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Foreword

CRITICAL RACE THEORY AND INTERNATIONAL LAW: CONVERGENCE AND DIVERGENCE

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THIS symposium is the first symposium to address comprehensively how Critical Race Theory (“CRT”) might inform, and be informed by, an international perspective.¹ The objective of this conference is to begin

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1. Human rights from a LatCrit perspective was the topic of a groundbreaking symposium at the University of Miami Law School. See, e.g., Colloquy, *International Law, Human Rights, and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997). Other scholars have relied on Critical Race Theory to explore international themes. See, e.g., Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 HARV. INT’L L.J. 1 (1999) [hereinafter Anghie, *Finding the Peripheries*]; Antony Anghie, *Francisco de Vitoria and the Colonial Origins of International Law*, 5 SOC. & LEGAL STUD. 321 (1996); Antony Anghie, “The Heart of My Home”: *Colonialism, Environmental Damage, and the Nauru Case*, 34 HARV. INT’L L.J. 445 (1993) [hereinafter Anghie, “The Heart of My Home”]; John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129 (1992); Anthony Carty, *Critical International Law: Recent Trends in the Theory of International Law*, 3 EUR. J. INT’L L. 66 (1992); Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241 (1993); Pat K. Chew, *Asian Americans: The “Reticent” Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1 (1994); Colloquy, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997); Ruben J. Garcia, Comment, *Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law*, CHICANO-LATINO L. REV. 118 (1995); James Thuo Gathii, *International Law and Eurocentricity*, 9 EUR. J. INT’L L. 184 (1998); Harvey Gee, *Changing Landscapes: The Need for Asian Americans to Be Included in the Affirmative Action Debate*, 32 GONZ. L. REV. 621 (1997); Ruth Gordon, *Saving Failed States: Sometimes a Neocolonialist Notion*, 12 AM. U. J. INT’L L. & POL’Y 903 (1997); Isabelle Gunning, *Diversity Issues in Mediation: Controlling Negative Cultural Myths*, 1995 J. DISP. RESOL. 55 (1995); Isabelle Gunning, *Expanding the International Definition of Refugee: A Multicultural View*, 13 FORDHAM INT’L L.J. 35 (1989); Isabelle Gunning, *Modernizing Customary International Law: The Challenge of Human Rights*, 31 VA. J. INT’L L. 211 (1991); Angela P. Harris, *The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741 (1994); Berta Esperanza Hernandez-Truyol, *International Law, Human Rights and LatCrit Theory: Civil and Political Rights—An Introduction*, 28 U. MIAMI INTER-AM. L. REV. 223 (1997); Elizabeth M. Iglesias, *Global Markets, Racial Spaces*

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and the Role of Critical Race Theory in the Struggle for Community Control of Investments: An Institutional Class Analysis, 45 VILL. L. REV. 1037 (2000); Elizabeth M. Iglesias, *Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community*, 53 U. MIAMI L. REV. 575 (1999); Elizabeth M. Iglesias, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997); Elizabeth M. Iglesias, *Out of the Shadow: Marking Intersections In and Between Asian Pacific American Critical Legal Scholarship and Latina/o Critical Legal Theory*, 19 B.C. THIRD WORLD L.J. 349 (1998); 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); Chris K. Iijima, *The Era of We-Construction: Reclaiming the Politics of Asian Pacific American Identity and Reflections on the Critique of the Black/White Paradigm*, 29 COLUM. HUM. RTS. L. REV. 47 (1997); Indu M. John, *International Dimensions of Critical Race Theory*, 91 AM. SOC'Y INT'L L. PROC. 408 (1997); Hope Lewis, *Global Intersections: Critical Race Feminist Human Rights and Inter/National Black Women*, 50 ME. L. REV. 309 (1998); Ian F. Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1 (1994); Isaac Moriwake, *Critical Excavations: Law, Narrative, and the Debate on Native American and Hawaiian "Cultural Property" Repatriation*, 20 U. HAW. L. REV. 261 (1998); Makau wa Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 16 MICH. J. INT'L L. 1113 (1995); Kenneth B. Nunn, *Law as a Eurocentric Enterprise*, 15 LAW & INEQ. 323 (1997); Carrie Lynn H. Okizaki, Comment, "What Are You?": *Hapa-Girl and Multiracial Identity*, 71 U. COLO. L. REV. 463 (2000); Dianne Otto, *Rethinking the "Universality" of Human Rights Law*, 29 COLUM. HUM. RTS. L. REV. 1 (1997); Dianne Otto, *Subalternity and International Law: The Problem of Global Community and the Incommensurability of Difference*, 5 SOC. & LEGAL STUD. 337 (1996); David R. Penna, *Cultural Dominance*, 90 AM. SOC'Y INT'L L. PROC. 193 (1996); Nigel Purvis, *Critical Legal Studies in Public International Law*, 32 HARV. INT'L L.J. 81 (1991); Henry J. Richardson, III, "Failed States," *Self-Determination, and Preventive Diplomacy: Colonialist Nostalgia and Democratic Expectations*, 10 TEMP. INT'L & COMP. L.J. 1 (1996); Henry J. Richardson, III, *Gulf Crisis and African-American Interests Under International Law*, 87 AM. J. INT'L L. 42 (1993); Ediberto Roman, *Reconstructing Self-Determination: The Role of Critical Theory in Positivist International Law Paradigm*, 53 U. MIAMI L. REV. 943 (1999); Natsu Taylor Saito, *Crossing the Border: The Interdependence of Foreign Policy and Racial Justice in the United States*, 1 YALE HUMAN RTS. & DEV. L.J. 53 (1998) [hereinafter Saito, *Crossing the Border*]; Natsu Taylor Saito, *Justice Held Hostage: U.S. Disregard for International Law in the World War II Internment of Japanese Peruvians—A Case Study*, 40 B.C. L. REV. 275 (1998); Natsu Taylor Saito, *Beyond Civil Rights: Considering "Third Generation" International Human Rights Law in the United States*, 28 U. MIAMI INTER-AM. L. REV. 387 (1997); Natsu T. Saito, *Model Minority, Yellow Peril: Functions of "Foreignness" in the Construction of Asian American Legal Identity*, 4 ASIAN L.J. 71 (1997); Ana Slijivic, *Why Do You Think it's Yours? An Exposition of the Jurisprudence Underlying the Debate Between Cultural Nationalism and Cultural Internationalism*, 31 GEO. WASH. J. INT'L L. & ECON. 393 (1997-1998); M. Sornarajah, *Power and Justice in International Law*, 1 SING. J. INT'L & COMP. L. 28 (1997); Symposium, *Citizenship and its Discontents: Centering the Immigrant in the International Imagination*, 76 OR. L. REV. 207 (1997); Chantal Thomas, *Causes of Inequality in the International Economic Order: Critical Race Theory and Postcolonial Development*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 1 (1999); Philip R. Trimble, *International Law, World Order and Critical Legal Studies*, 42 STAN. L. REV. 811, 815 (1990); 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 (1996); Leti Volpp, *Talking "Culture": Race, Nation, and the Politics of Multiculturalism*, 96 COLUM. L. REV. 1573 (1996); Robert A. Williams, Jr., *Vampires Anonymous and Critical Race Practice*, 95 MICH. L. REV. 741 (1997); Adrienne Katherine Wing, *A Critical Race Feminist Conceptualization of Violence: South African and Palestinian Women*, 60 ALB. L. REV. 943 (1997); Adrienne Katherine Wing, *Critical Race Feminism and the International Human Rights of Women*

the difficult task of discerning whether CRT can assist in understanding, and possibly transforming, the international system, and ascertaining how an international dimension might enrich the Critical Race critique of race and rights. This is a complex task at best. My objective is to begin the dialogue, pose questions and summarize our ambitions for this momentous gathering.

Critical Race Theory is based on the American encounter, and it embodies and embraces race consciousness.² CRT places race at the center of American jurisprudence and the American experience.³ CRT scholarship, unlike traditional legal discourse, expresses disappointment in conventional "civil rights" discussions.⁴ This critique of race and racism in the American legal system has presented a powerful and empowering challenge to traditional legal discourse regarding race and rights.⁵ How the Critical Race critique facilitates an understanding of the *international system*, however, has yet to be established with any degree of certainty. Theories that explain and deconstruct America's peculiar institutions do not

in Bosnia, Palestine, and South Africa: Issues for LatCrit Theory, 28 U. MIAMI INTER-AM. L. REV. 337 (1997); Donna E. Young, *Culture Confronts the International*, 60 ALB. L. REV. 907 (1997); Luther Wright, Jr., Note, *Who's Black, Who's White, and Who Cares: Reconceptualizing the United States's Definition of Race and Racial Classifications*, 48 VAND. L. REV. 513 (1995).

2. Scholars of Critical Race Theory ("CRT") vary in their reasoning and objectives; however, CRT generally focuses on two primary concerns. See CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT at xiii (Kimberlé Crenshaw et al. eds., 1995) [hereinafter CRT READER] (identifying common interest in Critical Race Scholarship). The first concern is "to understand how a regime of white supremacy and its subordination of people of color have been created and maintained in America, and, in particular, to examine the relationship between that social structure and professed ideals such as 'the rule of law' and 'equal protection.'" *Id.* The second concern is to not only to understand the connection between racial power and law, but to change that relationship. See *id.* (emphasizing "change" aspect of CRT). Authors of CRT not only analyze current views of race in America, they try to construct an "opponentist account of race." See *id.* (noting purpose of text in CRT reader).

3. See *id.* at xiv (noting America's treatment of "racial power" as unique and not continuous). CRT endeavors to reconsider the terms under which "race and racism have been negotiated in American consciousness, and to recover and revitalize the radical tradition of race-consciousness among African-Americans and other peoples of color—a tradition that was discarded when integration, assimilation and the ideal of color-blindness became the official norms of racial enlightenment." *Id.*

4. See *id.* (stating American beliefs on race developed around "social implicit impact" of 1960s and 1970s).

5. See *id.* at xiv-xv (noting implicit social impact held "racial power and . . . justice" would be viewed in limited ways). Mainstream legal thought, whether liberal or conservative, does not recognize race as a factor in the construct of the basic assumptions or foundations of American law. CRT challenges the traditional underpinnings of the American legal framework and critiques prevailing ideologies and paradigms through a racial prism. See *id.* (stating CRT desires to rejuvenate "race-consciousness" amongst blacks and other minorities); see also Cornel West, *Foreword to CRT READER*, at xi, xi (commenting on development of CRT and its potential for liberation).

necessarily clarify the international plane. Traditional international discourse is framed in terms of formal equality, and race appears to be an almost non-existent factor. International legal theory rarely mentions race, much less employs it as a basis of analysis.⁶ Internationalists frame hierarchy in terms of economic strength, military power or technological advancement.⁷ Terms such as north/south, developed/developing or "Third World," are the preferred terms of reference.⁸ Nonetheless, the southern, developing Third World is for the most part the colored world,

6. See, e.g., U.N. CHARTER art. 2, para. 1 (stating United Nations is based on "equality" of all "Members"); *Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations*, G.A. RES. 2625 (XXV), U.N. GAOR, 25th Sess., Supp. No. 28, at 21 (1970), reprinted in 9 I.L.M. 1292 (approving Declaration); see also, e.g., Eve Darian-Smith, *Postcolonialism: A Brief Introduction*, 5 SOC. & LEGAL STUD. 291, 296 (1996) (discussing how modern Western law helps explain ways postcolonialism connects to government and governmentality); Stephen A. Kocs, *Explaining the Strategic Behavior of States: International Law As System Structure*, 38 INT'L STUD. Q. 535, 539 (1994) (citing sovereign equality of states as one of three central principles of Westphalian legal order).

For an in-depth discussion of Third World approaches to international law, see Karin Mickelson, *Rhetoric and Rage: Third World Voices in International Legal Discourse*, 16 WIS. INT'L L.J. 353 (1998).

7. Cultural relativism versus universalism in the human rights arena can also be viewed as a form of hierarchy. See Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 HUM. RTS. Q. 400, 414 (1984) (noting general acceptance of Universal Declaration of Human Rights and International Human Rights Covenant); Makau wa Mutua, *The Ideology of Human Rights*, 36 VA. J. INT'L L. 589, 656-57 (1996) (noting failure of universalists to engage in "cross-fertilization of cultures" debate creates conclusion that hierarchy of cultures exist); Michael J. Perry, *Are Human Rights Universal? The Relativist Challenge and Related Matters*, 19 HUM. RTS. Q. 461, 509 (1997) (stating cultural relativism values "cultural particularities"). One exception may be the International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Mar. 7, 1966, 660 U.N.T.S. 195, 214 (entered into force Jan. 4, 1969); 140 CONG. REC. S7634-35 (daily ed. June 24, 1994) (United States entered into force Nov. 20, 1994). The Convention defines racial discrimination to include:

Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

International Convention on the Elimination of All Forms of Racial Discrimination, *supra*, at art. 1, para. 1.

8. The phrase the "Third World" developed in the fifteenth century in Eastern Europe. At first it signified the trading inequities between Eastern and Western Europe whereby Eastern Europe became dependent upon and subordinate to the West. However, with the development of the global market, the Third World became synonymous with any nation that participated on unequal terms in the emerging global market. See LEFTEN S. STAVRIANOS, *THE GLOBAL RIFT—THE THIRD WORLD COMES OF AGE* 32 (1981). Today, the term is often used to refer to countries of Africa, Asia and Latin America, and is frequently interchanged with "less-developed," "developing," "underdeveloped" and "the South." Mickelson, *supra* note 6, at 356. The Third World is also used to designate a political coalition or to conceptualize the international protest of poor against rich. See *id.* at 357; see also Winston E. Langley, *The Third World: Towards a Definition*, 2 B.C. THIRD WORLD L.J.

and like the colored world in the United States, it is marginalized, disproportionately poor and relatively powerless.⁹ The critical question is the extent to which the divergence in wealth, technology, power, and indeed, voice are predicated on the contingent, fluctuating and very complex concept of race.

At the most basic level, race usually becomes significant when peoples with dissimilar racial characteristics encounter each other.¹⁰ To the extent there is little or no contact between different races, culture is usually the most compelling variable in defining community.¹¹ If we define race in biological terms, peoples in close proximity to each other tend to be of the same "race."¹² Thus, "difference" or "otherness" often manifests itself by way of language, kinship, religion, culture, or what might be termed ethnicity.¹³ Accordingly, in the international arena, concepts such as ethnicity and religion have been, and will remain, key.

But of course, world history altered this scenario quite dramatically. European imperialism and colonialism brought Europeans into contact with peoples who were physically different from themselves.¹⁴ This differ-

1, 27 (1981) (defining Third World's disfavor of current global economic structure).

9. In 1993, 32 developing countries had a gross national product (GNP) per capita of 695 U.S. dollars or less. See *Debt Institute for the Heavily Indebted Poor Countries* (visited Sept. 6, 2000) <<http://www.imf.org/external/np/hipc/hipc.htm>> (discussing IMF and World Bank plan to provide special assistance for heavily indebted poor countries). In 1998, nearly 40% of South Asia and Sub-Saharan Africa had populations living on less than one U.S. dollar per day. In Latin America, East Asia and the Pacific, approximately 15% of the population survived on less than one U.S. dollar per day. See *Income Poverty* (visited Sept. 6, 2000) <<http://www.worldbank.org/poverty/data/trends/income.htm>> (discussing World Bank estimates of number of people living in poverty).

10. See Thomas H. Eriksen, *Ethnicity, Race, Class and Nation*, in *ETHNICITY* 28, 30 (John Hutchinson & Anthony D. Smith eds., 1996) (noting minorities have reduced chance to be accepted by "majority").

11. Nationality may or may not be coterminous with culture. Definitions of nationality have also become an important source of community. See generally PETER BROOKER, *CULTURAL THEORY: A GLOSSARY* (1999) (noting various definitions of culture throughout history); LOUIS L. SYNDER, *ENCYCLOPEDIA OF NATIONALISM* 256 (1990) (defining nationality as "a community formed by the will to be a nation").

12. Concepts of race can nevertheless be important to the extent that they inform people's actions; at this level, race exists as a cultural construct, whether it has a biological reality or not. See Eriksen, *supra* note 10, at 28-29 (noting link drawn between race and personality). "Ideas of 'race' may or may not form part of ethnic ideologies, and their presence or absence does not seem to be a decisive factor in interethnic relations." *Id.* at 30.

13. See *id.* (stating strong parallel present between race and class); see also Manning Nash, *The Core Elements of Ethnicity*, in *ETHNICITY*, *supra* note 10, at 25 (citing "kinship," "commensality" and "common cult" as most common "ethnic boundary marks"). See generally BROOKER, *supra* note 11 (noting culture's use in defining "society," time frames and countries).

14. See Tayyab Mahmud, *Colonialism and Modern Constructions of Race: A Preliminary Inquiry*, 53 U. MIAMI L. REV. 1219, 1220 (1999) (stating adverse affects of contact are still present in "post colonial terrains"); see also Gordon, *supra* note 1, at

ence in and of itself could have been of little or no consequence.¹⁵ Indeed, what may have been pivotal was that these were peoples whose land, labor and wealth Europeans coveted.¹⁶ In this milieu, race came to matter a great deal, and it became an important part of the justification for colonial conquest.¹⁷ The colored natives were inferior and in need of civilization.¹⁸ White Europeans, who believed they epitomized civilization, were there to civilize them. Europeans took up the “white man’s burden,”¹⁹ as race became a key part of European domination and subordination of non-white peoples.²⁰

International law, which had a decidedly positivist bent, assisted and sanctioned the imperialist quest.²¹ The colored peoples of Africa, Asia and the Americas were considered backwards, inferior and uncivilized barbarians, and their lands or labor could be taken, pretty much at will, by civilized Christian Europeans.²² As Professor Anghie has brilliantly demonstrated, international law denied such peoples sovereignty, and sovereignty was deemed a prerequisite to participation in the international

933-34 (noting legal distinctions drawn between Europeans and their “subjects”); Robert A. Williams, Jr., *Columbus’s Legacy: Law as an Instrument of Racial Discrimination Against Indigenous Peoples’ Rights of Self-Determination*, 8 ARIZ. J. INT’L & COMP. L. 51, 53 (1991) (describing law brought to Western world by Columbus as “racist”).

15. See James M. Blaut, *Environmentalism and Eurocentrism*, 89 GEOGRAPHICAL REV. 391, 391 (1999) (stating that reason some civilizations prosper and others fail is due to “local environments” and each groups “geographical location” (citing JARED DIAMOND, GUNS, GERMS, AND STEEL: THE FATES OF HUMAN SOCIETIES 352 (1997))).

16. See REGINALD HORSMAN, RACE AND MANIFEST DESTINY: THE ORIGIN OF AMERICAN RACIAL ANGLO-SAXONISM 16 (1981) (noting that Englanders believed it was their duty to industrialize planet and share their wealth of findings).

17. See Mahmud, *supra* note 14, at 1220 (noting European racial views created sense of domination).

18. See Yassin El-Ayouty, *United Nations and Decolonization* 3 (1971) (discussing perceived need of colonialism); Anghie, *Finding the Peripheries*, *supra* note 1, at 1, 5, 31-32 (discussing non-European societies’ attempt to be part of international law); Gordon, *supra* note 1, at 932-34 (noting attempt by Europeans to educate colored natives in religion).

19. BASIL DAVIDSON, THE BLACK MAN’S BURDEN: AFRICA AND THE CURSE OF THE NATION STATE 37 (1993) (stating that Africans needed “Christianity” and “British” examples to progress in education); accord EL-AYOUTY, *supra* note 18, at 3; Gordon, *supra* note 2, at 934 (noting perception of white race’s superiority); Anghie, *Finding the Peripheries*, *supra* note 1, at 7 (discussing “white man’s burden”).

20. See Gordon, *supra* note 1, at 927 (arguing that European “racialization” caused global “color consciousness”); Mahmud, *supra* note 14, at 1224 (labeling race as “key signifier difference” between Europeans and non-Europeans).

21. See Anghie, *Finding the Peripheries*, *supra* note 1, at 6 (noting acquisition of non-European territories). A full discussion of these themes can be found in Gordon, *supra* note 1, at 903 (discussing how international law aided and abetted imperialist Russia).

22. See HORSMAN, *supra* note 16, at 194 (discussing perception of superiority by civilized Christian Europeans).

system.²³ International law was for Europeans only, and non-Europeans were included only through their contact with Europeans.²⁴ International law was for whites only. Our first panel, "Intellectual Origins-Race, Colonialism, Slavery and International Law," analyzed these historical antecedents in an attempt to discern how this history colors the contemporary international system.

How relevant is this history to contemporary international discourse? Certainly, the rhetoric has changed. We no longer discuss uncivilized barbarians, and the law of "civilized nations" now includes all of the world's major cultures and legal systems.²⁵ While the Third World is largely colored, surely no nation is permanently consigned to the first, second or third world. Russia and Singapore are examples of nations that have moved among these designations.²⁶ The newly industrializing countries, or "NICs," which can be termed the "new second world," are generally peopled by colored folks.²⁷ Although membership in these categories

23. See U. O. UMOZURIKE, *INTERNATIONAL LAW AND COLONIALISM IN AFRICA* 19-21 (1979) (discussing whether people of color lacked sovereignty); Anghie, "The Heart of My Home," *supra* note 1, at 496-98 (arguing "sovereignty doctrine" was not rational); see also Gordon, *supra* note 1, at 935-37 (explaining that only European states were fully sovereign, and thus non-European states did not have standing to challenge European states through international law); Dianne Otto, *A Question of Law or Politics? Indigenous Claims to Sovereignty in Australia*, 21 SYRACUSE J. INT'L L. & COM. 65, 75-76 (1995) (discussing sovereignty as means to international personality and impact of this doctrine on struggles of indigenous peoples to gain voice in international law).

24. See Anghie, "The Heart of My Home," *supra* note 1, at 494 (1993) (noting that contact came via European "conquest" over non-European lands).

25. See, e.g., Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugo.), 1996 I.C.J. 595-09 (July 11); Case Concerning Maritime Delimitation in the Area Between Greenland and Jan Mayen (Den. v. Nor.), 1993 I.C.J. 38, 38-40 (June 14); Case Concerning the Barcelona Traction, Light and Power Company, Ltd. (Belg. v. Spain), 1970 I.C.J. 3, 3-16 (Feb. 5); North Sea Continental Shelf (F.R.G. v. Den.; F.R.G. v. Neth.), 1969 I.C.J. 3, 3-18 (Feb. 20); South West Africa (Eth. v. S. Afr.; Liber. v. S. Afr.), 1966 I.C.J. 6, 6-19 (July 18).

26. See John Lloyd, *The Russian Devolution*, N.Y. TIMES, Aug. 15, 1999, § 6 (Magazine), at 34-52, 61, 64 (discussing challenges regarding economic reform in Russia). For statistical data on Singapore, see *Economic and Financial Data for Singapore* (visited Jan. 1, 2000) <<http://www.singstat.gov.sg/SDDS/data.html>> (detailing financial and economic data and indices for Singapore); *IMF Concludes Article IV Consultation with Singapore* (visited Jan. 1, 2000) <<http://www.imf.org/external/np/sec/pn/2000/pn0046.htm>> (outlining history and IMF assessment of Singapore economy).

27. Newly industrialized countries include Hong Kong (GDP: purchasing power parity CC\$168.1 billion (1998 est.), GDPCC real growth rate: -5% (1998 est.), GDPCC per capita: purchasing power parity CC\$25,100 (1998 est.), GDPCC composition by sector: agriculture: 0.1% industry: 15.9% services: 84% (1997 est.)), see *CIA—The World Factbook 2000—Hong Kong* (last visited Jan. 1, 2000) <<http://www.odci.gov/CIA/publications/factbook/geos/hk.html>>; South Korea (GDP: purchasing power parity CC\$584.7 billion (1998 est.), GDPCC real growth rate: -6.8% (1998 est.), GDPCC per capita: purchasing power parity CC\$12,600 (1998 est.), GDPCC composition by sector: agriculture: 6% industry: 43% services: 51% (1997 est.)), see *CIA—The World Factbook 2000—Korea, South* (visited Jan. 1, 2000)

is fluid, the hierarchy is unmistakable. Clearly, the goal is to be part of the North, the first, the developed world. The term "Third World," which was born in a spirit of independence and empowerment, has almost become a pejorative term.²⁸

As Eastern Europeans emerged from the Soviet bloc, they were not considered part of the Third or developing world.²⁹ Is this because the Third World is predominately colored or because it is predominately poor? Is it because the Third World is lagging economically and/or technologically? Is the difference culture? Is it race? Are nations and peoples aspiring towards development because it results in a physically easier life,

<<http://www.odci.gov/CIA/publications/factbook/geos/ks.html>>; Singapore (GDP: purchasing power parity CC\$91.7 billion (1998 est.), GDPCC real growth rate: 1.3% (1998 est.), GDPCC per capita: purchasing power parity CC\$26,300 (1998 est.), GDPCC composition by sector: agriculture: NEGL% industry: 28% services: 72% (1997)), see *CIA—The World Factbook 2000—Singapore* (visited Jan. 1, 2000) <<http://www.odci.gov/CIA/publications/factbook/geos/sn.html>>; and, Taiwan (GDP: purchasing power parity: \$362 billion (1998 est.), GDPCC real growth rate: 4.8% (1998 est.), GDPCC per capita: purchasing power parity: \$16,500 (1998 est.), GDPCC composition by sector: agriculture: 2.7% industry: 35.3% services: 62% (1997 est.)), see *CIA—World Factbook 2000—Taiwan* (visited Jan. 1, 2000) <<http://www.odci.gov/CIA/publications/factbook/geos/tw.html>>.

28. See Rodolfo Mata & Lawrence Friedman, *Welcome to the Third World: Reflections on the Anniversary of the Boston College Third World Law Journal*, 15 B.C. THIRD WORLD L.J. 77, 80 (1995) (considering implication of term "Third World"); see also Mickelson, *supra* note 6, at 355 (discussing terms that are interchangeable with "Third World"); No-Hyoung Park, *The Third World as an International Legal System*, 7 B.C. THIRD WORLD L.J. 37, 43-45 (1987) (outlining history and ramification of term "Third World" in context of Third World as international legal system).

29. See Stephen Stec, *Do Two Wrongs Make a Right? Adjudicating Sustainable Development in the Danube Dam Case*, 29 GOLDEN GATE U. L. REV. 317, 381-97 & n.4 (1999) (describing emergence of Eastern Europeans from Soviet bloc). They have been termed "states in transition" or "economies in transition." See *id.* at n.4; see also U.N. Conference on Environment and Development: Framework Convention on Climate Change, May 9, 1992, Annex I, 31 I.L.M. 849, 872 (entered into force Aug. 13, 1998) (listing countries undergoing transition to market economy); U.N. Conference on Environment and Development: Rio Declaration on Environment and Development, June 14, 1992, 31 I.L.M. 876, 876-80 (outlining principles of agreement on environment and development). Paragraph 1.5 of Agenda 21 states:

In the implementation of the relevant programme areas identified in Agenda 21, special attention should be given to the particular circumstances facing the economies in transition. It must also be recognized that these countries are facing unprecedented challenges in transforming their economies, in some cases in the midst of considerable social and political tension.

U.N. Department of Public Information, *Agenda 21: Programme of Action for Sustainable Development*, in AGENDA 21: THE UNITED NATIONS PROGRAMME OF ACTION FROM RIO 13, 15 (1992). For a brief discussion of terminology describing former Second World countries of Eastern Europe, see Helen E. Hartnell, *Subregional Coalescence in European Regional Integration*, 16 WIS. INT'L L.J. 115, 117-18 n.13 (1997), describing the East-West integration of post-Cold War transition countries; and Frances Elisabeth Olsen, *Feminism in Central and Eastern Europe: Risks and Possibilities of American Engagement*, 106 YALE L.J. 2215, 2220-21 (1997), discussing construction of Eastern Europe and central and Eastern Europe.

or because it represents what is valuable in the West? When we say “the West” do we really mean European or white? What do we mean by “the West,” a term we frequently employ, but rarely define?³⁰

I suspect peoples are primarily seeking a more comfortable life and, from my privileged “Western” perch, I will not deny the benefits of affluence. It may also be, however, that the world has adopted the convictions, creeds and ideology of the West. In other words, it is the Western perspective that shapes aspirations, or at least the aspirations that are given voice.³¹ Any resistance to westernization, any other yearnings are relegated to the realm of irrationality, fanaticism or clamor, (as the postcolonialists posit), and they are ignored, dismissed or crushed.³² Critical Race Theory is yet another Western theoretical framework, but perhaps its outsider perspective imparts a crucial difference. On the other hand, it can be legitimately asked whether anything from America can really be termed “outsider.”

On the home front, to the extent American culture is shaped and formed by a racial ideology, it must influence our foreign policy and our interactions with other nations and peoples. I believe it does in a number of subtle and not so subtle ways. It is easier to let colored people continue to be poor, to observe them living in wretched conditions and to ignore sometimes brutal wars.³³ It is just as natural to try to ensure that white folks do not suffer a similar fate.³⁴ Witness the reaction to Kosovo versus

30. See generally SAMUEL HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* 46-47 (1996) (defining “the West” as “Europe, North America, plus other European settler countries such as Australia and New Zealand” and “Western Civilization” as “Euroamerican or North Atlantic civilization”).

31. See George M. Kraw, *Criticism and Legal Analysis Affairs of State—Millennial Musings at the WTO Street Theater; Return to the Sixties? Birth of a New Progressive Coalition? Nah, Just a Good Old American Block Party/Riot in Latte-Land*, RECORDER (San Francisco), Dec. 8, 1999, at 4 (describing WTO riots as orchestrated by white Americans). The demonstrations in December 1999, at the Seattle meeting of the World Trade Organization (WTO) seem to indicate otherwise. See Douglass W. Cassel, Jr., *Attacking Symbol of Free Trade*, CHI. DAILY L. BULL., Dec. 2, 1999, at 5 (describing WTO as unfair and destructive). But it is at least contestable whether these were simply additional Western voices and aspirations.

32. See Tariq Banuri, *Development and the Politics of Knowledge: A Critical Perspective on Theories of Development*, in DOMINATING KNOWLEDGE 29-30 (Frederique Apffel Marglin & Stephen A. Marglin eds., 1990).

33. See, e.g., James Rupert & Douglas Farah, *Nigeria Leader Agrees to Send Troops into Sierra Leone; Obasanjo Seeks Support*, WASH. POST, May 19, 2000, at A23 (describing reluctance of Western peacekeeping forces to become involved in fighting in Sierra Leone).

34. See Jose E. Alvarez, *Crimes of States/Crimes of Hate: Lessons from Rwanda*, 24 YALE J. INT'L L. 365, 365-70 (1999) (examining genocide in Rwanda in context of epistemic community of international lawyers); Richard B. Bilder, *Kosovo and the “New Interventionism”: Promise or Peril?*, 9 J. TRANSNAT'L L. & POL'Y 153, 155-57 (1999) (discussing crisis in Kosovo under doctrine of humanitarian intervention); Fergal Keane, *War in the Balkans: Rwanda and Kosovo: The Same Beneath the Skin; Fergal Keane in Skopje Compares the Kosovovan Crisis with the Slaughter of the Tutsis Five Years Ago*, SUNDAY TELE. (London), Apr. 11, 1999, at 19 (contrasting Tutsi genocide with Kosovovan crisis).

Rwanda or Sudan.³⁵ It is elementary and necessary to assist Eastern Europeans and the peoples of the former second world, although we fought that world for over fifty years.³⁶ It was just as expedient to use colored folks as cannon fodder, as proxies, in our ideological showdown with the Soviet Union.³⁷ We could support apartheid in southern Africa for most of this century.³⁸ Race colors our stance in international organizations. The United Nations Secretary General admonished the Security Council, and especially its permanent members, for its lopsided treatment of Bosnia as compared to Somalia.³⁹ One wonders if a war crimes tribunal in Rwanda would have been established if not for such a tribunal in for-

35. See J. Bryan Hehir, *A Look at . . . What Makes a War Just?: NATO's Laudable Goals and Questionable Means*, WASH. POST, May 16, 1999, at B3 (comparing Kosovovan and Rwandan crises and U.S. reaction regarding same); Peter J. Riga, *War Without End*, CHI. TRIB., Mar. 28, 1999 (contrasting war in Kosovo with crisis in Sudan and U.S. reaction regarding same).

36. See Donald L. Pressley, *US Assistance to Eastern Europe*, Testimony Before the House of Representatives Committee on International Relations, Mar. 26, 1998, available in 1998 WL 8993670, at *1-2 (discussing U.S. assistance to Soviet Union under Freedom Support Act); Vincent John Ella, *The Visegrad Countries of Central Europe—Integration or Isolation?*, 2 MINN. J. GLOBAL TRADE 229, 234-36 (1993) (outlining assistance to Eastern Europe by industrialized Western countries); *EU/Czech Republic: PHARE Programme Given Euro 16 Million for 1999*, EUR. REP., July 3, 1999, available in 1999 WL 8306350, at *1-3 (describing assistance awarded to Czech Republic under E.U. PHARE Program); Johannes F. Linn, *The Transition in Europe and Central Asia: Progress and World Bank Assistance*, Address of November 25, 1996, Tokyo, at 1-5 (describing rationale and history of World Bank assistance).

37. See Gerald Horne, *Race From Power: U.S. Foreign Policy and the General Crisis of "White Supremacy"*, 23 DIPLOMATIC HIST. 437, 454 (1999) (discussing construction of whiteness within context of U.S. foreign policy); see also Mary L. Dudziak, *Desegregation as a Cold War Imperative*, 41 STAN. L. REV. 61, 117 (1988) (outlining foreign policy rationale for U.S. actions taken to dismantle racial segregation in United States).

38. See Horne, *supra* note 37, at 454-55 (discussing involvement of United States in anti-apartheid movement).

39. See William Neikirk, *Politics Blamed for Delay in Somalia Rescue*, CHI. TRIB., Dec. 6, 1992, at 3 (comparing and analogizing reactions to crisis in Somalia and Bosnia). U.N. Secretary General Boutros Boutros-Ghali called the international response to Rwanda's ethnic bloodletting a "failure" and a "scandal." Julia Preston, *Inaction on Rwanda Deplored/U.N. Chief Says Response to Massacre Is a 'Scandal'*, S.F. CHRON., May 26, 1994, at A15 (detailing U.N. Chief's reaction to lack of action taken regarding genocide in Rwanda). "It is genocide which has been committed. More than 200,000 people have been killed, and the world is still discussing what ought to be done," Boutros-Ghali said. *Id.* His successor, Kofi Annan, has more recently intimated that, had the Rwandans been white, other countries might have been more forthcoming with aid and assistance. See *Sunday Morning: Kofi Annan Discusses the U.N.'s Efforts to Keep the Peace*, CBS News (CBS television broadcast, Feb. 6, 2000) (discussing U.N. peacekeeping efforts and effectiveness for Congo). Annan stated in a television interview that "[w]hen you talk to Africans, they see a double standard. They see a double standard when they look at what happened in Bosnia and what happened in Kosovo and the resources that was [sic] applied to those crises, and the way the international community responded to the crisis." *Id.*

mer Yugoslavia.⁴⁰ Would there have been intervention in East Timor if there had not been intervention in Kosovo?⁴¹

The point is not to reduce the rationale for complex decisions and policies solely to race, for there are complex economic and geopolitical reasons behind all of these policies. Just because this conduct cannot be solely attributable to race, however, does not mean race is not a factor. The racial ideology that defines and undergirds American culture and institutions makes these policies appear natural and justifiable.⁴² It helps define where our interests do and do not lie. It helps define what is, or is not, important. Professor Brenda Gayle Plummer has closely studied the role of African-Americans with respect to U.S. foreign policy.⁴³ She continues this study in her book, *Rising Wind: Black Americans and U.S. Foreign Affairs, 1935-1960*.⁴⁴

Our analysis of America may not readily help us understand how other countries and peoples relate to each other or to the international

40. Professor Makau wa Mutua asserts that the Rwanda War Crimes Tribunal (International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States, Between 1 January 1994 and 31 December 1994) was made possible by the precedent-setting Yugoslav tribunal. See Makau Mutua, *Never Again: Questioning the Yugoslav and Rwanda Tribunals*, 11 TEMP. INT'L & COMP. L.J. 167, 178 (1997) (discussing Rwandan war crimes tribunal in relation to Yugoslav war crimes tribunal).

The UN and the powerful states that control it could not reject a tribunal for Rwanda when they had set one up for the former Yugoslavia; formally, white European lives were put on the same footing with black African lives. The overlapping conflicts, which had been so brutal and barbaric, had taken place in front of the television camera, making it impossible to set up a process for prosecuting one group of perpetrators and not the other. Nevertheless, the Rwanda Tribunal was an afterthought, . . . [it] was in effect a sideshow to the Yugoslav Tribunal. . . . The international press and the United Nations were pre-occupied with the Yugoslav Tribunal and only seemed to give the most perfunctory attention to the Rwanda Tribunal.

Id.

41. See Lynn H. Miller, *East Timor, Collective Action, and Global Order*, 14 TEMP. INT'L & COMP. L.J. 89, 93-94 (2000) (suggesting exposure to human rights abuses causes governments to take action regarding same); Colum Lynch, *East Timor Force Approved: U.N. Security Council Unanimously Backs Peacekeepers to Stem Violence*, WASH. POST, Sept. 15, 1999, at A18 (discussing resolution to send U.N. peacekeeping force to East Timor); Jane Perlez, *Getting Tough Gets Tough for Australia*, N.Y. TIMES, Sept. 26, 1999, § 6 (Magazine), at 4 (discussing Australian intervention regarding crisis in East Timor).

42. See Ian F. Haney López, *Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination*, 109 YALE L.J. 1717, 1723 (2000) (positing theory of new institutionalism claiming routine behavior defines normalcy regarding racial discrimination).

43. See generally BRENDA GAYLE PLUMMER, *RISE WIND: BLACK AMERICANS AND U.S. FOREIGN AFFAIRS, 1935-1960* (June 1996) (discussing engagement of African Americans in international issues).

44. *Id.*

system. That is how peoples define, understand and regard themselves and the "other." No matter how elaborate our analysis of the American milieu may be, it cannot simply be replicated on the international stage. Presumably, other nations and peoples have particular attitudes around race, which grow out of their distinct histories and grand encounters. Critical Race theorists have done a tremendous job analyzing America's peculiar institutions. The question is whether or how this translates beyond American idiosyncrasies.

Critical Race theorists have put forward varying and quite complex definitions of race and racism.⁴⁵ They have postulated that the concept of "race" may be socially constructed in very different ways.⁴⁶ Race is an "unstable complex of social meanings that are constantly transformed by polit-

45. See Janine Young Kim, Note, *Are Asians Black?: The Asian-American Civil Rights Agenda and the Contemporary Significance of the Black/White Paradigm*, 108 YALE L.J. 2385, 2388-89 (1999) (citing MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960'S TO THE 1990'S 55-61 (2d ed. 1994)); see also OMI & WINANT, RACIAL FORMATION IN THE UNITED STATES, *supra*, at 54-76 (defining theory of racial formation). The theory of racial formation espouses the idea that race is "not merely a classificatory system based on the distinctions among human bodies at any given moment, but that it also contains traces of past struggle over, and present understanding of, social and political relationships." Kim, *supra*, at 2388-89; accord Saito, *Crossing the Border*, *supra* note 1, at 54-55 (arguing that relationship between foreign and domestic policy can be more easily deciphered if, instead of examining race and citizenship, we "think in terms of identification of the 'other' . . . the kind of 'otherness' that is ascribed . . . on the basis of . . . racial or ethnic characteristics). Professor Horne notes that few have "sought to place the construction of whiteness in the context of U.S. foreign policy—although this global context was highly relevant in this process." Horne, *supra* note 37, at 437; see also IAN F. HANEY LÓPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 111-55 (1996) (theorizing that law and social policy "create" race and separation); EDWARD W. SAID, CULTURE AND IMPERIALISM 191 (1994) (suggesting that studying relationship between "West" and its dominated cultural "other" is "a point of entry into studying the formation and meaning of Western cultural practices themselves"); Antony Anghie, "The Heart of My Home," *supra* note 1, at 441 (describing dispossession of non-European World); Calmore, *supra* note 1, at 2160 (discussing race as central to identifying and rectifying effects of prejudice); Christopher A. Ford, *Administering Identity: The Determination of "Race" in Race Conscious Law*, 82 CAL. L. REV. 1231, 1231-32 (1994) (analyzing race as central to identifying and rectifying effects of prejudice); Ian Haney López, *Race and Erasure: The Salience of Race to Latinos/as*, in THE LATINO/A CONDITION: A CRITICAL READER 180, 189 (Richard Delgado & Jean Stefancic eds., 1998) (discussing *Hernandez v. Texas*, 347 U.S. 475 (1954)). For articles discussing race as a legal construction, see, for example: Kimberlé Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1336 (1998); Richard Delgado, *Enormous Anomaly? Left/Right Parallels in Recent Writing About Race*, 91 COLUM. L. REV. 1547, 1554-56 (1991); Richard Delgado, *Recasting the American Race Problem*, 79 CAL. L. REV. 1389, 1393-94 (1991) (arguing that racism is normal state of affairs, not exception); Neil Gotanda, *A Critique of "Our Constitution is Color-Blind"*, 44 STAN. L. REV. 1, 2-7 (1991); Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CAL. L. REV. 1213, 1215 (1997).

46. See OMI & WINANT, *supra* note 45, at 54 (noting dichotomy among racial scholars: that certain theorists consider race to be something objective and concrete, while others regard it as ideological and a mirage).

ical struggle;⁴⁷ it is contingent and fluctuating in nature—its meaning is fluid.⁴⁸ Critical Race theorists have demonstrated how very complicated the idea of "race" is. Moreover, they have demonstrated how it might intersect with gender, sexual preference, class and other forms of identity, making it more complex still.⁴⁹

This analysis becomes infinitely more perplexing in the international arena where social constructions of race may vary widely, or be almost non-existent, depending on the context, and where the variables with which race might intersect are much more numerous. Views of the "other" and self cannot be assumed. Indeed, such convictions are not necessarily (or perhaps even probably) built upon the concept of race. We must avoid "racializing" peoples—that is finding "race" where it is irrelevant or non-existent. Because race is such a fundamental part of the American prism, this tendency may be pronounced.⁵⁰ If race, and more importantly racism, is viewed as a form of subordination and domination, however, the analysis of subordination found in the Critical Race Critique

47. *Id.* at 55. Professors Omi and Winant define race as "a concept which signifies and symbolizes social conflicts and interests by referring to different types of human bodies." *Id.*

48. *See id.* (describing ever-changing meaning of term "race"). The theory of racial formation postulates that race is nebulous, ever changing, and dependent upon social and historical processes. *See id.* (exploring history, meaning and implications of term "race").

49. *See, e.g.,* Kimberlé Crenshaw, *Mapping the Margins, Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242-44 (1993) (analyzing intersection of race with gender and sexual preference). Intersectionality seeks to account for the marginalizing effect of identity politics, such as feminism and antiracism, on people whose identity is shaped by more than one dimension—for instance, women of color. *See id.* (discussing effects of intersectionality on race and gender); Kimberlé Crenshaw, *supra* note 45, at 1342 (describing how race and socio-economic status intersect); Kevin R. Johnson, *Racial Restrictions on Naturalization: The Recurring Intersection of Race and Gender in Immigration and Citizenship Law*, 11 BERKELEY WOMEN'S L.J. 142, 142-45 (1996) (reviewing IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996)) (discussing effects of intersectionality and naturalization laws on race and gender relations in United States).

50. *See* Cheryl I. Harris, *Whiteness As Property*, 106 HARV. L. REV. 1707, 1716-18 (1993) (relating development of racialization from colonial times to present). The law assumed the crucial task of racial classification, and accepted and embraced the then-current theories of race as biological fact. *See id.* at 1717 (describing seventeenth century law's legitimation of use of black women's bodies as means to increase property). This core precept of race as a physically defined reality allowed the law to fulfill an essential function—to "parcel out social standing according to race" and to facilitate systematic discrimination by articulating "seemingly precise definitions of racial group membership." *Id.* at 1737.

The law relied on bounded, objective, and scientific definitions of race—what Neil Gotanda has called 'historical race'—to construct whiteness as not merely race, but race plus privilege. By making race determinant and the product of rationality and science, dominant and subordinate positions within the racial hierarchy were disguised as the product of natural law and biology rather than as naked preferences.
Id. at 1738 (footnotes omitted).

may be quite instructive. These ideas and more are explored by Panel II, which moved from the national to the international and from the international to the national.

The final questions are where this dialogue leaves us and where it takes us. As scholars of international law, it is hoped that aspects of Critical Race Theory might help us articulate a different future, where a voice is given to those who are now voiceless and where those who seek to challenge the prevailing hierarchy might find a theoretical framework that will help mount this challenge. Whether it is because of race, culture or lack of power, certain voices, usually colored voices, are often silenced or ridiculed in the international system. They are ignored and assumed to be too incompetent to determine their own destinies or to contribute in any meaningful way to the future of the global community.⁵¹ They are deemed to come to the table with little or nothing to contribute. Critical Race Theory may help us critique a system where we espouse globalization, while relegating large segments of humanity to irrelevancy. At the same time, lessons from the international community might broaden the Critical Race Critique. Like most American theoretical paradigms, Critical Race Critique generally fails to take into account the rest of the world and its impact on America, past and present. Postcolonialism, international feminism, the right to development, group versus individual rights and much more can be found on the international stage. Perhaps these and other insights will enrich and broaden the Critical Race Critique.

Panel III, "Divergence and Convergence: Where Do We Go From Here? The Reconstructionist Project," elaborated on these themes as it explored our future path. As the following papers confirm, these are questions that must be raised and addressed, as parts of the Third World continue over the economic abyss. How to undertake the transformation that must take place if we are to have any semblance of economic and social justice across the globe is a task to which Critical Race Theory can contribute and an endeavor which will enrich and expand the Critical Race Critique of race and rights.

51. See Gordon, *supra* note 1, at 907, 953-62 (recognizing reality of subjugation and cultural inferiority and encouraging international community to "explore a more inclusive bottom-up approach").