. PROBS. 1, at xx (1996) (urging avoidance of suspect and unhelpful ideological arguments); Enrique R. Carrasco, *Who Are We?*, 19 CHICANO-LATINO L. REV. 331, 331 (1998) (warning that conflicting agendas and viewpoints could threaten viability of LatCrit's collective efforts).

Therefore, LatCrit is faced with the important challenge and exciting opportunity to create a new synthesis of critical legal scholarship to better analyze and understand the legal structures and processes that subordinate people based on race, ethnic identity, culture, and socio-economic class.<sup>136</sup>

LatCrit IV's discussions of the subordination of Latina/o and other oppressed farm workers<sup>137</sup> demonstrate that LatCrit is evolving as an inclusive movement, concerned with the subordination of people of lower socio-economic classes.<sup>138</sup> Furthermore, such discussions demonstrate that LatCrit will not become merely a vehicle for the privileging of a Latina/o professional elite, which overlooks and ignores the subordination of the masses of Latinas/os and other peoples of color.<sup>139</sup> Much work must be done to build the coalitions within LatCrit that will address the subordination of lower class Latinas/os by listening to real stories of subordination and resistance.<sup>140</sup> LatCrit scholars must continue to develop critiques of the legal structures and structures of thought that keep people down, particularly, critiques of the global financial system and IMF agenda.<sup>141</sup> As Nancy Ehrenreich reminds us,

[O]ne of the main ways in which power hierarchies are maintained in this country is through an ideology that convinces subordinated groups that their interests are in conflict . . . . In reality, however, those identity groups share a common interest in redistributing resources and influence in an equitable way.<sup>142</sup>

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<sup>136</sup> See Edward L. Rubin, *The New Legal Process, the Synthesis of Discourse, and the Microanalysis of Institutions*, 109 HARV. L. REV. 1393 (1996); see also *infra* note 6 and accompanying text (urging synthesis of critical voices to include the original class-based focus of the Critical Legal Studies movement within a more complex and culturally textured context).

<sup>137</sup> See Plenary Panel, Centering Class: Farmworkers, Land and Agribusiness, LatCrit IV Conference, *supra* note 13; see also Iglesias & Valdes, *supra* note 104, at 555-56.

<sup>138</sup> See Iglesias & Valdes, *supra* note 104.

<sup>139</sup> See Antoinette Sedillo Lopez, *A Comparative Analysis of Women's Issues: Toward a Contextualized Methodology*, 10 HASTINGS WOMEN'S L.J. 347, 352 (1999) (discussing possibility that "American middle-class feminists may support policies aimed to keep wages low for women of color and those of the Third World" while women in Mexico, owing to social and demographic conditions of widespread poverty, may be more concerned with "social and economic justice for the poor rather than more middle-class concerns").

<sup>140</sup> See Iglesias, *supra* note 112, at 200 (calling on LatCrit to get "real stories from development victims and using this knowledge to reveal the structural discrimination neoliberal policies produce").

<sup>141</sup> See Iglesias & Valdes, *supra* note 104 (discussing work of coalition building).

<sup>142</sup> See Nancy Ehrenreich, *Life After Identity Theory*, LatCrit IV Conference, *supra* note 13.

We must all learn about the mechanisms of globalization that threaten to divide subordinated groups while entrenching power hierarchies.

The sophistication of global financial discourse must be tempered with a profound disenchantment with the governing legal regime. Seen this way, a more fully developed critique of the neo-liberal agenda would represent an initial answer to Angela Harris's call for a creative discursive balance that generates progressive and transformative theorizing,<sup>143</sup> while also responding to Berta Hernández-Truyol's call to "globalize our domestic legal practice by integrating international human rights norms as a means of developing, expanding, and transforming the content and meaning of our human/civil rights jurisprudence."<sup>144</sup> Hernández-Truyol's "diversity perspective" is consistent with a more expansive conception of international human rights norms that borrow from domestic and international notions of economic sovereignty and rights to human development.<sup>145</sup>

Genuine "cultural resistance to Anglo assimilation" means resisting assimilation into the Anglo political culture.<sup>146</sup> The dominant neoliberal culture, grounded in orthodox Anglo-American economic theory, views unemployment as a necessary evil and often as a private failing. At stake is how those with power treat those without power. The reality is that the international trading and monetary system permits those with power to subordinate those without power.<sup>147</sup> We must not compromise on the belief that each and every person has a right to find meaning in productive work,<sup>148</sup> that the renewed vitality of ethnic identity and cultural pluralism requires such opportunities for work and meaning, and that the in-

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<sup>143</sup> See Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741 (1994).

<sup>144</sup> Berta Esperanza Hernández-Truyol, *Building Bridges: Bringing International Human Rights Home*, 9 LA RAZA L.J. 69, 69 (1996).

<sup>145</sup> See *supra* note 18.

<sup>146</sup> See Romany, *supra* note 134.

<sup>147</sup> This takes the form of declining terms of trade for submerging market economies, resulting in deeper debt levels, heightened political vulnerability and financial dependence. Once such countries have fallen into a debt or payments crisis, the neoliberal surveillance mechanism ensures that their living standards will fall further. This, again, is called the adjustment process, by which the weak must forego social goods such as education, jobs, real incomes to pay back the old debt and prevent incurring new debt. See *supra* notes 38-40 and accompanying text.

<sup>148</sup> See Peter B. Edelman, *The Next Century of Our Constitution: Rethinking Our Duty to the Poor*, 39 HASTINGS L.J. 1, 22-23 (1987).



clusive democratic state has an obligation as “employer of last resort” which is every bit more profound and crucial as is its role of “lender as last resort” to the private banking sector. We must, therefore, affirm that each and every man and woman has a right to exist, and that the right to employment at a living wage is a fundamental precondition to such an existence.<sup>149</sup>

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<sup>149</sup> THE WORDS OF MARTIN LUTHER KING, *supra* note 82. To paraphrase the great Algerian French writer Albert Camus, we must increase the sum of freedom and responsibility to be found in every man and every woman in the world. See ALBERT CAMUS, RESISTANCE, REBELLION, AND DEATH 240 (1960).

