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FOREWORD

CRITICAL CONVERSATIONS ON NATIONALISM, SELF-DETERMINATION, INDIGENOUS PEOPLE, GLOBALIZATION AND COLONIALISM: REFLECTIONS ON THE SOUTH-NORTH EXCHANGE, 2004 & 2005

*Yanira Reyes Gil**

The relationship between the South and the North is complicated, problematic, conflictive, and unequal. But it can also be creative, dynamic, insightful, and, ideally, respectful. The reasons for these adjectives are many, most of them related to sentiments of historical distrust and resentment caused by years, centuries of colonialism, neocolonialism, and postcolonialism.

Resulting from this conflictive relationship, there is a serious distance between academics and activists from the South and North hemispheres. Distance in terms of physical separation, intellectual debate, and in some cases, academic interests. This distance limits the possibilities of mutual growth and honest debate.

The South-North Exchange has been a place for LatCritical encounters designed to transcend those limitations and open up new possibilities. “The South-North Exchange on Law, Theory and Culture (“SNX”) met for the first time in 2003 to foster and sustain a trans-national, cross-disciplinary and inter-cultural dialogue on current issues in law, theory and culture that are of common interest across the Americas.”¹ LatCrit theorists created this space with the purpose of building bridges between South and North academics or activists from multiple disciplines to exchange thoughts and ideas about topics of interest, that will hopefully help to advance social justice awareness and activism across the hemisphere and globally.

* Professor, Universidad Interamericana Facultad de Derecho, San Juan, Puerto Rico. I thank Francisco Valdés for the opportunity, Prof. Angel Rodríguez Rivera for his ideas and support, and all the authors for their magnificent contributions to this ongoing reflection. All misinterpretations, omissions, or mistakes are mine.

1. For more information go to www.latcrit.org.

From my perspective — a junior faculty at the sponsoring school,² a puertorriqueña (Puerto Rican), a lawyer, a sociologist, a participant on all SNX encounters since 2003 — in practice, the South-North Exchange is an opportunity for open discussions and debate between people that otherwise probably will not be able to hear each other directly. It has been a relaxed, dynamic interaction in which the learning happens as much in the conference room as in the casual chats at the dinner table. It is a place for critical conversations, critical because of the way in which “LatCrit theory”³ approaches issues, from a penetrating outsider perspective, and also significant because of its imperativeness.

Moreover, the spirit of this Foreword introduces the papers being published from the South-North Exchanges of December 2004 and May 2005.⁴ Though not all the papers presented are being published, the selection of essays in this issue reflect most of the debates or “exchanges” generated at these two events. From those “exchanges,” this Foreword is structured as an ongoing conversation around the topics that, in my view, have emerged as the main themes treated throughout the eleven papers

2. The SNX has met annually since 2003 at the campus of the IAUPR School of Law in San Juan, Puerto Rico to focus critical attention on various substantive themes ranging from constitutional reform to the rights of indigenous people.

3. This concept is problematic because of the vast amount of academic contributions that have been made to LatCrit’s development over the years. Comprising this diverse and rich line of work into a definition is a difficult and probably an unattainable task. For that reason, I will cite the definition posted in LatCrit’s web site to avoid the task myself.

Emerging from the legal academy of the United States following a 1995 colloquium in Puerto Rico on Latina/o Communities and Critical Race Theory, “LatCrit theory” is a relatively recent genre of critical “outsider jurisprudence” — a category of contemporary scholarship including critical legal studies, feminist legal theory, critical race theory, critical race feminism, Asian American legal scholarship and queer theory. That cumulative record has served as LatCrits’ point of departure, and our basic twin goals since 1995 have been: (1) to develop a critical, activist and inter-disciplinary discourse on law and policy towards Latinas/os, and (2) to foster both the development of coalitional theory and practice as well as the accessibility of this knowledge to agents of social and legal transformation. LatCrit theorists aim to center Latinas/os’ multiple internal diversities and to situate Latinas/os in larger inter-group frameworks, both domestically and globally, to promote social justice awareness and activism.

See www.latcrit.org. For a full and detailed account on the development and origins of LatCrit Theory, see Francisco Valdés, *Legal Reform and Social Justice: An Introduction to LatCrit Theory, Praxis and Community*, The LatCrit Monograph Series, June 2003; Francisco Valdés, *Under Construction — LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087 (1997).

4. For a description of the themes and programs, see www.latcrit.org.

composing this symposium. These essays, as elaborated below, demonstrate the achievements of the SNX as an experiment on critical conversations and as an axis in LatCrit theory and praxis; these eleven papers also detail some of the substantive areas of law, policy, and social relations that affect South-North dynamics.⁵

The topics I selected⁶ as the main themes are: indigenous people, their rights and struggles, self-determination, nationalism, globalization, and, colonialist/neocolonialist/postcolonialist settings, advances for social justice. I will start by discussing the need for these encounters in relation to the dynamics of the binomial South-North and the localization of SNX in Puerto Rico, elaborating my own position in order to distinguish my perspective from the authors in this symposium. I will then turn to the topics mentioned above, and will compare each author's contribution to the South-North discussions, and determine the relationships between each contribution. I will also present a reflection on the lessons, and the remaining questions, embedded in these papers.

Conflictive Interactions: South-North Dynamics

Hector Meléndez⁷ affirms that the most important link between South America is its history of colonial domination. The countries that make-up the South American regional as known today, came to existence after the arrival of Europeans to the South American coast during the fifteenth century. I say this because during the period of time when European colonialism took place South America was permanently altered. Discussing these historical elements related to Latin America specifically, Francisco Valdés, in his essay *Spain Gazing: Postcolonial Aspirations, Neocolonial Systems and Postponed Reckonings — Queries from the Margins* (and one of the papers composing this symposium), describes Spain's legacies as follows:

Those legacies include the destruction of native civilizations and a record of wholesale genocide . . . Generally, and as in other regions recovering still from colonial rape, these legacies are encased today in highly stratified and polarized nation-states afflicted by

5. I thank Francisco Valdés for his comments regarding these areas impacting the South-North's influence.

6. These type of selections are always arbitrary, thus I apologize to the readers and the authors if the selection does not coincide with their perception of the essays, and I assume all responsibility for the subjective selection process of the above topics.

7. Héctor Meléndez, *Gramsci en la De Diego*, Ediciones La Sierra, Río Piedras (1995).

widespread poverty, white-male domination, political instability and social misery.⁸

Hence, the ways in which the south relates to the north is conflictive and very problematic. The divisions created by national borders are not as profound as those created by the borders of other frontiers like development-underdevelopment, power-subordination, and action/reaction.⁹

Even if we take as correct Melendez's argument, that what links South America is its history of colonial domination, the forms and results of the colonial phenomenon is not equal to the entire South and it has changed throughout the years.

Angel Rodríguez¹⁰ identifies three stages on the development of colonial relations in South America. The first stage, from 1500-1800, is characterized by the transfer of economic surplus of pre-industrial overseas locations to Europe. The second, from 1800-1950, is called the colonial period and is characterized by the political control of the territories in order to secure the transfer of economic surplus from the periphery to the core, in unequal terms of trade, which impoverished the countries on the periphery. The third stage, from 1950 to 1970, is the neocolonial period, that is characterized by "the transfer of economic surplus through local development and export-led industrialization strategies . . . in order to enter the international development of the capitalist world, peripheral countries needed the implementation of development strategies that were directed most of the time by the core countries."¹¹

Globalization and the internationalization of the economy are creating what might be a fourth stage, if we follow Rodríguez's description of colonized/colonialist development. The different relationships generated by these international phenomenons, which might be characterized by new forms of economic and social oppressions that succeeded neocolonialism still subject people to diverse forms of political, economic, and cultural domination, and form new colonial or postcolonial realities.

8. Further contributions of this essay will be discussed later.

9. See Martin Saavedra, *Miradas Desde el Sur: Introducción al Simposio LatCrit Sobre Derecho Internacional y Derecho Comparado*, Buenos Aires, Agosto 2003, 38 REV. JUR. UIPR 7 (2003).

10. Angel Rodríguez, *The Significance of Class in the Formation of the Puerto Rican State: Recovering the Subaltern Voices in the Constitutional Convention*, Doctoral Dissertation, 2002.

11. *Id.* at 5.

Thus, colonial, neocolonial, or postcolonial relations mark the interaction between South and North hemisphere. In that context, Puerto Rico appears as an ideal place to have these discussions. The history of Puerto Rico, as with other countries located in the Southern hemisphere, is being defined by the colonial relation they have with the United States. Further, Puerto Rico is not only one of the few colonies in the traditional, meaning the sixteenth century colonial relationship, but it also exhibits elements of all the colonial stages as discussed above.

While there have been various stages in the development of colonialism and the core-periphery relations, Puerto Rico has characteristics that are similar to those of neocolonialism and classical colonialism. After the approval of its constitution in 1952, Puerto Rico developed its own government with some levels of sovereignty. Yet, it is still subject to the decisions of the U.S. government.

The colonial situation of Puerto Rico defies traditional and simplistic explanations. Colonialism has not meant underdevelopment. Yet, it has pertained to poverty. Nevertheless, it is poverty typical of the industrialized countries that does not lack of capitalist development as is exemplified in other postcolonies or neocolonies. Puerto Rico has advanced forms of social and economic formations, while maintaining core-periphery relations that resemble the end of the nineteenth century.

I refer to this setting as the postcolonial setting, one in which traditional forms of colonial dominations still exists, but its complexities locates it in a different stage. In the words of Rubén Berríos Martínez, “we are in a postcolonial era, an era on nationalities and internationalization of the economy, [therefore] the era of the increasing power of the Puerto Rican people and other minorities in the decisional process of the United States.” (author’s translation).¹²

With this introduction I proceed to engage in a virtual conversation with the eleven authors of the essays included in this symposium. The papers are going to be introduced and discussed, unavoidably, through my subjective lenses and particular position, as described above.

Critical Conversations: Contributions from the SNX

The essays included in this symposium were presented at two South-North Exchange events. The first forum was held on December 2004, which was entitled *Reconstituting Constitutions and Cultures: Neoliberalism, Social Justice and the Rule of Law*; and the second was held on May 2005, *The Americas and their Indigenous People: Assessing*

12. Rubén Berríos, *Puerto Rico's Decolonization*, FOREIGN AFF. 100-14 (1997).

*the International Decade of the World's Indigenous People (1994-2004).*¹³ These topics are as varied as they are rich in content. Here, I will present the contributions of the authors of four subjects in particular: indigenous people, and their rights and struggles; self-determination and nationalism; globalization; colonialist, neocolonialist, or postcolonialist settings; and advances for social justice. The amplitude of their academic discussions in each essay can only be appreciated by a careful reading of each piece. Nevertheless, my purpose here is to include their most salient points, and to highlight some current academic interests and concerns, as reflected through these eleven essays.

Indigenous People, Rights and Struggles, Self-Determination Claims, and the Dangers of Nationalism

On December 21, 1993, the General Assembly of the United Nations passed its resolution 48/163, proclaiming the International Decade of the World's Indigenous People, to begin on December 10, 1994. The purpose of this legislation was to promote international recognition of the situation regarding indigenous communities around the world on topics such as human rights, cultural survival, environment, and development. The essays included in this section critically discuss the successes or failures of this initiative. The essays also interject on the historical foundations of indigenous marginality and invisibility, as well as claims for betterment.

Ronald Niezen's piece, *The Indigenous Claim for Recognition in the International Public Sphere*, discusses the reactions to the results of the International Decade of the World's Indigenous People. He starts his essay by stating his position on the situation of marginalized groups in its relationship with the nation-states in which they exist. Niezen believes that this relationship is problematic as the states recognize marginalized groups but reject these groups sharing political power, which he presents as a contradictory result since recognition without autonomy is an incomplete agenda.

Although his premise, as stated above, offers a severe critique to the way in which nation-states have dealt with those ignored groups, he presents a counter-positive angle to the evaluations on the results of the decade of those people excluded. Niezen presents the reactions to the decade from indigenous representatives, as being embedded in a discourse of skepticism, disappointment, disillusionment, and frustration. He counters the negative evaluation of the decade by pointing out important changes gained by indigenous people during this time. The differences are

13. For a complete description of both events and programs, see www.latcrit.org.

many and of much importance, for instance, recognition in almost every institution of global governance, the creation of the concept of “indigenous” as a collective rubric, and the introduction of a new “speech genre” to the discourse of human rights. Indigenous people have become collective subjects, legitimate beneficiaries of distinct rights and distinct forms of political mediation, and have redefined themselves as nations.

The latter point is important to further the critical discussions of our concerns as South hemisphere and to the formulation of policies of social justice for activists and critical members of the political and academic arena concerning the North global region as well. Niezen elevates a critique to indigenous movements and questions the claims for self-determination within that context, and points to the dangers of ethnic groups mobilizations and nationhood. His questions are “what does indigenous self-determination mean?,” and “are the peoples that constitute the indigenous peoples movement somehow immune from the pathologies of rediscovered nationhood?” are answered in his conclusion. Furthermore, Niezen’s statement that “no group of people that has been racially categorized and humiliated, excluded, impoverished, and then — most ominously — only partially liberated is entirely immune from outward displays of grievance, self-directed cultural romanticism, and political desperation, the primary ingredients of exclusivist hatreds” is of special importance to movements on the South.

Claims for self-determination have to be carefully discussed and scrutinized in relation to the future of marginalized people, of all sorts. Niezen appears to question, as I do as well, the self-determination movement in Puerto Rico. What does it mean for Puerto Ricans to be granted the right to self-determination? Are we, or do we want to be, a nation or an ethnic group with national characteristics as indigenous peoples are portraying themselves? Even more important, does it make sense in the context of globalization and international human rights? Can we (meaning all marginalized people) talk about cultural or political self-determination without entering into nationalist or nationhood, antagonistic discussions?

Ángel R. Quendo, in his *Indigenous Self-Determination in Latin America*, examines the history of indigenous peoples in the Americas. Here, he illustrates how, since the beginning of colonization, Ibero-American law strove to protect indigenous communities, although the gap between legal norm and reality became obvious as the empire’s officers destroyed everything they encountered. The hopes, brought by independence wars in South America and its promises of individual political participation, dissipated since there was no collective recognition or social justice demands granted.

The renewed claim of rights for indigenous people that has come with internal movements and the human rights movement, presents, in his opinion, two main challenges. The first obstacle is that the new formulas would have to include not only equality, but also difference. Second, it would have to address and resolve the gap between legal formal norms and legal practice.

In contrast to Niezen's contentions regarding the dangers of nationalism, Oquendo offers an alternative model to avoid degenerating liberation movements into nationalistic oppressions. He calls, in his own words, for a "progressive nationalism," a concept he describes as a model that:

the ultimate aim would be to place the national culture in a position of equality and not hegemony *vis-à-vis* other cultures. Moreover, the interpretation of the national culture would be inclusive, rather than exclusionary. Finally, the cultural autonomy of individuals would carry considerable weight.

As interesting as it sounds, the concept of a "progressive nationalism" raises many queries. Is it paradigmatically compatible to talk about a national culture that is inclusive? To solve this problem we would have to redefine the concept "nation" to not be exclusionary, which raises another query, as to how such a concept can be harmonized with definitions of the members of the nation, who are part of that nation, and who are not? If it is not exclusionary, does that mean it could include anyone? If it can include anyone without restrictions, then an adequate definition of a nation comes into question? Again, is it possible, or even desirable, to have nations at this point and age?

From a different angle, Daniel Bonilla's and Claudia Lozano's essays offer a study of the development of indigenous rights and movements, specifically in Colombia and Argentina. Both essays represent an important contribution to the study of this topic, from particularized national experiences that serve as platforms from which we can learn greatly.

In his essay, *The Principle of Political Unity and Cultural Minorities' Self-Government*, Daniel Bonilla builds upon the experience of indigenous groups in Colombia, and the debates generated thereafter. In his contribution, Bonilla analyzes the constitutional conflict between the notion of Colombia as a unitary state and the right to self-government granted to indigenous communities in the 1991 Colombian Constitution. This case thus brings to light insightful facts, which serve to guide us to a better understanding of the questions already posed.

First, Bonilla explains the conflict. The Colombian Constitution recognizes aboriginal groups' rights to exercise jurisdictional powers within their territory, and it also observes aboriginal lands as territorial entities and as collective property, and other rights. On the other side of the equation, the same Constitution also establishes Colombia as a political unity, with only one legal system and only one centralized and hierarchical political structure. The problems, therefore, arise when the two textual sets of provisions and underlying values enter into a conflict; or when, in a conflict, the state, in this case through the courts, must decide what value to protect: aboriginal groups' property rights or the interests of all Colombian people within the concept of a unitary nation-state. Of course, as experienced teaches and this example illustrates, these kinds of conflicts are bound to arise around issues of economic transformation, exploitation of natural resources, criminal activities within aboriginal property and infrastructure for economic growth.

Bonilla then analyzes various cases on this topic decided by the Constitutional Court of Colombia. According to the author, these cases, discussed in detail in the essay, demonstrate a zig-zagging pattern in a court's understanding of the issue. For example, the court goes from defending indigenous interests, by stressing individual rights but not collective self-government (Cristanía case), and then moves on to recognizing collective self-government rights, but, in the end, protecting the principle of political unity (Military Base case), to finally favoring Indian groups' political autonomy over the political unity principle.

This essay offers important elements to the discussion of "self-determination" for indigenous communities inside already established nation-states, and the possible adjustments entailed by those arrangements. The complexities of possible old formulas of autonomy versus interests of economic development and even democracies are at the forefront of this debate. Thus, for example, would Oquendo's proposal of a "progressive nationalism" be an alternative to these problems, as recounted by Bonilla? Or is it unfeasible to design models of national or nationalistic, self-government in a growing, competing globalized economy?

Amplifying this exchange, Claudia Lozano in her essay, *Indigenous People, Rights, and the State in Argentina*, explores how the indigenous peoples' issue has developed within anthropological debates. She exposes how the growing interest in the relationship between these communities, and the state, have provoked important discussions, like redefinitions of the concepts "the people," "the individual," and the "community"; awareness of violence, poverty and social exclusion experienced by these groups; engendered sensitivities; and critiques to the expansion of western

values, which has turned to investigations on how elites have contributed to the reproduction of social inequalities, and the like.

One of the most interesting aspects of this essay is its study of the advancement of indigenous rights in Argentina. Lozano begins by examining the implantation of individual notions of rights, and abstract conceptualizations of citizenship. Lozano then relates the expansion of the capitalist market economy to the sometimes conflicting reactions to indigenous claims for autonomy or equality. For example, any demand from these groups is either taken as a menace to social order, or as an opportunity to incorporate the claims as individualistic demands, obscuring along the way key differences and eroding the related sense of community.

Thus, the problematic handling of the indigenous peoples' issue in Argentina led this movement to depend on transnational processes and international support, according to Lozano. As is the case in other countries, and discussed in some of the other essays included in this symposium, the international human rights movement has served as a strategic platform for support and discourse improvement. This, in turn, brings yet another contradictory phenomenon in which, too often, perhaps, self-determination and autonomy claims are paradoxically made effectively dependent on international fora and interventions.

Globalization Contradictions: Toward New Forms of Citizenship?

In his essay, *Globalizations, Nationalism and Human Rights*, Paul H. Brietzke critically approaches "sub-legal systems" that are at work currently, but are theoretically and paradigmatically opposed to each other. In brief, Brietzke discusses globalization as a process of internationalization of economies, which produces social and personal fragmentation, and sets agendas for poor nations. Globalization in his view, weakens state structures as the urgencies of entering into the international capitalist market compels poor nations to go into subordinated transactions and makes them subjected to the demands of the World Bank (WB) and the International Monetary Fund (IMF). For example, the massive deregulation and privatization required by the WB and IMF negates state sovereignty, some nationalist demands, and democratization of new laws and policies are typically approved by finance ministers or central bank governors and, at best, are rubber-stamped by parliaments. Consequently, these requirements suppress the possibility that southern economies will develop differently from those in the north.

Human rights activists, says Brietzke, use international instruments to apply in their localities, and to help in their local antisubordination

struggles. However, these calls for international support are also calls for international, foreign intervention on local politics. Strategically, then, these external resources are being sought out by cultural minorities and marginalized groups in different nations. But Brietzke's argument is that human rights declarations and international instruments in fact, require detraction from discourses of national sovereignty.

Paradoxically, again, most nationalist movements are predicated upon the international right of self-determination — a contradiction that, as mentioned above, Lozano also discusses. This paradox produces not only theoretical problems for the conceptualization of local or global frontiers, but also generates possible internal contradictions. Brietzke, therefore, warns about the dangers of national claims, his argument is contrary to Niezen's and Oquendo's¹⁴ perspectives, by making a more pessimistic argument concerning the possibilities of avoiding the risks of nationalist struggles. For instance Brietzke states, "in practice, some nationalist movements and/or their governmental opponents are so violent and intolerant that the pursuit of self-determination becomes a net destroyer of human rights."

Brietzke presents a proposal to avoid these outcomes, which deserves careful consideration and theoretical engagement and development. Thus, here I contribute to this pending follow-up effort by highlighting the proposal's three main points, and by pointing to some of the possible theoretical implications that probably (and hopefully) will prove useful in our ongoing discussion of the issues and queries raised in this paper and symposium. The proposal has three levels: formal constitutionalization of international relations; global democratization; and, the creation of an international system of checks and balances. At bottom, this proposal therefore imagines a new way of conceptualizing, not only the means of controlling and repressing social movements,¹⁵ but also of new forms of citizenship across national borders. This same aim, and some similar theoretical issues, are found in the next essay.

José Miguel Flores, in *Globalization and Urban Opportunities in the Immigrant Cityscape*, advances the discussion about new concepts of citizenship. This essay explains how the development of the city, as a center for globalized economic intersections, has also created an interesting space for immigrant dialogue, as immigrant enclaves take control of urban metropolitan spaces to which they have been displaced,

14. Both essays were discussed before.

15. This aspect deserves to be discussed in more detail, it has possible scary consequences which demand debate; but I choose to relegate this discussion to a more appropriate forum or moment.

or have been cabined. This process, which Flores calls “globalization from below,” encompasses the concentration of immigrants workers in (severely underpaid) service sector jobs, but also includes the resistance of these groups to their cultural domination and subordination. Flores explains that immigrants, dislocated from their home countries, recreate the “types of places they left behind,” both physically and culturally, and in this way they immediately and concentrically influence American life.

More specifically, through his tale of two urban neighborhoods, Flores describes how immigrant populations become operationally restricted to specific geographical areas, and how these communities create alternative economies as well as alternative social interactions that re-construct urban spaces around them. Here, he then makes a very significant contribution to our conversation by arguing that globalization creates new forms of participation and representation with no requirement of citizenship.

Are these new forms of globalized citizenship — cultural resistance, social struggle, and political participation — without national limits, to which we all should be moving? Does it offer an alternative political standpoint from which to evade essentialist and exclusionary visions of identity and belonging? Are these alternatives viable as antisubordination praxis?

Colonial/Neocolonial/Postcolonial Settings: Critical Approaches and Advances for Social Justice

I suggested above, that one of the most important elements linking countries in the South to each other is our shared histories of colonial domination. I also suggested that colonial relations had suffered important transformations over the years in relation to international economic trends. Globalization, discussed above in the last section, helps to generate new forms of social relations, as well as new forms of colonial domination — what has been called, perhaps prematurely, as “post” colonial relations.

Generally, it seems clear that postcolonial relations are not only about domination, subordination, and exploitation from one side and submission from the other. It includes also resistance in many forms. Postcolonial subjects become subaltern subjects,¹⁶ and they resist in different (and sometimes contradictory) ways the colonial, neocolonial, or postcolonial situation they inherit. In that process, subalterns resist sometimes by adopting the agenda of the Powerful, and sometimes they or we resist by

16. See GAYATARY C. SPIVAK, “CAN THE SUBALTERN SPEAK?” *MARXISM AND THE INTERPRETATION OF CULTURE* (Cary Nelson & Lawrence Grossberg eds., Urbana: U of Illinois Press 1988).

attacking the Powerful's agenda. Sometimes they or we, resist collectively, and sometimes they or we resist individually. These contradictions are there, because postcolonial relations are contradictory.

It is no surprise, then, that the essays included in this section demonstrate the complexities of actions and reactions from the South, regarding the histories and realities of colonization — actions intended to make social justice advancements, and reactions reflecting conflictive identities that remain still subordinated to colonialist power arrangements and their legacies.

These essays, however, also present interesting challenges to academics in the North. As these essays illustrate, legal professionals and public policymakers in the South are taking steps towards democratization of their, or our, political and legal processes. Some of these steps, as the essays also illustrate, are common to a basic, liberal framework — debates about judicial review and constitutional reform via judicial transformation, or debates about the role, or neutrality, of the courts or judges — which, of course, already have been tested, evaluated and criticized in the North. At this juncture, therefore, do (or should) critical conversations or exchanges of this sort include the importation of North-style critiques of, say, the Rule of Law, to the current situation in the South? Do we, meaning those of the South, need to develop our own “independent” understandings of these processes or “learn” from the experiences and work of critical theorists from the North? Do these “learning” processes place us once again in a subordinated position? Or can they represent a new hemispheric occasion for alliance in antisubordination theory and praxis?

In this vein, Conrado Hübner Mendes discusses the impact of economic reforms, or neoliberalism, in the processes of constitutional reforms in Brazil. He first articulates the question that directed his research, which he asks what is the relationship between law and economic forces? Specifically, he discusses the effects of neoliberal imperatives on the legal order of Brazil, and questions whether the Constitution of that state can serve as a place to make reforms compatible to economic forces or, on the contrary, if the Constitution can become a check or restraint on those forces to help protect human rights?

After twenty one years of military rule, the democratization process in Brazil, Hübner explains, had, as a final step, the approval of the current Constitution in 1988. Constitutional efforts were strongly focused on bringing social change through vigorous state intervention. The constitutionalists included a textual restraint on constitutional reform, through “*las clausulas pétreas*,” which secured individual rights. Thus, Hübner's main concern seems to be the role of the Supreme Court in the

process of constitutional reforms through what he calls “the judicialization of politics.” Or, in other words, to what extent, if any, are judges better suited to make constitutional decisions than policy makers?

Of course, the problem of judicial review has been discussed exhaustively in the North-based legal and political academy of the United States.¹⁷ In fact, Hübner analyzes the problem by presenting the debate between Ronald Dworkin and Jeremy Waldron. In that discussion, he warns about the problems of judicial activism and questions whether the South can import academic debates:

It is important for democracy that progressive decisions are made, but the question of who gets to make them is no less important. It may be hard to defend this kind of argument looking at Latin American reality, especially in a context in which the courts have played such an active role in the preservation of rights. But the enthusiasm with it cannot eliminate the need of carrying on the task of designing more democratic arrangements for collective decision making. Judicialization is not the only answer for the crisis of representative democracy.

The answer for Hübner lies in the strengthening of formal aspects of procedural democracy. Nevertheless, the questions he focuses on still remain. Are there spaces in these debates to include Latin American, and more amply, the South’s experiences? Could critical theorists and policy makers reach different conclusions on old debates, if the analysis is centered on the history, experiences, or needs of the South?

Anashri Pillay’s essay, *Assessing Justice in South Africa*, puts forward interesting elements that illuminate this discussion. In this essay, Pillay evaluates the successes and failures of the new constitutional order in South Africa. This work permits us to analyze otherwise old legal instruments of liberal democracies in a completely new and different setting — specifically, in a society marked by omnipresent formal racism and discrimination, and with the honest national intention of creating a social, or legal, order beneficial for all.

Pillay explains that since the implantation of the new constitution (ten years ago), there have been considerable changes in matters such as legal,

17. See, e.g., LAURENCE TRIBE, *CONSTITUTIONAL CHOICES*, ch. 1, *The Futile Search for Legitimacy* (1985); LOUIS LUSKY, *BY WHAT RIGHT?*, ch. II, *Why Judicial Review?* (1975); PAUL BREST & SANFORD LEVINSON, *PROCESSES OF CONSTITUTIONAL DECISIONMAKING*, ch. 11, *Judicial Review in a Democratic Polity* (1992).

political, and economic reforms. These changes, she argues, have been accompanied by growing concerns about the issue of access to justice. Despite many attempts to solve this issue, Pillay identifies two major obstacles. First, the court system's adversarial structure, results in an exclusion of marginalized groups in South Africa. Second, a Western bias in the conceptualization of rights and adjudication focuses on the individual rather than collective groups.

To help remedy this status quo, Pillay proposes alternative models of justice, which admittedly have not been widely discussed, partly because South Africa's legal culture is still firmly rooted in the colonial past of bureaucratic, incomprehensive, expensive, and complicated procedures. Thus, Pillay locates the underlying problem in the gap between the formal and the actual procedures: formal changes in the formal law have not been accompanied by cultural changes in the notions of judicial roles and the questionable neutrality of legal processes.

Interestingly, the long-held critique of neutrality and impartiality of the judicial action, again under exhaustive discussion in the North at least since the legal realist movement of the 1930s in the United States,¹⁸ does not encounter fertile grounds in South Africa, according to Pillay. Instead, Pillay explains, opponents to this debate argue that South Africa faces more serious and pressing problems than that of judicial roles. Pillay is right when emphasizing that the definition of the judicial role is an important aspect of securing access to justice, which therefore should not be relegated to later. Yet, the counter-argument, as she recounts it, does raise an important issue. Are there ever specific, concrete, social realities that must take precedence over discussions that might appear as "merely" theoretical? And, again, can (or may) we reach different conclusions in various historical and social settings?

Imer B. Flores, in *Reconstituting Constitutions — Institutions and Culture: The Mexican Constitution and NAFTA: Human Rights vis-à-vis Commerce*, presents a possible answer to these queries. In this essay, Flores evaluates the institutional transformations in Mexico, in the last thirty-five years, via constitutional reforms, and the effects of those reforms on political issues, such as human rights and separation of powers.¹⁹ Flores also discusses the issue of the role of courts in the protection of constitutional and human rights, and stresses the importance

18. See Valdés, *supra* note 3; Karl Llewellyn, *A Realistic Jurisprudence — The Next Step*, 30 COLUM. L. REV. 43 (1930).

19. Flores's essay also includes a very insightful discussion on the role of treaties in political internal processes and proposes a new legal hierarchy in order to accommodate possible conflicts between the Constitution and a treaty, or between two treaties.

of judicial activism in the protection of individual rights in a clear contrast to what is proposed by Hübner.

A key point that emerges from this engagement, and which may be a crucial contribution of this essay, is Flores's contention regarding the importance of culture in legal reforms. To the questions raised before — the space of historical experiences in old academic debates, can the South import academic critiques to the rule of law, models of democracy, agendas, etc. — Flores states:

I guess both cases explain why legal transplants, i.e. either by transplanting one part or the whole institutional arrangement into a different cultural establishment, have rarely been entirely successful. In fact, those that have been more or less useful are the result of a complex process of adoption-adaptation in which culture is taken seriously.

Thus, Flores himself indicates that the answers might be as complicated as the questions; as noted earlier, reactions from the subalterns are complicated, and sometimes contradictory, because so-called postcolonial relations are complicated, and sometimes contradictory.

Francisco Valdés' *Spain Gazing: Postcolonial Aspirations, Neocolonial Systems and Postponed Reckonings — Queries from the Margins*, drives upon these sorts of contradictions by reflecting on the recent involvement of Spain in several progressive agendas, as exemplified by its pivotal interventions in *Pinochet*. He uses this case to critically examine the relationship of Spain with Latin America, and analyze the remains of Spain's imperialism. In particular, Valdés questions the use of "Hispanismo" as a link to bond multiply diverse Latinas or Latinos.²⁰

Hispanismo is presented by Valdés as a problematic identity foundation. On the first hand, hispanismo builds on colonial legacies of genocide and brutal exploitation, which generates discourses of identity that essentializes Latinas, or Latinos, and obscures the realities of indigenous populations. Furthermore, the concept is perceived problematic by Valdés in three fundamental ways: it has a machista component which subordinates Latinas of all sexual orientations — lesbians, bisexuals and gay men, as well as transgendered, or bigendered, people; it entails a heteropatriarchal ideology that is oppressive specifically both to women and sexual minorities; and finally, its eurocentric and white-identified components are especially damaging to indigenous peoples and all non-

20. The complexities of the term "Latina/o" and its meaning are discussed in Valdés's essay.

white (or non-Spanish-identified) Latinas, or Latinos. According to Valdés, what is at stake here is intra-Latina, or intra-Latino, diversities — and, in particular, whether colonial identity hierarchies from the past and present that occlude specifically Latinas, indigenous peoples, non-Spanish Latinas, or Latinos, and all Queers will be projected into the shared future that Spain labors to construct for us all via its campaign for Hispanismo.

Valdés calls for a collective critical questioning of Spain's recent progressive agenda, and of Hispanismo more generally, as contradictory and dangerous identity linkages between Latinas, or Latinos. Rather than resort to a knee-jerk rejection of Spain or Spanish-identified elements of Latina, or Latino, realities, Valdés asserts that “the challenge here is to re-imagine, reconfigure and redeploy an entrenched structure of subordination — in this instance, the ideology of uncritical Hispanismo — in order to transform it into an efficient platform for critical social justice coalitions grounded expressly in anti-subordination principles, purposes and projects.”

The SNX is an effort of that sort. As I already noted, the South-North Exchange has offered a welcomed safe space to conduct these critical collective questionings. By enabling, and promoting, new critical conversations, the SNX already has helped to develop key links of anti-subordination praxis between the South and North, and connections with more far-reaching possibilities than those of essentialized and essentializing Hispanismo.

Concluding Thoughts: Building Bridges Through LatCritical Conversations

There are many questions raised by the discussions collected in this symposium. Many inquiries are left unanswered. However, the fact that there are unresolved issues should not be of concern; it is an important success even to have raised these questions effectively. It is not only by supplying answers that we learn, but also by asking the right questions.

Critical conversations between the South and North could give us the grounds to develop these and similar insightful questions. The conjuncture of honest dialogues between unequal parties could produce a very rich and fertile location for the development of new theoretical formulations, with practical implications to our common interests as anti-subordination academics. Indeed, it is precisely this aim that animates the SNX project, and this symposium as a whole.

Thus, Greg M. Nielsen, in his essay *For and Against John Rawls: Reflections on South-North Citizenship*, proffers an insight that serves as a perfect parameter for our critical conversations: “An exchange between unequals is not only possible but also potentially creative.” Nielsen

proposes a model of two-sided answerability, which he calls dialogic pluralism, which is as an instrument to drive conversations between South and North.

This model is one that accounts for both consensus and conflict, a process “in which a citizen anticipates a general or objective response to an idea as well as a uniquely subjective rejoinder to an act or event.” It is a model that includes the possibility of putting into question meta-theoretical doctrines, even if they are pillars of critical approaches to law and social reality, because even those should and will be answerable. It is also a model that requires “transcultural understandings for the political that accommodate the creative dimension or eventness, which occurs when dominant, and subaltern lifeworlds crossover.”

Critical conversations that happen within a dialogic pluralistic framework, as proposed by Nielsen, I envision, would not be without conflict, or without emotion. These exchanges must allow honest interactions, with inclusion of differences and experiences, which are not necessarily compatible. These exchanges between unequals will probably not be easy; but at least honest, hopefully creative, and always respectful of cultural diversities.