

1999

# Causes of Inequality in the International Economic Order: Critical Race Theory and Postcolonial Development

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## Recommended Citation

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# Causes of Inequality in the International Economic Order: Critical Race Theory and Postcolonial Development\*

*Chantal Thomas\*\**

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\* This essay and the papers by Professor Tayyab Mahmud and Professor Amy Chua that follow were originally delivered in November 1997 at the Critical Race Theory Conference at Yale Law School.

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This essay applies two methods used in critical race theory (CRT)<sup>1</sup> to international economic law and policy as it affects postcolonial economic development. These applications show that critical race theorists and critical postcolonial development scholars have areas have critiqued classical liberal ideology as a foundation for legal justice on the grounds that the formal legal equality suggested by classical liberalism entrenches structural inequalities between dominant and subordinate groups. Critical race theorists have also argued that racism serves as an ideological reinforcement for the injustice perpetuated by the liberal legal regime; this critique may suggest a new, parallel critical direction for postcolonial development theory. Part I of the essay considers CRT methodology in relation to postcolonial development theory. Part II recognizes and raises for discussion the problems with the exercise.

## I. APPLYING CRT TO NORTHERN POSTCOLONIAL HEGEMONY

Critical race theorists have argued that law, shaped by classical liberalism, perpetuates racial hegemony by failing to address entrenched dynamics of material inequality. Classical liberalism envisions an ideal society in which a constitutionally restrained government enforces minimal but fundamental rules—primarily, individual civil and political rights—that secure conditions in which citizens experience relatively little constraint in determining their lives. In this ideal society, the “rule of law” ensures security in individual rights on the one hand, and personal liberty unfettered by government interference on the other. Necessary to this legal structure is a rigid formal equality of citizenship, undifferentiated by group status. This formal equality prevents the corrupt extension of privileges to elites and the tyranny over minorities by the majority. It also, however, prevents legitimately differential treatment of groups to correct historical wrongs perpetrated upon them *qua* groups. Thus, the formal equality necessitated by the classical liberal understanding of the rule of law, though intended to secure justice, can perpetuate injustice by ignoring structural inequality in material conditions across groups. Neil Gotanda has criticized the manifestation of this ideology in “color-blind” constitutional theory, which interprets the U.S. Constitution to prohibit state preferences for racial minority groups in, among other things, procurement contracts and broadcast licensing. Gotanda protests: “A color-blind interpretation of the Constitution legitimates, and thereby maintains, the social, economic, and political advantages that whites hold over other Americans.”<sup>2</sup>

In addition to identifying how legal formalism supported by liberal ideology perpetuates material inequality, critical race theorists have shown how this inequality is justified by “illiberal” ideology. By contrast to liberalism’s formal

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1. See generally CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al. eds., 1995); CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado ed., 1995).

2. Neil Gotanda, *A Critique of “Our Constitution is Color-Blind,”* 44 STAN. L. REV. 1, 2-3 (1991).

refusal to countenance group status, an “illiberal” ideology supposes a normative hierarchy of groups. White supremacy, according to which whites assume a natural and rightful position of dominance over other racial groups, is such an ideology. CRT identifies how racism, notwithstanding its formal illegitimacy, provides “a series of rationalizations that suppress the contradiction”<sup>3</sup> between the implied outcomes of liberal legal ideology and the subordinate reality of racial minority groups. Kimberlé Crenshaw has argued that racism helps to perpetuate racial inequality within a formally legal regime by making it easy to conclude that since “equal opportunity is the rule, . . . if Blacks are on the bottom, it must reflect their relative inferiority.”<sup>4</sup>

Similar to the way in which the racial organization of American society pre-dates and survives the receipt by American non-whites of legal status formally equal to that of whites, Northern hegemony originated in the colonial organization of the international economy and survives and pre-dates the entry of Southern states into the international economy as formally equal to Northern states. In the “postcolonial development” context, I want to address colonialism as the organizing characteristic of North-South hegemony operative both (i) in material patterns of economic (and political) activity that reinforce Northern economic dominance and (ii) as discourse or ideology that justifies Northern economic dominance. I noted that CRT identifies material inequality, liberal ideology, and illiberal ideology as components of a racial hegemony that is perpetuated by the American legal regime. Transposing this critique, I describe below the components of Northern hegemony that are privileged by the international economic legal regime and address how both liberal and colonial ideology preserve these components in the international economic order.

### *A. Critique of Material Inequality of Northern Hegemony in the Liberal Postcolonial International Economic Order*

CRT shows how the American legal system, shaped by liberalism, ensures formal equality but perpetuates structural inequality in the material conditions of racial groups. Applying this approach to postcolonial development produces the argument that the legal rules of the international economic order, though informed by liberal ideals of egalitarianism, perpetuate Northern economic

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3. Kimberlé Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1369 (1988). This style of critique self-consciously modifies (and partially rejects) Critical Legal Studies methodology in the following ways: (1) it changes the methodological question from how law perpetuates the status quo generally to how law perpetuates racial domination in particular; (2) it identifies racism as a central “pillar” of “hegemonic rule” rather than one of many possible “contingencies”; and (3) it asserts that the perpetuation of racism rests not only on the operation of liberal legal ideology to disguise doctrinal inconsistencies, but also on acceptance by the dominant class (whites) of both “legitimate” ideology (i.e. liberalism) and “illegitimate” ideology (i.e. white supremacy) to justify the visibly different status, and implied coercion, of the subordinate class.

4. See Crenshaw, *supra* note 3, at 1380.

hegemony by failing to address the entrenched economic inequality of the South resulting from the colonial era. As a result, Northern actors continue to dominate economic activity both within the economies of developing countries (DCs) and in the “international market.” That is, the liberal postcolonial international economic order perpetuates the material components of Northern economic hegemony by failing to correct them.

This conclusion reproduces the insight of the “structuralist,” “dependency,” or “neo-Marxist” theories produced by early postcolonial development scholars, such as Andre Gunder Frank, Raúl Prebisch and Samir Amin.<sup>5</sup> The material causes of Northern economic domination were a primary focus of these writers. According to their analyses, colonialism organized economic relations between the colonizing states (the North) and colonized societies (the South) by transforming the Southern economies into satellites of the Northern economies. This led to a large-scale transfer of resources from the South to the North. Under this view, the colonial international economy not only failed to develop the South, but also actually “underdeveloped” it by extracting indigenous resources and by transforming the South from a self-reliant (albeit subsistence) economy to one dependent on both imports from and exports to Northern markets. Political independence, postcolonial critics pointed out, did little to alter this organization and, therefore, perpetuated economic relations characterized by the “neocolonial” dominance of Northern economic actors.<sup>6</sup>

This critique formed the ideological basis for the explicit challenges—collectively identified as the New International Economic Order (NIEO) movement—by developing-country governments to the hegemony of liberal policy in international economic law. In international trade law, for example, the General Agreement on Tariffs and Trade (GATT) received several intensive applications of the structuralist, or dependency, critique. Critics showed that “free trade”—depriving DC governments of the right to favor domestic producers over foreign producers in their domestic markets and denying DC producers preferential treatment in foreign markets—hindered industrialization in developing countries. Free trade prevented DC producers from breaking into industrial sectors and consigned them to the production of raw materials and to dependency on imports established as a result of colonialism. In the area of foreign investment, international legal rules perpetuated economic dominance of Northern actors by prohibiting (actually or effectively through strict compensation requirements) the nationalization of foreign-owned property that had been acquired in developing countries during colonialism.

A related conclusion of the critique is that liberal ideology suppressed the apparent inability of liberal legal regimes to correct Southern underdevelopment

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5. See, e.g., SAMIR AMIN, NEO-COLONIALISM IN WEST AFRICA (Francis McDonagh, trans., Penguin Books 1974) (1973); ANDRE GUNDER FRANK, THE DEVELOPMENT OF UNDERDEVELOPMENT (1966); RAÚL PREBISCH, TOWARDS A NEW TRADE POLICY FOR DEVELOPMENT (1964).

6. See FRANK, *supra* note 5, at 4; PREBISCH, *supra* note 5, at 29; see also WALTER RODNEY, HOW EUROPE UNDERDEVELOPED AFRICA (1981).

by attributing underdevelopment to the failures of Southern governments to comply fully with liberal international legal rules relating to foreign trade, investment, and finance.<sup>7</sup> Thus, the severe debt crises experienced by many Latin American and Sub-Saharan African countries during the 1980s were attributed to statist and “discriminatory” economic policies and practices by the debtor governments, rather than to either Northern economic dominance or liberal international economic law. The latter two factors, however, arguably helped cause the debt crisis by facilitating, among other things, the concentration of DC export production in volatile and recession-prone commodities; chronically low savings and investment rates resulting from perpetual capital flight and the repatriation of profits by foreign-owned corporations; and undisciplined and ill-supervised lending practices of international banks.

Thus, the critique of formal equality and structural material inequality are common to CRT and critical theory in postcolonial development. This commonality can be attributed to the concern in each field with the substantive inequality of particular constituent groups within the given legal regime who were historically positioned as formally subordinate but have more recently been granted formal equality—that is, the discrepancy between form and substance in liberal regimes.

### *B. Critique of Ideological Components of Northern Hegemony in the Liberal Postcolonial International Economic Order*

CRT originated explicitly to address the perpetuation of racial subordination in the United States after the end of formal segregation, and so expressly focuses on ways in which “legitimate” ideology (liberalism) interacts with “illegitimate” ideology (white supremacy) to rationalize the visible failure of the legal regime to assure racial minorities access to social equality. Applied to the postcolonial framework, this analysis helps to draw attention to the ways in which colonial ideology interacts with and supports liberal ideology in the international economic order. CRT argues that structural inequality is in part rationalized by racist ideology. Applying this second CRT method to postcolonial development produces the argument that the international economic order perpetuates Northern hegemony not only by virtue of its liberal rules and ideology, but also by virtue of a submerged illegal ideology that rationalizes the contradictions between the implied outcomes of a liberalized international economy and the economic realities facing developing countries. This “colonial” ideology consists of a set of attitudes towards the South that ties race and geography to cultural, political and economic traits deemed inferior to those of the North. In this way, the liberal postcolonial international economic order and the unequal relations

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7. See, e.g., WORLD BANK, WORLD DEVELOPMENT REPORT 1989, at 6-15; Michael Driscoll, *The Developing-Country Debt Crisis: Comments on the Role of 'Northern' Macroeconomic Policy Coordination*, in THE INTERNATIONAL FINANCIAL REGIME 329 (Graham Bird ed., 1990).

it creates are affirmed and perpetuated by a colonialist ideology that views the North as rightly and naturally dominant over the South.

Criticism of "colonial discourse" has been thoroughly developed by postcolonial writers in other fields, such as literary and cultural studies. A wave of post-structuralists, beginning with Edward Said, generated an analysis of the ideological components of Northern hegemony by tracing the development of the discursive categories of the "colonizer" and the "colonized," or "Other." If "colonialism" is defined as the combined will to geographical, cultural, racial and economic hegemony of the North over the South, a crude sketch of the categories which colonial discourse deploys to legitimate Northern hegemony might juxtapose the following:<sup>8</sup>

	<i>North</i>	<i>South</i>
<i>Geographical</i>	here/center	there/periphery
<i>Cultural</i>	civilized modern scientific rational industrious/ambitious "rule of law"	barbaric traditional mystical irrational lazy/dishonest lawless
<i>Racial</i>	white	non-white
<i>Economic</i>	capitalist efficient growing	pre-capitalist inefficient stagnating

Existing postcolonial critiques of international economic law and policy show how a facially liberal regime entrenches material inequality between North and South. A cultural critique in the post-structuralist vein would argue that colonialist ideology operates as an additional force which entrenches this material inequality by providing an explanation for Southern poverty that diverts attention away from defects in the international order. Such analysis may add depth to existing postcolonial critique of international economic law and policy.

This approach need not claim that colonialist cultural discourse infuses every text on international economic development. Explicit examples of such texts, however, appear to be plentiful, dating from the earliest Northern attempts to explain the sociological causes of industrialization. Texts such as Max Weber's *The Protestant Ethic and Spirit of Capitalism*<sup>9</sup> do much to

8. Cf. Crenshaw, *supra* note 3, at 1373 (representing "Historical Oppositional Dualities" systematically created and maintained by racist ideology, viewing blacks in terms subordinate to and in opposition to whites).

9. MAX WEBER, *THE PROTESTANT ETHIC AND SPIRIT OF CAPITALISM* (Talcott Parsons trans., Roxbury Publishers, 2d ed. 1998) (1905).

elucidate the discursive categories that have slowly become submerged and subtextual. In that text and others, Weber developed a famous series of typologies allocating, among others, the characteristics of “formality” and “rationality” to Northern culture and the characteristics of “informality” and “irrationality” to Southern cultures. These inherent differences, Weber argued, explained the rise of capitalism in the North and its absence in the South.<sup>10</sup>

After decolonization, these discursive categories were embraced by some of the Northern academics and professionals who helped design the postwar liberal international economic order and its stance toward developing countries. As bureaucrats in or consultants to international organizations and Northern (and Southern) governments, these individuals straightforwardly viewed Third World “culture” as an obstacle to economic development. Works such as *The Achievement Motive*<sup>11</sup> and *The Achieving Society*<sup>12</sup> by David McClelland, and *The Social System*<sup>13</sup> by Talcott Parsons reproduced and extended Weber’s theses and significantly influenced both academic work and bureaucratic policy on development. Bert Hoselitz, founder of the journal *Economic Development and Cultural Change*, raised the question whether economic development required “only a change in certain aspects of overt behavior [such as] the acquisition of new skills or the exercise of new forms of productive activity” or whether it also had to be “accompanied by or contingent upon more basic changes in . . . the structure of values and beliefs in a culture.”<sup>14</sup> In his influential book, *The Stages of Economic Growth: A Non-Communist Manifesto*, W.W. Rostow described the primary cause of industrialization as the “set[ting] in motion [of] ideas and sentiments which initiate[] the process by which a modern alternative to the traditional society [can be] constructed.”<sup>15</sup>

It is important to emphasize that the critique of this “culture and development” discourse is not merely that it analyzes culture as a causal factor in the development of economies or societies. Rather, the critique is that the analysis is inaccurate and unjust for two reasons. First, it derives mainly from Northern representations of Southern culture. This centrality of the Northern speaker can imply the inability of the South to represent itself, and can allow the South to be reconstituted into a clutch of inferior traits defined in opposition to the North. Edward Said emphasized both of these problems in his critique of texts in the discipline of “Oriental Studies.” Said wrote, “[t]he exteriority of the

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10. For an excellent discussion of Weber’s theory and influence, see David M. Trubek, *Max Weber on Law and the Rise of Capitalism*, 1972 WIS. L. REV. 720.

11. DAVID MCCLELLAND, *THE ACHIEVEMENT MOTIVE* (1953).

12. DAVID MCCLELLAND, *THE ACHIEVING SOCIETY* (1961).

13. TALCOTT PARSONS, *THE SOCIAL SYSTEM* (1951). For a discussion of Talcott Parsons’ work, see CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* 249-50 (1973).

14. Irene Gendzier, *Culture and Development: Veiled Apologetic or an Effort at Social Reconstruction of Economic and Political Change?*, 13 FLETCHER F. WORLD AFF. 217 (1989).

15. W.W. ROSTOW, *THE STAGES OF ECONOMIC GROWTH: A NON-COMMUNIST MANIFESTO* 6 (3d ed., 1960).



representation is always governed by some version of the truism that if the Orient could represent itself, it would.”<sup>16</sup> Showing how a number of fictional and non-fictional texts written about the Orient by Northern authors posited and reinforced a concept of the Orient constituted by a set of stylized characteristics juxtaposed against the West, Said observed:

[I]t is finally Western ignorance which becomes more refined and complex, not some body of positive Western knowledge which increases in size and accuracy. . . . Thus the Orient acquired representatives, so to speak, and representations, each one more concrete, more internally congruent with some Western exigency, than the ones that preceded it. . . . The Orient then seems to be, not an unlimited extension beyond the familiar European world, but rather a closed field, a theatrical stage affixed to Europe.<sup>17</sup>

Culture, as deployed in this discourse, deflects attention from other factors which might provide an equally compelling explanation of underdevelopment. The discourse locates obstacles to Southern development not in Northern economic dominance or in an indifferent international legal regime, but rather in the cultural incapacity of the South fully to partake in the benefits of liberal economics. For example, the remarkable growth rates of the East Asian “Newly Industrializing Countries” (NICs), such as Taiwan, Hong Kong, Singapore and South Korea, have been explained as the exception that proves the rule of Southern cultural inferiority. NIC success has been attributed to “Asian values” that other developing countries do not share, which allowed the populations and governments in the NICs not only to select the “correct” policy of export-led growth, but also to effectively implement it.<sup>18</sup> The rush to culture as the sole independent variable of NIC success in policy determination and execution, however, obscures a number of other factors. Lack of natural resources requiring an early focus on manufacturing, the early presence of generous foreign aid, and relatively small economy size all played significant roles in shaping the choice and the success of export-led growth in the East Asian NICs.<sup>19</sup>

The critique of the “culture and development” discourse, in other words, is not that it addresses culture, but rather that its particular treatment of culture illegitimately preserves both ideological and material sources of Northern hegemony. This treatment of culture filters empirical evidence and shuts out Southern voices, thereby constructing a stylized portrayal of the South as

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16. EDWARD W. SAID, *ORIENTALISM* 21 (1978). Said then recalls Karl Marx’s admonition, “They cannot represent themselves; they must be represented.” *Id.* (quoting KARL MARX, *THE EIGHTEENTH BRUMAIRE OF LOUIS BONAPART* 124 (International Publishers 1964) (1852)).

17. *Id.* at 62-63

18. “So-called Asian values—often described as a firm work ethic, combined with a strong belief in education and a shared view that individual rights should be subordinate to the community’s interests—were cited in explaining the economic structures that enabled Asia to flourish.” Marcus W. Brauchli, *Currency Turmoil Wounds Asian Pride*, *WALL ST. J.*, Aug. 26, 1997, at A12.

19. See STEPHAN HAGGARD, *PATHWAYS FROM THE PERIPHERY* 24-48 (1990).

different from and inferior to the North. Finally, this resulting stylized portrayal of culture is used to justify Southern poverty.

This stylized portrayal remains operative. In one of the more polemical descriptions of Southern culture, Lawrence Harrison, a "career USAID officer" and author of the 1985 book, *Underdevelopment is a State of Mind: The Latin American Case*, argues that underdevelopment in Latin America is "principally the consequence of the powerful momentum of traditional [culture which] is essentially anti-democratic, anti-social, anti-entrepreneurial, and anti-work."<sup>20</sup> Yet an alternative account of the Latin American development experience argues that it has been precisely Latin America's relatively *strong* democratic and pro-labor traditions that have often deterred Latin American governments from liberal policy choices that would have, at least in the short-term, foreclosed social spending and exacerbated income inequality.<sup>21</sup> Sub-Saharan African culture is frequently stylized in a similar manner. Persistent economic marginalization of Sub-Saharan African societies is continually attributed primarily to pessimistic accounts of African culture as beset by tendencies toward patronage, graft, and tribalist/"Big Man" politics.<sup>22</sup> Relatively little attention is devoted to the impact of Africa's relatively recent and brutal colonial experience and consequently unstable territorial boundaries, dependence on primary product exports, scant capital base, poor infrastructure and meager technological access.

Indeed, even the discursive treatment of NICs turns out to be stylized in an ultimately derogatory fashion. During the 1970s, the NICs achieved superlative levels of economic growth through competitive exports of consumer goods to Northern markets. The NICs were initially regarded as "model citizens" of the developing world, and "success stories" of the liberal international economic order.<sup>23</sup> As NIC exports increasingly challenged the dominance of Northern actors in certain markets, these countries increasingly became subject to cultural criticism. East Asian states came to be viewed as anti-democratic and anti-competitive, justifying the protectionist bilateral agreements that Northern states negotiated with them to restrict the influx of imports into Northern markets.<sup>24</sup>

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20. Lawrence E. Harrison, *Cultural Obstacles to Progress in the Third World—and at Home*, 13 FLETCHER F. WORLD AFF. 243, 243 (1989).

21. See HAGGARD, *supra* note 19, at 254-56 (observing that authoritarian rule helped to explain East Asian NIC governments' ability to engineer export-led growth, but could not be reliably associated with statist Latin American governments); Amy L. Chua, *The Privatization-Nationalization Cycle*, 95 COLUM. L. REV. 223, 227-43 (1995) (describing periods of nationalization and other statist economic reform in Latin America as a product of populist reform movements).

22. See, e.g., Elliott P. Skinner, *Development in Africa: A Cultural Perspective*, 13 FLETCHER F. WORLD AFF. 205 (1989).

23. See HAGGARD, *supra* note 19, at 2. "For development economists, the East Asian NICs vindicated the liberal prescriptions of market-oriented policies and participation in the world economy." *Id.*

24. Trade discrimination toward the NICs was an early and central component of what has come to be identified as the "New Protectionism" in the economic policies of Northern states. See, e.g., SIMA

The foregoing brief applications of CRT methodology to postcolonial development illustrate that both CRT and postcolonial development theory have employed criticism of a liberal legal system that posits formal equality and ignores structural inequality of particular groups. CRT has supplemented the critique of liberal ideology and formal legal equality with the argument that illiberal ideology acts as a further rationalization for the structural inequality of racial groups. A parallel argument can be made about "culturalism" in North-South discourse, in which the South is constituted into a set of inferior traits and positioned in an oppositional and subordinate way to the North. While this analysis has been well-established in postcolonial literary criticism, it has not been employed within postcolonial development theory.<sup>25</sup> CRT thus suggests a new path for postcolonial development work: existing postcolonial critiques of colonial discourse can be applied to address colonial ideology, and the links it creates between Southern development and Southern "culture," in international economic law.<sup>26</sup>

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LIEBERMAN, THE ECONOMIC AND POLITICAL ROOTS OF THE NEW PROTECTIONISM 133-51 (1988).

25. While this move has not been made in scholarship on international economic law, some notable forays have been made in international legal scholarship generally. See, in particular, Antony Anghie's excellent studies of the colonial origins of public international law: Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 HARV. INT'L L.J. 1 (1999); Antony Anghie, *Francisco De Vitoria and the Colonial Origins of International Law*, 5 SOC. & L. 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).

26. This paper has concentrated on exploring the gains to be made from applying one style of CRT analysis to one set of "postcolonial development" issues. I want to point briefly to work being done by LatCrit and Asian-American writers which begins to explore the converse application of postcolonial method to CRT. Several questions have presented themselves. First, how does the American legal regime reflect and incorporate the ideology of "otherness" first identified in the colonial context in, for example, (1) immigration law, (2) zoning, and (3) laws restricting the use of non-English languages? Second, how do material challenges to Northern economic hegemony by Southern states influence treatment of racial minorities in the United States? The oscillation between representations of the Asian Other as "model minority" on the one hand, and as sneaky, inscrutable, devious and taking-over on the other, has also been identified as operative with respect to Asian minorities in the U.S. See, e.g., Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism and Narrative Space*, 1 ASIAN L.J. 1 (1994); Pat K. Chew, *Asian Americans: The "Reticent" Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1 (1994). Third, how does racist ideology developed within the United States affect its stance towards Southern countries, for example, in development aid and policy for Sub-Saharan Africa?

In short, there seems to be plenty of fertile ground for cross-pollenization between CRT and postcolonial development theory. Searching for and unearthing links between hegemonic ideologies within the North and as between the North and South should help to integrate what are, in all likelihood, related narratives, and clear new ground for theoretical and other types of coalition-building.

## II. OBJECTIONS, SHORTCOMINGS, AND MISGIVINGS

The above analysis appears promising as a way of drawing out the destructive aspects of, and areas for positive reconstruction of, discourse in international economic law and policy. Several questions about the exercise present themselves, however, and are addressed below.

### A. Liberal Development Policy as "Objective" Economics

A standard objection to the material analysis of Northern hegemony is that the dominance of Northern market actors has no bearing on the correctness of liberal prescriptions for the economic growth and/or welfare of Southern states. As long as the Southern economic climate sufficiently reflects the tenets of liberalism, economic efficiency will be maximized, economic activity will expand, and social wealth and welfare will increase. Thus, (the argument goes) the objection to Northern influence in Southern economies is merely a political one. In a liberalized economy, the nationality of the participants is irrelevant.

The responses to this objection run along three lines. First, the "economic" response restates the critique of liberal economics—neocolonial economic activity produces hierarchical outcomes. Second, the "pragmatic" response observes empirically that Southern populations view economic production as an aspect of political self-determination and sovereignty.<sup>27</sup> As a result, continued Northern domination risks political backlash within these countries and warrants a degree of indigenous political control over economic activity.

Finally, the "political" response argues that social welfare, at least partially, depends on the political consciousness of economic self-determination. Economic self-determination is, therefore, one of the political and legal "rights" accruing to a government by virtue of its political and legal sovereignty.<sup>28</sup> This response was common within the NIEO movement in a way similar to the reliance on "rights" by the Civil Rights Movement in the United States. The relationship of Southern countries to the international economy was subsumed into a larger discussion of "sovereignty," and a reified concept of "sovereignty" was deployed as an "invigorating cloak[] of safety" to "unite" Third World societies "in a common bond" against the politically subordinating fact of Northern economic domination.<sup>29</sup>

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27. See HAGGARD, *supra* note 19, at 11 (observing that liberal theorists "tend[] to ignore the political dimension of the international economy [and the] fact that asymmetric economic interdependence [can] generate power relationships between countries").

28. See Rajani Kanth, *Postscript: Self-Determination—Birth of a Notion*, in PARADIGMS IN ECONOMIC DEVELOPMENT 255 (Rajani Kanth ed., 1994). "[P]eople have the right to make their own decisions—even if these be judged incorrect decisions by some outside agency . . . even if it only amounts to a right to be wrong." *Id.* at 257 (emphasis in original).

29. This terminology was used to describe the function of rights among activists for racial equality in the United States in Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have*

### B. Essentialism

Like many “counter-hegemonic” styles of critique, the analysis described above is open to the challenge that it relies on unacceptably essentialist description<sup>30</sup>—in this case, of a monolithic entity, the “South,” positioned statically against and beneath the “North.” Two aspects of this criticism are particularly salient. The first, (the “diversity within” point), is that the “South” comprises a vast and complex array of political, economic and cultural entities which are stratified, cleaved and interrelated both within themselves and with “Northern” entities in innumerable ways. The second, (the “anthropomorphosis” point), is that governments, societies and states are fundamentally different than individuals in a way that problematizes any attempt to speak of the former as objects of ideological oppression or political injustice.

Both of these critiques, I believe, deserve exploration and elaboration. The real question, however, is whether these points invalidate the critical enterprise described in this paper. I believe the question remains open; it is worthwhile noting, however, a response offered by some postcolonial theorists, which maintains and makes clear the methodological distinction between “pure” and “political” knowledge. In other words, the goal of postcolonial theorists is to expose, rather than to affirm or embrace, the monolithic categories of the “North” and the “South.” It is to show precisely that the privilege of flux—of flexibility, possibility and change—is denied the Other.<sup>31</sup> Simplified and oppositional categories are employed not because they *are*, in some empirical sense, but because they *are within* and *result from* the discourse that is the subject of critique. A “non-essentialist” understanding of the postcolonial critique of colonial discourse theory, therefore, is that it exposes the essentialism of the “hegemonic rule” in order to reject it.<sup>32</sup>

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*What Minorities Want?*, 22 HARV. C.R.-C.L. L. REV. 301, 306-7 (1987).

30. “Essentialism has been defined as: ‘the set of fundamental attributes which are necessary and sufficient conditions for a thing to be [considered] a thing of that type.’ To define a thing is to express its essence in words. Thus, definition involves two steps: first, distinguishing the object from other objects by referring to certain parts of its characterization in order to capture its intuitive essence, and second, characterizing the object within a single concept so as to permit the definition to move to a discursive understanding. The result is that the characteristics used to define a thing are thought to inhere in its very essence and, thus, to be unchangeable.” Jane Wong, *The Anti-Essentialism v. Essentialism Debate in Feminist Legal Theory: The Debate and Beyond*, 5 WM. & MARY J. WOMEN & L. 273, 274-75 (1999) (quoting Michael A. Ntuny, *Essentialism and the Search for the Essence of Law*, 18 MELANESIAN L.J. 64, 64 (1990)).

31. See SAID, *supra* note 16, at 208. “The very possibility of development, transformation, human movement—in the deepest sense of the word—is denied the Orient and the Oriental.” *Id.*

32. The above approach does not, however, address the twin problems of essentialism and historicism that affect the material (as opposed to the ideological) critique. These problems are, at bottom, empirical and can only be resolved by weighing the empirical support for competing claims.

### C. "North-South" Fetishism

Another problem with the arguments made in Part I is that they fetishize the South's relationship to the North in a way that creates at least two important weaknesses.<sup>33</sup> The critical focus on "neocolonial" economic coercion of Southern states (paradoxically) discounts the importance of domestic politics in determining economic outcomes. Accordingly, Stephen Haggard,<sup>34</sup> Amy Chua<sup>35</sup> and others have argued for increased awareness of domestic politics in Southern states. In addition, this "North-South" fetishism unacceptably overlooks the domestic coercive powers of Southern states and, therefore, tends to minimize or rationalize the oppression of individuals and groups within Southern societies by Southern governments. As Enrique Carrasco has pointed out, "anti-colonial" politics can be deployed by Southern governments to "avoid[] the discussion of *justicia* within their own borders."<sup>36</sup> The related argument for economic "sovereignty" has similarly been asserted as "the right to shield . . . domestic policies from international scrutiny."<sup>37</sup>

### D. Coercion vs. Consensus

Yet another difficulty arises from the implication of the critique in Part I; the subordinated group participates in hegemonic rule solely or at least significantly as the product of coercion rather than consent. Critical race theorist Kimberlé Crenshaw, for example, adopts Antonio Gramsci's definition of hegemony as consisting both of "consent" of the "great masses of the population" and of "coercive power which 'legally' enforces discipline on those groups which do not 'consent'."<sup>38</sup> Using this model, Crenshaw argues that the *coercion* of black Americans is made possible by virtue of the *consent* of whites to the "dominant ideology."<sup>39</sup>

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33. "To take the accepted definition, 'fetishism occurs when the mind ceases to realize that it has itself created the outward images or things to which it subsequently posits itself as in some sort of subservient relation.'" Robert A. Ferguson, *Holmes and the Judicial Figure*, 55 U. CHI. L. REV. 506, 543 n.142 (1998) (quoting DAVID SIMPSON, *FETISHISM AND IMAGINATION* xiii (1982)); see also Emily Apter, *Introduction to FETISHISM AS CULTURAL DISCOURSE* 1, 3 (Emily Apter & William Pietz eds., 1993) "The fetish is always a meaningful fixation of a singular event . . . [T]he fetish might be identified as the site of both the formation and the revelation of ideology and value-consciousness." *Id.* To fetishize the North-South relationship is both to reify it and to project onto it undue explanatory power.

34. See HAGGARD, *supra* note 19.

35. See Chua, *supra* note 21.

36. Enrique R. Carrasco, *Opposition, Justice, Structuralism, and Particularity: Intersections Between LatCrit Theory and Law and Development Studies*, 28 U. MIAMI INTER-AM. L. REV. 313, 322 (1997).

37. *Id.*

38. Crenshaw, *supra* note 3, at 1360.

39. *Id.* at 1359.

The application of this model to postcolonial development might have been less problematic during the era of the New International Economic Order movement, when many Southern governments adopted an explicitly resistant posture towards the dominant liberal international economic regime. In contemporary times, however, Southern governments have, in considerable numbers, embraced classical liberal policies of orthodox economic stabilization, liberalization, export orientation, and privatization.<sup>40</sup> If Southern governments more or less “consent” to the dominant regime, can the CRT/postcolonial development critique be either accurate or relevant?

I think the answer is a cautious yes. The critique as applied in the postcolonial context does not focus on the coercion by Northern states of politically resistant Southern actors, but rather on the gradual entrenchment of a series of economic patterns of Northern hegemony. As Gramsci demonstrated, because hegemony need not rely primarily on coercion, the consent of Southern states to Northern hegemony does not neutralize its hierarchical aspects. Social inequality can and does persist in its many incarnations even in the presence of such consent—particularly when the consent is merely that of the involved governments. Persistent scrutiny of the international economic regime can aid in drawing attention to these inegalitarian aspects, and increase the possibilities for adopting policies that will have relatively egalitarian distributive consequences.

### *E. “Globalization”*

A final difficulty to consider is that the increasing size and integration of international trade and investment-flows seem to be undermining traditional categories of the “North” and the “South.” Although a simplified North-South split may no longer be feasible, this trend does not reduce the need or the possibilities for postcolonial critique. Identified by their non-geographical discursive characteristics, there increasingly appear to be pockets of the “North” within the “South,” and pockets of the “South” within the “North.” Critical postcolonial development theory should identify and account for increasingly complex global patterns of economic dominance and subordination, in both their material and ideological aspects.<sup>41</sup>

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40. See generally Tamara Lothian, *The Democratized Market Economy in Latin America (and Elsewhere)*, 28 CORNELL INT’L L.J. 169 (1995).

41. See Chantal Thomas, *Globalization and the Reproduction of Hierarchy*, 32 U.C. DAVIS L. REV. (forthcoming 1999).

## III. CONCLUSION

I have tried to suggest in one very particular and limited exercise some insights that result from transposing CRT methodology into the field of postcolonial development. This theoretical transposition reveals an important parallel; both disciplines use a critique of classical liberalism that focuses on its exclusive commitment to formal legal equality and its corresponding neglect of substantive and structural inequality. In addition, the transposition suggests that new ground in postcolonial development theory might be broken by investigating the extent to which the liberal international economic order is reinforced by illiberal, colonial ideology. This ideology posits a stylized set of Southern cultural traits, assembled from exclusively Northern accounts of Southern culture, that constitutes the primary hindrance to Southern economic progress.

While promising, such a critique contains several potential weaknesses. Thus, this essay does not posit conclusions but, rather, emphasizes the “need for greater crossing of boundaries, for greater interventionism in cross-disciplinary activity, [and] a concentrated awareness of the situation—political, methodological, social, historical—in which intellectual and cultural work is being carried out.”<sup>42</sup>

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42. Edward W. Said, *Orientalism Reconsidered*, in *LITERATURE, POLITICS AND THEORY* 210, 229 (Francis Barker et al. eds., 1986). This passage of Edward Said’s, I think, bears full repetition:

First, we note a plurality of audiences and constituencies; none of [which] . . . claims . . . a truth allied to western (or for that matter eastern) reason, objectivity, science. On the contrary, we note here a plurality of terrains, multiple experiences and different constituencies, each with its admitted (as opposed to denied) interest, political desiderata, disciplinary goals. All these efforts work out of what might be called a decentred consciousness, not less reflective and critical for being decentred. . . . Several possibilities impose themselves, and I shall conclude simply by listing them. A need for greater crossing of boundaries, for greater interventionism in cross-disciplinary activity, a concentrated awareness of the situation—political, methodological, social, historical—in which intellectual and cultural work is carried out. A clarified political and methodological commitment to the dismantling of systems of domination which since they are collectively maintained must, to adopt and transform some of Gramsci’s phrases, be collectively fought, by mutual siege, war of manoeuvre and war of position. Lastly, a much sharpened sense of the intellectual’s role both in the defining of a context and in changing it, for without that, I believe, the critique . . . is simply an ephemeral pastime.

*Id.* at 228-29.