

Center for Hispanic &
Caribbean Legal Studies

Professor Elizabeth M. Iglesias
Co-Director, (305) 284-4050 Fax
(305) 284-1588
IGlesias@law.miami.edu

Professor Francisco Valdes
Co-Director, (305) 284-1780 Fax
(305) 284-6506
fvalar50raw.miamiedu

*THE SPANISH LEGAL SYSTEM AND LATCRIT THEORY
A DIALOGUE*

*co-sponsored by
Facultad de Derecho, Universidad de Málaga
and the
Center for Hispanic and Caribbean Legal Studies
University of Miami School of Law*

General Description of Conference Purposes

This conference is designed to commence a collaboration and dialogue between American LatCrit legal scholars and Spanish legal scholars. LatCrit Theory is a new development within the American legal academy.¹ While still evolving, its initial concern has been to center Latina/o identities, histories, perspectives and current social realities in the critical analysis of domestic and international law and, through this identity-based legal analysis, to promote transformative anti-subordination legal reform. As a result, LatCrit scholars have been interested in many different areas of law, process and policy, and many LatCrits are particularly interested in exploring the legal dimensions of Spain's historical and present-day interconnections with the United States and Latin America. In this initial conference, the main objective is to map out some areas of common interest to both American LatCrit and Spanish legal scholars.

¹ Although LatCrit Legal Theory is a relatively recent intervention, LatCrit scholarship has virtually exploded in the last four years. See e.g. Symposium, *LatCrit Theory, Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L. J. 1 (1998); Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 LA RAZA L. J.S 1 (1996); Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997); Symposium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTERAM. L. REV. 1 (1997); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 CHICANO-LATINO L. REV. 1 (1998); Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, U. MIAMI L. REV. Volume 53 and U. TEXAS HISPANIC L. J., Vol. 4 (forthcoming 1999).

Conference Logistics

The conference will be held at the Universidad de Malaga, Wednesday June 30th, during the University of Miami's Tour de España Summer Program. Students in the Tour de España Program will visit the Universidad de Malaga to attend the conference. The conference proceedings will also be open to Universidad de Malaga students.

The substantive discussions will be organized around four sessions. The first hour of each session will be dedicated to individual presentations. Each presentation should be no longer than 15 minutes. The second hour will be a question and answer discussion period based on the presentations made during the first hour. Through this structure of prepared presentations followed by focused group discussion, our hope is to create an opportunity for the kind of genuine exchange of perspectives and opinions that will enable deeper and more comprehensive understanding of the issues at stake in our chosen topics of analysis.

Substantive Themes of the Conference (Four Sessions)

SESSION ONE

Regional Integration, National Identities and the Rights of Citizenship in Comparative Perspective

Both the United States and Spain are undergoing regional integration processes that, in one way or another, raise significant questions about the future meaning of citizenship. In Spain, the processes of European integration raise complex questions about the way Spanish law and national identity will respond to (1) legal reforms eliminating restrictions on the movement of persons across national boundaries, (2) increasing demands for legal protection against different forms of discrimination, particularly discrimination that restricts the consolidation of a European identity, e.g. discrimination based on national origin, language usage, religious affiliations and race and ethnicity and (3) the economic restructuring that will *follow* increased cross-national commerce, for example, after the introduction of the EMU.

In short, the process of regional integration is increasingly testing what a "European" *citizenship* is likely to mean in the nations that comprise the European Union. The way these issues are articulated in Europe, as understood particularly from a Spanish perspective, are of great interest to LatCrit scholars precisely because the U.S. is undergoing similar pressures toward regional integration, even as these processes are channeled through the very different legal structures and political dynamics of the NAFTA regime, which has no supra-national institutions and significantly does not authorize the free movement of persons. Indeed, restrictive immigration policies and the English-Only Movement in the United States are both linked to cultural politics aimed at ensuring that "American" continues to mean a distinctly

Anglo-American national identity.

The purpose of this session is to generate comparative analysis and exchange of perspectives on the relationship between regional integration, national identity, the legal meaning of citizenship and the anti-subordination objectives that inform LatCrit Theory.

Drawing on their own particular fields of legal expertise, presenters may address the way any or all of these issues come are reflected in the following areas:

- the intersection of Spanish immigration/citizenship laws and European equal rights and non-discrimination regimes;
- different or competing accounts of what Spanish national identity means and how it may be affected by increasing European integration;
- comparative analysis of the impact of European integration on Spanish domestic legal regimes, e.g. Spanish labor laws versus commercial laws?;
- the intersection of U.S. immigration laws and NAFTA's free trade regime from an anti-subordination perspective; and
- the possibilities, limitations and impact of proposals to promote increased economic integration between Spain and Latin America.

Participants:

- Prof. Kevin Johnson, Professor of Law and Associate Dean, University of California at Davis, *"NAFTA, the European Union, and Migration Controls: The Maintenance of Racial Hegemony Through the Increased Flow of Capital, or the (Lack of the) Color of Money"*
- Dr. Juan Dr. Juan Luis Millan Pereira, Professor of Political Economy, Vice-Dean of Financial Matters. *"Economic Restructuring, Increased Cross-National Commerce and the EMU"*
- Dra. Ana Salinas de Frías. Professor of Public International Law. *"Legal reforms, National Boundaries and the Free Movement of Persons in the E. U. "*
- *Commentator*, Professor Ediberto Roman, Professor of Law, St. Thomas University School of Law

SESSION TWO

Human Rights, Gendered Identities and the Public/Private Dichotomy in Comparative Perspective

The public/private dichotomy is pervasive in American legal discourse. Basically, it holds that social reality is divided into two spheres: the private sphere is cast as the realm of intimate relations, freedom from government intervention and regulation, and as the particular domain of women; the public sphere is, by contrast, represented as the realm of male prerogative - governed by reason and law, it is the sphere of the market and the state. This public/private dichotomy appears everywhere in American legal discourse. It is used to rationalize legal outcomes in areas of law as diverse as First Amendment rights of free speech and association and privacy rights that limit government intervention and regulation. International legal regimes are also distinguished and organized around different normative and procedural assumptions depending on whether they are cast as elements of "private" (international commercial transactions) versus "public" (international social welfare norms).

Despite its ubiquity in law, the public/private dichotomy has come under severe criticism in American critical legal theory. Some critical legal scholars argue that this dichotomy masks the impunity of power relations in spaces cast as "private" (e.g. the family), even as it allows government overreaching and intrusiveness in social spaces or relations cast as "public." Others argue that the dichotomy serves to rationalize the exclusion and subordination of women and sexual minorities, both in public **and** in private. Finally, the fragmentation of international law and legal regimes into private and public creates substantial problems when "public" international is cast as "soft" law without any compulsory impact on sovereign states, while "private" international law is made binding and in many cases dominant over domestic laws of states.

The purpose of this panel is to invite comparative analysis and exchange between LatCrit scholars and Spanish legal scholars on the way the public/private distinction organizes legal forms, institutions and procedures in the different legal systems, and the impact of these legal forms on the objectives of equality and increasing respect for the social and economic rights of vulnerable groups.

Participants:

- Prof. Celina Romany, City University of New York School of Law at Queens College *"Womens' Rights, Human Rights and the Public/Private Distinction"*
- Dr. Angel Rodríguez-Vergara Diaz. Professor of Constitutional Law, Universidad de Malaga *"Human Rights and Gendered Identities in Europe"*
- Lundy Langston, Professor of Law, Nova Law School, *Save The Marriage Before (Not After) The Ceremony: The Marriage Preparation Act-- Can We Have A Public Response To A Private Problem?*
- Peter Halewood, Associate Professor, Albany Law School, *Commitments Realized in the Flesh: Liberalism and the Tortured Body in International Law*

SESSION THREE

Legal Theory and Practice: The Objectives and Methodologies of Legal Education

The nature, objectives and methodologies of legal education are at the center of a series of ongoing debates in the American legal academy. In its simplest terms, the debate reflects two competing visions of the purpose of legal education. Viewed as part of the University, the role of the law school is to promote deeper understanding of the way law intersects, intervenes and regulates the workings of society, culture and political economy. The law school's work product is a cadre of "social engineers" equipped with a keen sense of the possibilities and limitations of law as an instrument in the organization and transformation of society. Viewed, by contrast, as "the doorway" to the legal profession, the law school's purpose is to educate lawyers as skilled advocates, who can activate the legal machinery of courts, legislatures and other legal forums to promote the interests of their clients.

These two visions of the purpose of legal education (as well as of the kinds of lawyers legal education is designed to produce) are constantly at odds, implicating different notions of the kinds of classes, teachers, subjects and methodologies that should be at the center of legal education. Issues of racial and gender bias, both in the legal profession and in society as a whole, raise further questions about the way law is taught and to whom it is taught in our law schools.

The purpose of this session is to develop a comparative analysis of the key debates over the nature, objectives and methodologies of legal education in Spain and the United States. The session as a whole would be most interesting if presenters focused on different aspects of the debate perhaps by dividing up their topics between

- historical evolution, of legal education in response both to internal politics and objectives of the legal profession at different times in the history of Spain/United States;
- debates over the functions of lawyers in society and its implications for legal education, debates about the role of law in transforming racial and gender bias embedded in Spanish/U.S. societies and cultures and its implications for the kinds of education future lawyers should receive in law school;
- reflections on the kind of scholarship law professors are expected to produce and the differential recognition afforded to different kinds of scholarship.

Participants:

- Prof. Elizabeth M. Iglesias, Professor of Law, University of Miami, *"The Purposes, Practices and Possibilities of LatCrit Legal Theory in American Legal Education"*
- Dra. Yolanda de Lucchi Lopez-Tapia, Professor of Procedural Law, Universidad de Malaga, *"Legal Education: How to Prepare Experts in the Law."*
- Commentator

SESSION FOUR

International Relations: Spain and Latin America

A fourth area of general interest might focus on the role of Spain in the history and current development of Latin American legal forms and institutions. Rather than rehearsing familiar themes about the civil law tradition, it would be very interesting to organize a session that examined Spain/Latin America international relations through the prisms of commentaries (both in favor and against) the pending cases in the Spanish courts attempting to hold accountable military elites in Latin America (Chile and Argentina) for the deaths and/or disappearances of Spanish citizens during the dirty wars in these countries.

Participants:

- Dra. Magdalena M' Martin Martin Martinez, Professor of Public International Law, Universidad de Malaga, "*Universal Jurisdiction and Crimes Against International Law in Military Regimes*"
- Prof. Francisco Valdes, University of Miami School of Law, "*Criminality, Accountability and Reparations: Post-Pinochet Extrapolations*"
- *Commentator*

Publication of the Conference Proceedings

The papers presented at, or arising from, the live proceedings of LatCrit conferences are regularly published. Our current plans are to do a joint publication as a collaborative project between the University of Malaga and an American Law Journal as yet to be designated.

Expanding the Conference

Persons interested in participating or attending the conference should contact Professor Iglesias at iglesias@law.miami.edu.