Cluster I: Critical Politics and Jurisprudence

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Cluster I: Critical Politics and Jurisprudence

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I. INTRODUCTION

What is LatCrit Critical Politics & Jurisprudence?

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

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¹ For more information regarding the LatCrit Student Scholar Program (SSP) as well as for samples of past contributions and selected papers, please visit the SSP site at: http://www.latcrit.org/.
Cabarcas Macías’ paper seeks to refocus the approach to the study of law by drawing on a new historiographical approach that privileges the everyday lives of subordinated populations. This essay contributes to a small body of articles focusing on new historical interpretations of American legal history published in LatCrit symposia that seek to de-center the law and the state by recasting the debates from a subaltern position. To be sure, a LatCrit approach could emphasize a distinct re-reading of history that pays attention to traditionally marginalized or excluded questions about everyday life of subordinated groups. Perhaps a LatCrit approach that pays attention to the content of the form of traditional legal history could select events (content), which have been excluded from traditional legal narratives and shape these into a more democratic narrative that highlights the oppressive and exploitative ideologies of the past. Of course, this could mean that it may be possible to construct an unfamiliar historical narrative that can help re-think the present in more creative ways.

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

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4 Please visit the LatCrit webpage for more information regarding the LatCrit NGO at: http://www.latcrit.org/.
seeks to challenge various forms of international and global discrimination in a critical manner.  

Hugo Rojas’ clear and insightful article explores the case of Omar Ahmed Khadr and his attorney in the United States (US) detention camps in Guantánamo Bay, Cuba. Drawing on an analogy to Franz Kafka’s The Trial, Rojas’ article interrogates the current legal process employed by the U.S. in its efforts to prosecute the detained subjects. At a time when even the former Chief Prosecutor for the Bush Administration, Col. Morris D. Davis, has begun to question the fundamental justice of the Military Commissions, 6 Rojas’ article offers a concise critique informed by a critical concern for human rights. Rojas’ article should be read as a further contribution to the growing body of LatCrit scholarship on human rights and justice. 7 Rojas’ article is also representative of efforts by LatCrit to create a space where scholars from the global south can articulate critical positions in mainstream academic venues.

José María Monzón’s contribution seeks to provide a critique of the role of Anglo-American legal imperialism in shaping the Argentinian legal culture. The essay is representative of an effort to grapple with the problem of legal and cultural transplants in the Argentinian legal tradition. It is unfortunate that the essay does not engage the work of other scholars that have addressed this subject in Argentina 8 as well as in other Latin American countries more broadly. 9 More importantly, Monzón’s work can be situated as part of small but consistent body of LatCrit approaches that looks at the clash of legal cultures 10 and the challenges posed by the formation of new conceptions of law that generally borrow from more hegemonic legal tradi-

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A LatCrit approach to the study of legal transculturation could focus on the subordinating effects of the global north’s efforts to re-define Latin American legal traditions in line with a capitalist global agenda. To be sure, the focus of this critique could center on the efforts to adjust legal traditions from the global south to a more subordinated position within a global north hierarchy by domesticating the possibility of critical jurisprudence.

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

Towards a new jurisprudence?

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