COLLOQUIUM PROCEEDINGS: PANEL TWO: OPPOSITION, JUSTICE, STRUCTURALISM, AND PARTICULARITY: INTERSECTIONS BETWEEN LATCRI T THEORY AND LAW AND DEVELOPMENT STUDIES

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BIO:

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SUMMARY: ... This type of scholarship has been characterized as "structural determinism" because it focuses "on ways in which the entire structure of legal thought ... influences its content, always tending toward maintaining the status quo." ... 

[*314] I. INTRODUCTION

This essay explores how emerging LatCrit theory can inform efforts to critically assess and monitor global neoliberalism. My discussion is premised upon two persistent and striking dualities throughout the world. One relates to liberalism's promise of prosperity. Just over fifty years ago, a post-war liberal order was created to promote global prosperity. If one looks solely at the increase in world income from $4 trillion in 1950 to over $20 trillion in the 1990's, one would likely conclude that liberalism has performed admirably.

Yet the distribution of that income is highly skewed. Today, the richest twenty percent of the global population captures eighty-five percent of global income, while the remaining portion is shared by three-quarters of the world's population living in developing countries. Distributive disparities within countries, especially in South Asia, Latin America, and the Caribbean, are likely to increase in the future. These disparities do not exist solely in developing countries, however. Distributive inequality has been steadily increasing in the United States. The gap between the very rich and all other segments of society is wider today than at any other period since World War II. Recent data indicates that Latinas/os disproportionately occupy the low end of the economic spectrum.

Another closely related duality relates to liberalism's opportunity principle. The creators of post-war liberalism spoke eloquently of freedom of opportunity, a foundational freedom that would enable "the people of every nation ... through their industry, their inventiveness, their thrift, to raise their own standards of living and enjoy, increasingly, the fruits of material progress" on an earth infinitely blessed with natural riches. The U.N. Charter and other international and regional human rights instruments created thereafter have called for the elimination of the main obstacle to opportunity--discrimination. Little progress has been made on this front either. Relatively few people today can find meaning in the opportunity principle. Rampant economic discrimination on the basis of ethnicity, race, gender, and religion prevails in nearly every region of the world. As the World Bank has noted, "certain groups
systematically do worse than others. For example, unstable employment and lower earnings are more common among the indigenous than the nonindigenous people of Guatemala, among blacks than whites in Brazil, among the members of scheduled castes and tribal groups than the upper castes in India. More women than men are trapped in a degrading life of absolute poverty, and they are disproportionately affected by related problems: social disintegration, unemployment, environmental degradation, and war. Once again, we need not look outside of the United States for pervasive manifestations of this duality.

These dualities have not dissuaded many countries today from supporting an updated or "neoliberal" version of what was viewed in the 1940s as a universal principle—that an open, market-based, interdependent, international economy combined with democratic governance is the best prescription for global peace and prosperity. Policymakers realize, however, that neoliberalism cannot flourish over the long-term in the face of massive social inequalities. Equitable "development" is, thus, as necessary today as it was after World War II. Yet "law and development" efforts have addressed this need with only moderate success.

The question is, therefore, whether LatCrit theory can help those of us dealing with law and development issues to think of ways to promote "a political, economic, ethical and spiritual vision for social development ... based on human dignity, human rights, equality, respect, peace, democracy, mutual responsibility and cooperation, and full respect for the various religious and ethical values and cultural backgrounds of people." Given the incipiency of the LatCrit "movement," my response is cautiously optimistic. LatCrit theory's emphasis on opposition, justice, structuralism, and particularity—animated in part by concepts of ethnicity—may help scholars explore and articulate a socio-legal framework that will give rise to an enabling environment for social development, especially in Latin America. In particular, these concepts may enable development scholars and activists to engage in a careful and nuanced criticism of neoliberalism.

II. LATCRITS' TOOLS OF CRITICISM

LatCrit theory, which is emerging from Critical Race Theory, is complex and thematically broad. In this essay, I will address opposition, justice, structuralism, and particularity, four basic concepts of LatCrit theory that can inform our thinking about social development. As the discussion below will indicate, these concepts reflect both modern and postmodern views of law and society, to the extent that they reveal a hopeful quest for enlightenment leading eventually to liberation while at the same time rejecting modernism's epistemological foundations.

As to opposition, LatCrit theory, like Critical Race theory, seeks to continue the "long tradition of human resistance and liberation." History has taught Latinas/os that engaging in la lucha (struggle) is both honorable and inevitable. Struggling for justicia (justice) is almost a teleological "given" in the Latina/o community. LatCrits engaged in la lucha por la justicia (the fight for justice) thus seek to understand and change a U.S. socio-legal system that presents a disabling environment for social development of Latinas/os via new nativism and racism. Importantly, the inspiration and strength needed to wage la lucha por la justicia comes not from an intellectual construct, but rather from a communitarian ethic diasporetically linked to Latin America.

LatCrit theory's structural critique of U.S. society and its preference for particularity or perspectivism over universalism can also be useful for social development. Structuralist criticism of law and society was first formulated by legal realists and subsequently refined by Critical Race Theorists. Derrick Bell, for example, has used structural theory to show how civil rights reform has been tied to the long-term interests of whites. Similarly, Kendall Thomas has explored questions of race, power, and culture in the context of popular constitutional historiography ("popular memory") in order to challenge the conceptual order or hierarchy...
that subtends the exclusion of the common run of human beings and their concerns from the historical study of constitutional law." n21

Structural analysis is also evident in Ian Haney Lopez's examination of the social construction of the white race n22 and Juan Perea's exploration of how hierarchy and whiteness adversely affect the Latina/o population in the United States. n23 This type of scholarship has been characterized as "structural determinism" because it focuses "on ways in which the entire structure of legal thought ... influences its content, always tending toward maintaining the status quo." n24

LatCrits seek to enrich structural critiques with scholarship emphasizing particularity, through the use of storytelling techniques to examine embedded racism, power, and ideology. n25 Particularity is the deconstructive companion of structuralism inasmuch as "stories, Pbles, chronicles, and narratives are powerful means for destroying mindset--the bundle of presuppositions, received wisdoms, and shared understandings against [*320] a background of which legal and political discourse takes place." n26 Well-known illustrations of this technique in the LatCrit context include Richard Delgado's *The Rodrigo Chronicles*, in which his alter ego, Rodrigo, explores racism in the United States, n27 Margaret Montoya's piece on Latina stories and legal discourse, n28 Michael Oliva's article weaving his grandfather's stories into a commentary on immigration law, n29 and Leslie Espinoza's reflections on how her background affects her work in legal academia. n30

Taken together, opposition, justice, structuralism, and particularity appear to be useful analytical tools for scholars addressing what amounts to social development in the United States. Nevertheless, those of us who have been working in the international law and development field may view the tools with a bit of weary skepticism. For we are well aware that opposition, justice, structuralism, and particularity have also been important elements in our field. Unfortunately, as described below, they have not been very effective in the international context.

III. OPPOSITION, JUSTICE, STRUCTURALISM AND PARTICULARITY IN THE INTERNATIONAL CONTEXT

The "story" of social development in the international context commonly begins with post-war liberalism. After World War II, the Allied Powers believed that an international economy was the best prescription for global prosperity, which, in turn, would help maintain international peace. n31 Development issues that demanded contextual analysis, such as structural impediments facing developing countries, were marginalized as a result of the discourse of universal liberalism. n32 After decolonization, frustrated developing countries claimed the prevailing global order perpetuated economic inequality among nations. n33 However, as the examples below illustrate, efforts to promote progressive change were based on incomplete or otherwise flawed notions of opposition, justice, structural critique, and particularity. Hence, these analytical tools failed to make any significant changes in the global order.

A. The New International Economic Order

Conceived as a broad critique of post-war liberalism, the New International Economic Order (NIEO) was perceived as [*322] radically oppositional. In the name of global justice, developing countries called for negotiations with industrialized countries to modify the philosophical, juridical, and institutional structures comprising post-war liberalism. n34 The broad agenda for structural change included issues ranging from official development assistance from the North, to international trade and finance, to health, education, and welfare. n35

The NIEO's oppositional vision was not all that radical, however. The strategy was premised on a fundamental construct of liberalism--the nation state. n36 Because the NIEO's goal was to give true meaning to the principle of sovereign equality among states, particularly with respect to economic matters, n37 developing countries avoided discussion of *justicia* within their own borders. They argued that domestic inequalities could not be remedied without first transforming relations among nations. n38 They
also claimed that the principle of sovereign equality among states gave developing countries the right to shield their domestic policies from international scrutiny. n39

The NIEO agenda was hopelessly contradictory because it insisted upon radical and contextual change within liberalism's moderate, state-centered, and universal framework. Not surprisingly, much debate addressed the legal significance of the NIEO. While supporters asserted that the NIEO reflected customary international law, n40 critics argued that the non-binding United Nations resolutions were merely moral or political statements, [*323] at best constituting "soft law." n41 Deep divisions between the North and South continue to this day over much of the NIEO's substance. n42

B. Import Substitution

Import substitution was another strategy developing countries adopted (particularly in Latin America) to challenge postwar liberalism. In the 1950s and 1960s, development economists articulated a structural and particularized critique of the international economy, grounding their theory on a bias in the global trading system against developing countries which export primary commodities. n43 Import-substitution policies encompassed high tariffs and nontariff barriers that protected infant industries, laws that controlled foreign investment, and favorable financing that subsidized state-guided investments. n44

Despite considerable efforts, the import-substitution model of development yielded mixed results in terms of economic growth in Latin America. n45 More importantly, the model provided little *justicia*. Supporters of import substitution assumed the welfare state would distribute the fruits of growth on an equitable basis. Yet populists redistributive policies only widened the gap between the rich and the poor. n46

[*324] C. The Rise and Fall of Oppositional Voices

The increasing gap between the rich and the poor in developing countries undermined development models emphasizing capital accumulation and import substitution. n47 This gave rise to radical critiques of global liberalism that caused as much controversy as LatCrit/Critical Race Theory's current critique of domestic liberalism. In the late 1960s, for instance, neo-Marxists argued that "peripheral" (developing) countries were stuck in a state of underdevelopment and unequal exchange with the "center" (advanced capitalist countries). A socialist revolution was needed to capture the economic surplus for development. n48

These critiques, though provocative, were ineffectual. Other voices in development claimed that neo-Marxist solutions, such as autarky, were unrealistic. n49 Much of neo-Marxist theory proved to be incomplete or empirically incorrect. n50 Moreover, the theory itself was too grand and fatally formalistic. n51

Co-optation also stifled oppositional voice in international development. For example, the preoccupation in the 1970s with [*325] inequitable development led some economists to reject the notion that growth in per capita income alone could be used to measure development. n52 Taking advantage of the emerging view that growth need not necessarily be sacrificed for equity, the World Bank soon declared there could be redistribution with growth. n53 The Bank's approach, however, avoided radical redistributive policies, advocating instead a moderate, incremental strategy of redirecting investment to raise the productivity and incomes of the absolute poor. n54 The World Bank took a similar approach to the controversial "basic human needs" approach to development n55 and avoided radical redistributive policies of that model by focusing on cost-effective, targeted expenditures on the poor. n56

The clearest indication of the broadening crisis in the development field came from the "law and development" movement. During the Cold War, funding from the U.S. government, private foundations such as the Ford and Rockefeller Foundations, and international organizations enabled scholars to write about and advise on non-communist strategies to modernize "Third World" nations through legal reform. n57 Inspired by the work of Max Weber, n58 scholars believed that an autonomous, consciously designed,
and universal legal system could help replicate the development path of Western industrialized societies. n59

[*326] By the early 1970s, scholars began to doubt the utility of the "liberal legalist model." n60 In a soul-searching article titled *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, David Trubek and Marc Galanter despairingly observed: "Law and development studies are in crisis because some scholars have come seriously to doubt the liberal legalist assumptions that "legal development" can be equated with exporting United States institutions or that any improvement of legal institutions in the Third World will be potent and good. They have come to see that legal change may have little or no effect on social economic conditions in Third World societies and, conversely, that many legal "reforms" can deepen inequality, curb participation, restrict individual freedom, and hamper efforts to increase material well-being." n61

Having identified disadvantages associated with "pragmatic problem solving" and "positivistic pure science" approaches to law-and-development studies, the authors advanced an "eclectic critique" that "transforms the central assumptions underlying the law and development enterprise into critical standards." n62 The call for critical analysis by these and other authors n63 failed to ameliorate the crisis. The law and development "movement" subsequently subsided. n64

[*327] IV. POTENTIAL INTERSECTIONS BETWEEN LatCRIT THEORY AND LAW AND DEVELOPMENT

The story I have recounted does not bode well for the creation of an enabling environment for social development. Those who work in the law and development field are likely to conclude that the tools of opposition, justice, structuralism, and particularity are worn and of little utility today.

The apparent triumph of neoliberalism in the face of glaring dualities in the global order breeds cynicism about the future of social justice. Along with the disintegration of the Soviet Union and the socialist bloc in Eastern Europe, n65 the debt crisis of the 1980s has led policymakers in developing and transitioning countries to abandon import substituting and statists approaches to development in favor of economic law and policy based on an open, privatized, market-based economy. Although the former policies failed to empower vulnerable groups, there is no guarantee that neoliberal policies alone will effectively address these groups either. n66

Is there no hope, then, for a progressive approach to law and development? I believe there is, provided we reconstitute opposition, justice, structuralism, and particularity by examining potential intersections between LatCrit theory and concepts relating to law and development. n67 This process may help us find new ways of looking at the process of development, especially in Latin America. It may also reveal "domestic" aspects of LatCrit/Critical Race Theory that can be strengthened.

A. Opposition and Justice

As to intersections relating to opposition and justice, we should consider the following proposition: A critical approach to development based on LatCrit theory should avoid waging a frontal assault on global neoliberalism in the name of *la lucha* [*328*] por la justicia (fight for justice). The story recounted above suggests that a grand counter-hegemonic strategy risks the production of flawed scholarship. Moreover, policymakers would not take our work seriously were we to adopt such a strategy. n68 Instead, we should develop a careful, cautious, and constructively critical position supporting neoliberalism.

This proposition is not as shocking as it first seems. If we want to reconstitute opposition and justice effectively in the international sphere, strategic positioning is crucial. n69 In an article dealing with the plight of the nonwhite poor in the United States, Richard Delgado asks, "In a society with power divided almost equally between two political groups, one conservative, one liberal, which is the more likely source of aid for the nonwhite poor?" n70 After concluding that the moderate left and communitarians would
unlikely provide significant long-term support for the poor, Delgado concludes that "conservative principles may be a better source of succor for the poor than has hitherto been thought, perhaps even superior to that available from the left." He reasons that conservatives are more likely to provide the poor with job training and other forms of "cultural capital" in order to strengthen the legitimacy of conservative thought emphasizing "self-reliance, the free marketplace, and as little governmental intervention as possible." Thus the poor should seek alliance with the right, albeit with a strident or radical voice.

A similar strategy may be useful in the international realm. Statist-oriented development policies amply demonstrate that governments have often been indifferent to the plight of the poor, many of whom are women, children, black, Indian, and members of minority ethnic groups. When governments have paid attention to the poor for political reasons, the resulting populist policies have not been sustainable and have ultimately hurt the poor.

LatCrits with an interest in development should therefore cautiously support the neoliberal policies of the International Monetary Fund (IMF) and the World Bank. This strategy is promising because unlike the situation fifty years ago, developing countries today are the major constituencies of these two multilateral institutions. Moreover, in order to respond to critics and thus bolster the legitimacy of the neoliberal development paradigm, both the Bank and the Fund are attempting to address many of the economic, social, and cultural issues relating to today's human rights regime.

At the World Bank, for example, labor-intensive growth, investment in human capital (e.g., education and health), safety nets for the poor during market-based transitions, and, increasingly, good governance (e.g., accountability, transparency, participation) are the primary components of development policy. In an effort to persuade critical observers of its commitment to the "growth-with-equity" approach to development, the Bank has highlighted its increases in social spending and initiatives aimed at poverty reduction.

The Bank also uses conditionality to address human rights. Responding to observations that governments facing adjustment have chosen expenditure reductions that hurt the poor, the Bank has relied upon charter provisions to "increasingly include conditionality in its structural adjustment operations to ensure that public expenditures on the activities and subsectors that benefit the poor disproportionately such as primary education, basic health care, nutrition, and water supply and sanitation are protected, and in many cases, even increased."

The IMF believes it promotes human rights, albeit indirectly, by insisting upon "high quality" economic growth. This approach embraces (i) macroeconomic stability, (ii) market-based trade and investment policies, (iii) good governance, and (iv) sound social policies that create social safety nets for the poor, increased employment, and cost-effective social spending. Moreover, Fund missions now regularly discuss distributional consequences of adjustment with borrowing countries.

All of these developments in the human rights field are welcome and necessary, but they are not sufficient for the realization of meaningful social development. LatCrit scholars along with other activists deben luchar por la justicia (should fight for justice) by ensuring, at the very least, that multilateral and regional financial institutions actually comply with their own policy and rhetoric relating to economic, social, and cultural matters. This does not require Delgado's stridency tactic as much as careful and precise observation and criticism--what can be called "radically rigorous monitoring."

LatCrit/Critical Race Theory, however, provides little guidance for the development of the analytical aspects of such monitoring, at least with respect to the intersections between race/ethnicity and financial/economic matters. This is partly due to the type of scholarship produced to date, which has focused on other pressing issues and problems relating to racism and identity in a liberal order. In addition, important pieces in Critical Race Theory reflect the view that "law and economics" analysis is
conservative, formalistic, and ultimately inconsistent with Critical Race Theory. Thus, the argument goes, economic or financial analysis cannot effectively address systemic distortions in society.

Although the rich LatCrit and Critical Race scholarship produced thus far can be usefully applied to social development issues, increased economic globalization will compel critical scholars to abandon their defensive posture regarding economic and financial analysis. Fortunately, recent writings suggest an expansion of critical analysis into the commercial/economic realm. Steven Bender, for example, has proposed comprehensive reform of U.S. consumer protection regulation to ensure that Latina/o consumers and other language minorities can "strike informed bargains." Beverly Moran's and William Whitford's critical examination of the U.S. Internal Revenue Code suggests that the Code treats blacks more harshly than similarly-situated whites. And Anthony Taibi has used Critical Race Theory to explore how economic globalization disempowers local communities. These and other writings may eventually lead to a corpus of literature that can be used as a springboard for radical and rigorous monitoring of economic and financial institutions in the increasingly interconnected domestic and international spheres of today's world.

B. Structuralism and Particularity

Radically rigorous monitoring cannot occur without structural criticism. Although the structural critique of liberalism described above has helped change the global order in favor of developing countries, progress in this regard has been marginal. LatCrit and Critical Race Theory may be able to broaden and invigorate the critical project by ungrounding institutionalized discrimination against communities and peoples.

Reconstituting structuralism along these lines should be premised on a proposition of LatCrit/Critical Race Theory that has begun to make inroads into scholarship relating to law and development--namely, that law is a constitutive element of race, gender, culture, and ethnicity itself. Applying this type of structural analysis to international economic law and policy may provide very useful insights into complex problems of development.

One of the hardest problems relates to the accountability of multilateral institutions governing the international economic order--the IMF, the World Bank, and the World Trade Organization (WTO). Progressive change does not come easily to these entities. An analogy to the Critical Race Theorists' criticism of the civil rights movement is instructive. Characterizing the civil rights movement of the late Sixties and early Seventies as "tragically narrow and conservative," Critical Race Theorists have noted that the whites who perpetrated segregation retained their positions of authority during the era of integration, making reform exceedingly difficult. The same can be said of the transnational elite inhabiting the IMF, the Bank, and the WTO. Although decolonization forced these institutions to recognize the needs and demands of developing countries (e.g., the NIEO), reform has occurred slowly and in small increments. This is because policymakers in the international economic arena, whether from developed or developing countries, by and large have gone to the same schools and/or undergone similar doctrinal training. Universalism and orthodoxy pervade their thinking, which, of course, is reflected in and reinforced by institutional policy.

Preservation of the status quo is compounded by the fact that policymakers in these institutions are not likely to view the institutions as constitutive elements of global discrimination. Rather, in their view, discrimination exists "out there somewhere," and it is up to member states to eradicate it. These problems can be attacked through radically rigorous monitoring and equally rigorous and sound research regarding structural discrimination.

Particularity, the final intersection to be addressed in this essay, can also be used to promote a critical approach to development. As noted above, both the NIEO and the import-substitution model of
development as well as development "radicals" of the 1960s and 1970s relied on particularity. However, the particularity of that era frequently lacked a human face. Much of the analysis was woodenly formalistic and exceedingly grand.

Although theory and models continue to be vital to tackling problems of development, policymakers today favor a pragmatic approach. Yet the danger with pragmatism in the realm of development is that it misleadingly suggests that programs and projects are or can be divorced from the hegemonic ideology produced by international institutions such as the IMF, the World Bank, and the WTO.

The risk of false consciousness in development calls for counter-hegemonic development stories "from the bottom." n98 [*335] Such stories should be constructed from the reverberations in local communities resulting from cavalier applications of neoliberal law and policy. n99 This will require analytically rich, n100 contextual scholarship produced in conjunction with grassroots activists, members of non-governmental organizations, and academics in Latin American and Caribbean communities. n101 The goal of this type of particularity should be to monitor neoliberalism critically and radically, exposing weaknesses and contradictions in the dominant story that ultimately can be exploited to ensure a more equitable development process. n102

V. CONCLUSION

This essay has provided only preliminary thoughts and ideas regarding connections between newly evolving LatCrit theory and development in the international sphere. Future research must, among other things, address various complications that may arise from a LatCrit approach to development, especially in Latin America. For example, openness and sensitivity may require LatCrits to reassess Critical Race Theory's reliance on [*336] "rights," n103 given that the popular justice movement in the region has favored collective over "liberal/individualistic" notions of justice. n104 LatCrit's explicit reliance on ethnicity (and Critical Race Theory's reliance on U.S. concepts of race and racism) may also need readjustment to properly assess complex conceptions of race and racism in Latin America. n105

Nevertheless, I am hopeful that LatCrit theory can help development scholars construct a socio-legal framework that will promote an enabling environment for social development. A reconstituted application of opposition, justice, structuralism, and particularity may help reinvigorate critical thinking regarding development and the role of law in the development process. Moreover, LatCrit theory may be especially useful vis-a-vis development in Latin America, given increasing regional integration and the cultural/linguistic connections between "Latinas/os" in the United States and "Latin Americans."

FOOTNOTE-1:

n1 LatCrit theory (signifying "Latina/o" and "critical") is an outgrowth of Critical Race Theory. The former is "more openly, directly, and unabashedly Latina/o in content and focus." Francisco Valdes, Foreword: Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities, 9 LA RAZA L.J. 1, 11 (1996).

n2 James Gustave Speth, Foreword to UNITED NATIONS DEVELOPMENT PROGRAMME, 1995 HUMAN DEVELOPMENT REPORT, at iii (1995)[hereinafter 1995 HUMAN DEVELOPMENT REP.]. See WORLD BANK, POVERTY REDUCTION AND THE WORLD BANK, at vii (1996)[hereinafter POVERTY REDUCTION REPORT] ("More than 1.3 billion people in the developing world still struggle to survive on less than a dollar a day, and the number continues to increase."); id. at 2-9 (examining worldwide trends in poverty from late 1980s to mid-1990s).


n5 See DANZIGER & GOTTSCHALK, supra note 4, at 73 (noting that Hispanics made no economic progress between 1973 and 1991); Cheryl Wetzstein, Poverty in Young Children Up Sharply, WASH. TIMES, Dec. 11, 1996, at A9 (explaining National Center for Children in Poverty's report indicating that Hispanics showed fastest growth in poverty rates); United States
Dept. of Commerce, U.S. Census Bureau, Income, Poverty, and Health Insurance (Sept. 26, 1996) (noting that for first time poverty rate of Hispanics has surpassed that of blacks).

n6 UNITED STATES DEPARTMENT OF STATE, 1 PROCEEDINGS AND DOCUMENTS OF THE UNITED NATIONS MONETARY AND FINANCIAL CONFERENCE 80 (1948) (remarks of Henry Morgenthau Jr., U.S. Treasury Secretary) [hereinafter PROCEEDINGS].


n10 See, e.g., CHRISTOPHER EDLEY, Jr., NOT ALL BLACK AND WHITE 42-52 (1996) (Special Counsel to President Clinton appointed to review affirmative action policy) (reviewing evidence of pervasive discrimination against minorities in the United States and concluding that "the pattern of racial disparities in economic and social conditions remains painfully stark."). The Texaco case is the most recent example of blatant and egregious discrimination litigation against Texaco, where plaintiffs' counsel discovered audio tapes recording racist remarks by high corporate officials. Texaco recently settled the case for $176.1 million. Jack E. White, Texaco's White Collar Bigots: Top Executives, Confronting A Discrimination Suit, Talk About Shredding Documents, TIME, Nov. 18, 1996; Peter Fritsch et al., Texaco to Pay $176.1 Million in Bias Suit, WALL STREET J., Nov. 18, 1996, at A3.

n11 See WORLD BANK, 1991 WORLD DEVELOPMENT REPORT 1. Neoliberal economic policies comprise noninflationary growth, fiscal discipline, high savings and investment, trade and foreign investment liberalization, privatization, and domestic market deregulation. They have become collectively known as "the Washington consensus." See JOHN WILLIAMSON, THE PROGRESS OF POLICY REFORM IN LATIN AMERICA (1990) (discussing ten areas of market-based policy reforms in debtor countries that "could arguably muster a fairly wide consensus ... in Washington").

n12 This definition of development was articulated at the 1995 World Summit for Social Development in Copenhagen, Denmark. Social development is based in part on human rights. The Copenhagen Declaration thus pledges to strive for the realization of rights set out in various international instruments and declarations, including Universal Declaration of Human Rights, the Covenant on Economic, Social and Cultural Rights, as well as the Declaration on the Right to Development. See generally World Summit for Social Development 1: An Overview, Report of the Secretary-General, U.N. Doc. A/CONF. 166/PC/8 (1994). Social development focuses on specific social sector issues, such as health, education, and welfare, as well as on broader concepts relating to human societies, such as equal opportunity and citizen participation. Id. at 3.

n13 See generally supra note 1.

n15 See generally CRITICAL RACE THEORY: THE KEY WRITING THAT FORMED THE MOVEMENT (Kimberle Crenshaw et al. eds., 1995)[hereinafter KEY WRITING]; CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado ed., 1995)[hereinafter THE CUTTING EDGE].


n17 See Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741, 760 (1994) (proposing "jurisprudence of reconstruction" and suggesting Race-Crits are compelled "to live in the tension between modernism and postmodernism, transforming political modernism in the process.").


n22 See LOPEZ, supra note 19.

n23 See generally supra note 19.

n24 THE CUTTING EDGE, supra note 15, at 205.


n27 RICHARD DELGADO, THE RODRIGO CHRONICLES (1995). Rodrigo was born in the United States of an African-American father and Italian mother. In the first chronicle,
Delgado's fictional professor tries to describe Rodrigo: "His tightly curled hair and olive complexion suggested that he might be African-American. But he could also be Latino, perhaps Mexican, Puerto Rican, or any one of the many Central American nationalities ..." Id. at 1. For another example of using narrative to address racism in the United States, see DERRICK BELL, AND WE ARE NOT SAVED (1987).


n31 PROCEEDINGS, supra note 6, at viii (1948) (stating "the proposal for ... the Fund ... was based on the premise that international financial cooperation and the establishment of conditions conducive to international trade are imperative to the economic welfare of the peoples of the world and to world peace ... . Proposals for the establishment of the Bank were based on the premise that postwar reconstruction and development would aid political stability and foster peace among all nations.").

n32 See HAROLD JAMES, INTERNATIONAL MONETARY COOPERATION SINCE BRETON WOODS 120 (1996); Richard N. Gardner, Establishing a Vision for Promoting Development, in FIFTY YEARS AFTER BRETON WOODS: THE FUTURE OF THE IMF AND THE WORLD BANK 63, 65 (James M. Boughton & K. Sarwar Lateef eds., 1995) ("There was simply no conception of the vast needs of the developing countries and of the role of the Bank should play in meeting them."); Victor L. Urquidi, Reconstruction vs. Development: The IMF and the World Bank, in THE BRETON WOODS-GATT SYSTEM: RETROSPECT AND PROSPECT AFTER FIFTY YEARS 47-48 (Orin Kirshner ed., 1996) (noting that White and Keynes "did not seem to have a clear idea of the unusually quite different structural problems of the less developed countries").


n37 Jordan, supra note 33, at 70-72.
n38 LASZLO, supra note 35, at xxii.

n39 See id. at 239-40 (recording India's position that national governments have sovereign right to determine development needs).


n42 FERGUSON, supra note 34, at 41.


n46 ROBERT R. KAUFMAN, THE POLITICS OF DEBT IN ARGENTINA, BRAZIL, AND MEXICO 62 (1988) (noting that import substitution in Mexico "provided extensive protection and subsidies for favored industrial and agro-commercial elites"); id. at 11 (noting that import substitution in Brazil benefited "military elites, coffee exporters, industrialists, and rural bosses"); id. at 71 (noting the Mexican working class maintained its share of expanding economy, whereas, in Brazil increases in income were limited to the top ten percent); id at 92 (noting that Mexican "import-substituting firms ... were the most important group opposing trade liberalization"); Enrique R. Carrasco, Chile, Its Foreign Commercial Bank Creditors, and Its Vulnerable Groups: An Assessment of the Cooperative Case-by-Case Approach to the Debt Crisis, 24 LAW & POL'Y INT'L BUS. 273, 294-95 (1993) (noting that Chile's rich and relatively wealthy middle class benefited from import substitution); Alejandro Foxley, Stabilization Policies and Their Effects on Employment and Income Distribution: A Latin American Perspective, in ECONOMIC STABILIZATION IN DEVELOPING COUNTRIES 191, 195-96 (William R. Cline & Sidney Weintraub eds., 1981) ("After a short initial success in redistributing income toward wage earners and in moderating the rate of inflation, the
imbalances generated by the [populist] policy result in accelerating inflation and a regression in
the initial distributive gains.

n47 DIANA HUNT, ECONOMIC THEORIES OF DEVELOPMENT: AN ANALYSIS OF
COMPETING PARADIGMS 64 (1989).

n48 Id. at 64-67, 163-95.

n49 Id. at 189.

n50 Id. at 67, 217-19, 220-21. Bill Warren, an "Orthodox Marxist" critiquing neo-Marxist
theory, noted "empirical observations suggest that the prospects for successful capitalist
economic development of a significant number of major underdeveloped countries are quite
good; that substantial progress in capitalist industrialization has already been achieved ... that
the imperialist countries' policies and their overall impact on the Third World actually favor its
industrialization ... ." Id. at 190.

n51 Id. at 189.

n52 See Dudley Seers, What Are We Trying to Measure?, in MEASURING DEVELOPMENT


n54 Id. at 47-49.

n55 See Carrasco & Kose, supra note 45, at 21 & nn. 116-17 (noting inter alia that basic needs
stressed autonomous development through considerable investment in human capital and
access to employment).

n56 HUNT, supra note 47, at 270-71. See Margaret E. Grosh, Social Spending In Latin

n57 David M. Trubek & Marc Galanter, Scholars in Self-Estrangement: Some Reflections on
the Crisis in Law and Development Studies in the United States, 1974 WISC. L. REV. 1062;
David F. Greenberg, Law and Development in Light of Dependency Theory, in LAW AND
DEVELOPMENT (Anthony Carty ed. 1992). See also John H. Merryman, ComPtive Law and
Social Change: On the Origins, Style, Decline & Revival of the Law and Development
Movement, 25 AM. J. COMP. L. 457 (1977); Elliot M. Burg, Law and Development: A Review
492 (1977); Robert B. Seidman, Law and Development: A General Model, 6 LAW & SOC'Y
311 (1972).

n58 See MAX WEBER, ECONOMY AND SOCIETY 641, 900 (Geunther Roth & Claus
Wittich eds., 1978) (addressing the sociology of law).

n59 See David M. Trubek, Toward a Social Theory of Law: An Essay of the Study of Law and
Development, 82 YALE L.J. 1 (1972).

n60 See Trubek & Galanter, supra note 57; Merryman, supra note 57. See generally JAMES
GARDNER, LEGAL IMPERIALISM (1980).

n61 See Trubek & Galanter, supra note, 57 at 1080.

n62 Id. See David M. Trubek, Unequal Protection: Thoughts on Legal Services, Social
Welfare, and Income Distribution in Latin America, 13 TEXAS INT'L L.J. 243 (1978); David
M. Trubek & John P. Esser, "Critical Empiricism" in American Legal Studies: Paradox,
Program, or Pandora's Box?, in CRITICAL LEGAL THOUGHT: AN AMERICAN-

n63 See GARDNER, supra note 60; Merryman, supra note 57; Abelardo Lopez Valdez, Developing the Role of Law in Social Change: Past Endeavors and Future Opportunities in Latin America and the Caribbean, 7 LAW. AM. 1 (1975); Abelardo Lopez Valdez, Law and Socio-Economic Change in Latin America and the Caribbean, 10 J. INT'L L. & ECON. 553 (1975).

n64 Merryman, supra note 57, at 481 ("The mainstream law and development movement, dominated by the American legal style, was bound to fail and has failed."). See also David M. Trubek, Back to the Future: The Short, Happy Life of the Law and Society Movement, 18 FLA. ST. U. L. REV. 1 (1990) (describing 25-year evolution of "law and society" movement, which began in mid-1960s, and critically assessing related "law and development" movement).


n66 See Carrasco & Kose, supra note 45, at 28-34 (discussing mixed impact of stabilization and adjustment programs on income distribution in developing countries).

n67 See Trubek, supra note 64, at 41-55 (describing post-modern emerging "countervision" based in part on Critical Race Theory, that rejects ideas prevailing in earlier stages of law and society movement).

n68 This proposition is especially important with respect to international economic/financial policy. Policymakers in this realm are likely to be economists, many of whom presume that non-economists and their criticisms are irrelevant.

n69 See SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI 229-39 (Quintin Hoare & Geoffrey Nowell Smith, eds. & trans., 1971)[hereinafter PRISON NOTEBOOKS](describing "war of positions" in which intellectuals engage in protracted political struggle).


n71 Id. at 1940.

n72 Id.

n73 Id. at 1947-48.

n74 As Claude Ake has argued, the state's indifference may be the product of colonialism, at least in Africa:Although political independence brought some changes to the composition of the state managers, the character of the state remained much as it was in the colonial era. It continued to be totalistic in scope, constituting a statist economy. It presented itself as an apparatus of violence, had a narrow social base, and relied for compliance on coercion rather than authority ... Political independence ... was often a convenience of deradicalization by accommodation, a mere racial integration of the political elite.CLAUDE AKE, DEMOCRACY AND DEVELOPMENT IN AFRICA 3-4 (1996).

n75 See supra notes 43-46 and accompanying text (discussing impact of populist policies during import substitution period).

n76 See generally BEYOND BRETTON WOODS: ALTERNATIVE TO THE GLOBAL ORDER (John Cavanagh et al. eds., 1994); FIFTY YEARS IS ENOUGH: THE CASE

n77 See generally WORLD BANK, 1990 WORLD DEVELOPMENT REPORT; POVERTY REDUCTION REPORT, supra note 2.

n78 THE WORLD BANK, ADVANCING SOCIAL DEVELOPMENT: A WORLD BANK CONTRIBUTION TO THE SOCIAL SUMMIT, at ix (1995) [hereinafter ADVANCING SOCIAL DEVELOPMENT].

n79 POVERTY REDUCTION REPORT, supra note 2, at 29. See generally ADVANCING SOCIAL DEVELOPMENT, supra note 78.


n81 POVERTY REDUCTION REPORT, supra note 2, at 33-34. See James H. Weaver, What Is Structural Adjustment?, in STRUCTURAL ADJUSTMENT: RETROSPECT AND PROSPECT 1, 13-14 (1995) (noting that all bank adjustment loans must include "upfront" analysis of adjustment's impact on poor and measures to address impact). The Bank also addresses the poor through "poverty-focused" adjustment operations. Incorporated into SALs, SECALs, or rehabilitation import loans (RILs), these programs help governments implement anti-poverty measures ranging from reallocation of public expenditures to gathering data on poverty and monitoring the impact of adjustment on the poor.

n82 The Fund pursues the fourth element through its policy advice, technical assistance, and collaboration with other agencies, particularly the World Bank.

n83 TONY KILlick, IMF PROGRAMMES IN DEVELOPING COUNTRIES 20 (1995).

n84 See Carrasco & Kose, supra note 45, at 45-46 (proposing various measures to monitor programs of World Bank and IMF with respect to income distribution); Daniel D. Bradlow, The World Bank, the IMF, and Human Rights, 6 TRANSNAT'L L. & CONTEMP. PROBS. (proposing that IMF and World Bank articulate human rights policy that can be effectively monitored).

n85 See generally KEY WRITING, supra note 15; THE CUTTING EDGE, supra note 15.

Relying on economic theory to solve problems of race and sex makes about as much sense as reading Gramsci for help with one's household budget.


n91 See Linz Audain, Critical Cultural Law and Economics, the Culture of Deindividualization, the Paradox of Blackness, 70 IND. L.J. 709 (1995) (outlining a framework that will incorporate culture into law and economics analysis). See also id. at 712 n.4 (citing articles by Cheryl Harris, Robert Cooter, and Richard McAdams as examples of Critical Cultural Law and Economics); Andre Sole, Official English: A Socratic Dialogue/Law and Economics Analysis, 45 FLA. L. REV. 803 (1993).

n92 Emphasizing structural critique may seem contradictory in light of post-modern aspects of Critical Race Theory. See KEY WRITING, supra note, at 440 (describing race and postmodernism); Trubek, supra note 64, at 50 (noting "critical empiricism's" contradiction between appropriation of post-structuralist concepts and reliance upon structural causes and explanations). The contradiction may be more apparent than real, however. See R.B.J. Walker, INSIDE/OUTSIDE: INTERNATIONAL RELATIONS AS POLITICAL THEORY 3 (1993) (characterizing "rigid division between modernity and postmodernity" as misleading). In any event, an extended discussion of this issue is beyond the scope of this article.

n93 Several of Lance Taylor's works address this issue. See generally THE ROCKY ROAD TO REFORM: ADJUSTMENT, INCOME DISTRIBUTION AND GROWTH IN THE DEVELOPING WORLD (Lance Taylor ed., 1993); SOCIALLY RELEVANT POLICY ANALYSIS: STRUCTURALIST COMPUTABLE GENERAL EQUILIBRIUM MODELS FOR THE DEVELOPING WORLD (Lance Taylor ed., 1990); LANCE TAYLOR, STRUCTURALIST MACROECONOMICS (1983); Sustainable Development: Macroeconomic, Environmental, and Political Dimensions, in WORLD DEVELOPMENT 215 (Special Issue No. 24, 1996).

n94 See Trubek, supra note 64, at 41-52 (citing Critical Race Theory movement as example of "post-imperial legal culture" in law and society movement that sees "law as fragile, contradictory, fragmentary, and dispersed"); AFTER IDENTITY: A READER IN LAW AND CULTURE 187-270 (1995) (containing essays examining "the often contradictory roles that
legal rules have played in the construction of 'new identities' in postcolonial culture; MARTTI KOSKENNENMI, FROM APOLOGY TO UTOPIA 490-501 (1989) (contemplating "the possibilities of re-establishing the identity of international law by re-establishing that of the international lawyer as a social agent."). For literature relating to Post-Colonial Theory's treatment of race, gender, culture, and ethnicity, see COLONIAL DISCOURSE AND POST-COLONIAL THEORY: A READER (Patrick Williams & Laura Chrisman eds., 1994); CULTURAL STUDIES (Lawrence Grossberg et al., 1992); EDWARD W. SAID, ORIENTALISM (1978); SAID, supra note 18.

n95 See generally AKE, supra note 74; ARJUN MAKHIJANI, FROM GLOBAL CAPITALISM TO ECONOMIC JUSTICE (1992).

n96 Introduction to KEY WRITING, supra note 15.


n102 Antonio Gramsci described a process of differentiation and change in the relative weight that the elements of the old ideologies used to possess. What was previously secondary and subordinate...is now taken to be primary [and] becomes the nucleus of a new ideological and theoretical complex.PRISON NOTEBOOKS, supra note 69, at 195.
n103 See KEY WRITING, supra note 15, at xxiii ("Race crits realized that the very notion of a subordinate people exercising rights was an important dimension of black empowerment"); Patricia J. Williams, Alchemical Notes: Reconstructing Ideals from Deconstructed Rights, 22 HARV. C.R.-C.L. L. REV. 401 (1987).

n104 Fernando Rojas, A Comparison of Change-Oriented Legal Services in Latin America with Legal Services in North America and Europe, 16 INT'L J. SOC. L. 203, 208-09, 219, 225 (1988).

n105 See TESSA CUBITT, LATIN AMERICAN SOCIETY 57-84 (addressing ethnicity and race relations in Latin America); Adrienne D. Davis, Identity Notes, Part I: Playing in the Light, 45 AM. U. L. REV. 697 (1996) (describing impact on author of Nicaragua's "complex map of racial relations and domination"); cf. Valdes, supra note 1, at 27 (noting possibility that LatCrit theory could be based on politicized identities based on common struggles rather than "traditional fault lines like race and identity").