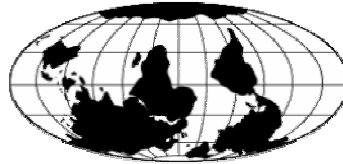


## AN INTRODUCTION AND INVITATION: SNX 2004

### **The South-North Exchange on Theory, Culture and Law**

The South-North Exchange is a joint project of LatCrit, Inc and the Universidad Inter-Americana de Puerto Rico, Facultad de Derecho.



WWW.LATCRIT.ORG

LATCRIT@LAW.MIAMI.EDU

## ***Reconstituting Constitutions and Cultures: Neoliberalism, Social Justice and the Rule of Law***

SAN JUAN, PUERTO RICO \* DECEMBER 9-13, 2004

The South-North Exchange on Law, Theory and Culture (“SNX”) met for the first time in 2003 to foster and sustain a trans-national, cross-disciplinary and inter-cultural dialogue on current issues in law, theory and culture that are of common interest across the Americas. This Exchange consists of two parts: an annual encounter in Puerto Rico and, afterward, a scholarly publication based on the live proceedings. Both the “live” and published versions of the Exchange aim to bring to bear on a contemporary issue or topic the combined specialties of the Exchange participants. Ideally, this annual Exchange will help to build networks of knowledge that, over time, will help to foster social justice awareness and activism, and help to inform public discourse and policymaking nationally, hemispherically and globally regarding current affairs in law and society. To do so, each year the Exchange examines a topical general theme, and participants “exchange” views, experiences, proposals and work through a series of four interactive plenary sessions spanning three days. We invite you to make advance plans *NOW* to join us in the Caribbean this December for the second meeting of this hemispheric Exchange of this new project! To follow up, please *fully complete and timely return* the appended “Participation Guidelines Form” by October 1, 2004 (with your Abstract – see instructions on appended Form).

This year’s Exchange theme, ***Reconstituting Constitutions and Cultures: Neoliberalism, Social Justice and the Rule of Law***, is designed to query the social and political significance of recent efforts or experiments in constitutional reforms in the South and North of the Americas. In the South, constitutional and structural reforms during the past decade or two have been rooted in twin principles that, in practice, oftentimes seem at odds: first, to protect human and civil rights, to assure substantive equality and democracy, and to promote social justice among the citizenry; and second, to implement neoliberal fiscal and social policies that privatize basic sectors of the economy, deregulate labor rights and open internal economies to international capital. As a result, the experience in the South is that national aspirations for social justice tend to be overwhelmed by the demands of global capital. In the North, the national fiasco in 2000 over selection of a new President in the United States prompted calls for constitutional amendments to overhaul the practices of democracy and ensure that voters’ choices win elections while the recent recognition of same-sex marriages in several cities or states have triggered additional calls for a federal amendment to ban them. Consequently, in the North constitutional efforts have focused on cultural engineering to reinforce neocolonial traditions, relations and arrangements. And in both the North and South, these national battles over constitutional law and policy have raised competing claims over the meaning of the Rule of Law as both a foundation and aspiration of societies across the Americas. In light of these ongoing developments, this Exchange aims to gather a diverse group of interdisciplinary scholars to interrogate critically the social and legal implications for the hemisphere of these policy reforms and political struggles.

The Exchange sessions begin on Thursday, December 9<sup>th</sup> at 4 PM and conclude on Monday, December 13<sup>th</sup>, at noon. Please use the appended Form to accept this invitation. For more information, please contact the 2004 Program Coordinators (see below) or contact us directly at [latcrit@law.miami.edu](mailto:latcrit@law.miami.edu). Mil Gracias!

**Program Coordinators** : Jorge Esquirol ([esquirol@fiu.edu](mailto:esquirol@fiu.edu)) & Diego Lopez Medina ([dlopez@uniandes.edu.co](mailto:dlopez@uniandes.edu.co))

# The South-North Exchange 2004: Program Participation Guidelines and Form

After reviewing the Guidelines below, please FAX your completed Form and Abstract to Professor Frank Valdes at 305-284-6506 or email your response to [latcrit@law.miami.edu](mailto:latcrit@law.miami.edu) as soon as possible, *and no later than Friday, October 1, 2004*, so that we can follow up appropriately in advance of the South-North Exchange 2004 in San Juan. Mil gracias for your timely response ... Abrazos!!

---

**ABSTRACTS, ADVANCE DRAFTS, FINAL PAPERS & PARTICIAPTION GUIDELINES:** *Each session of the Exchange will feature three-four presentations (15-20 minutes each) based on the timely responses to this Form, and will be facilitated to ensure interactive dialogue. Presentations may consist of or be based on (a) recent or ongoing research projects relating to the Exchange topic; (b) a thought piece responsive to the Exchange topic; or (c) an analysis of current affairs in a particular locality or community as they relate to the Exchange topic. **To participate in the Exchange, please fully complete and timely return this Form by October 1<sup>st</sup> with an Abstract (1-3 paragraphs) of your proposed presentation/paper. To facilitate interactive discussion at the Exchange, all participants additionally are requested and urged to submit a short Advance Draft (2-5 pages) or outline of their papers by November 15, 2004 for advance circulation among Exchange participants. Finally, all Exchange participants are invited to submit a Final Paper (15-35 pages) based on their participation by February 25, 2004 for publication as part of a law review symposium. Thanks for your cooperation in meeting these Program Participation Guidelines ... see ya soon in Puerto Rico!!***

1. NAME: \_\_\_\_\_ EMAIL: \_\_\_\_\_

2. SCHOOL: \_\_\_\_\_ PHONE/S: \_\_\_\_\_

3. MAILING ADDRESS: \_\_\_\_\_

4. \_\_\_ Yes, I am interested in participating in the inaugural South-North Exchange this December 9-11<sup>th</sup> in Puerto Rico, AND would like to present a paper/essay there on (please provide title and brief description or Abstract of your presentation below, or attach a separate sheet if necessary):

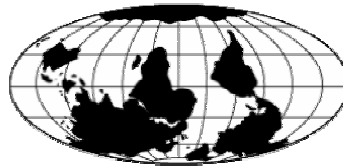
5. \_\_\_ Yes, I will be able to submit an Advance Draft or outline of my remarks (2-5 pages) via email or otherwise by Monday, November 15, 2004, for advance circulation to other Exchange participants.

6. \_\_\_ Yes, after the Exchange in San Juan I will be able to submit my Final Paper (15-35 pages) by February 25, 2005 for publication as an essay in a law review symposium based on this event.

## ADVANCE NOTICE OF FUTURE PROGRAM THEME: SNX 2005

### **The South-North Exchange on Theory, Culture and Law**

The South-North Exchange is a joint project of LatCrit, Inc and the Universidad Inter-Americana de Puerto Rico, Facultad de Derecho.



WWW.LATCRIT.ORG

LATCRIT@LAW.MIAMI.EDU

### ***The Americas and their Indigenous People: Assessing the International Decade of the World's Indigenous People (1994-2004)***

**SAN JUAN, PUERTO RICO \* MAY 5-7, 2005**

This one-page Advance Notice of Program Future Theme provides a general description of upcoming program themes to help interested scholars plan ahead for future South-North Exchanges. The summary description presented below therefore introduces interested scholars to the 2005 Exchange theme and to the Program Coordinators for that year (see below). More detailed information regarding lodging, registration and publication opportunities will be circulated as we prepare for that year's Exchange. If you are interested in participating in the 2005 Exchange program, please save the date NOW! (*Please note the 2005 Exchange will meet in San Juan, but in late May over the Memorial Day Weekend*).

Most nation-states in the Americas have indigenous peoples under their jurisdiction. Unfortunately, to many citizens, and even some social activists, the members of these communities are like Ralph Ellison's *Invisible Man*. To help rectify this marginality, on December 21, 1993, the General Assembly of the United Nations passed its resolution 48/163, proclaiming the International Decade of the World's Indigenous People, to begin on December 10, 1994. The U.N. General Assembly thus sought to promote international cooperation in order to solve the problems faced by autochthonous communities in areas such as human rights, cultural survival, the environment, and development. This Decade is now concluding and, in the eyes of many observers and affected people, not much has changed. Indeed, most governments have failed to move forward and adopt the U.N. Draft Declaration on the Rights of Indigenous Peoples.

The 2005 South-North Exchange on Law, Theory and Culture ("SNX") will convene in San Juan, Puerto Rico at the Inter-American University (School of Law) to cast a critical focus on this topic. To do so, the program for the 2005 Exchange calls for paper proposals exploring the current conditions and prospect of the indigenous peoples throughout the Americas, and interrogating the meaning of concepts like self-determination, nationalism, Eurocentrism, colonialism, multiculturalism, democracy, federalism, political philosophy and the Rule of Law from the perspective of the indigenous. All paper proposals for this 2005 Exchange program are due by March 5, 2005.

More particularly, the 2005 Exchange organizing committee hopes that the proposals will focus critical analysis on the worth, importance, and relevance of contemporary indigenous cultures in South, Central or North America. The 2005 committee also is very much interested in paper proposals examining the history and politics of the negotiations on the United Nations Draft Declaration between 1994 and 2004. Finally, the 2005 committee welcomes paper proposals that address the work that remains to be done on this topic after ten years, and again from the perspective of indigenous fellow citizens. Interested scholars may obtain from the 2005 Exchange program coordinators a listing of U.N. and indigenous peoples' web sites that provide information and discussion about the Draft Declaration. To request this list, or to obtain further information, please contact the 2005 Program Coordinators (see below) or write directly to [latcrit@law.miami.edu](mailto:latcrit@law.miami.edu).

**Program Coordinators** : *Dominique Legros* ([legros\\_dominique@sympatico.ca](mailto:legros_dominique@sympatico.ca)) & *Angel Oquendo* ([oquendo@uconn.edu](mailto:oquendo@uconn.edu))

# **The South-North Exchange on Theory, Culture and Law**

*The South-North Exchange is a joint project of LatCrit, Inc and the Universidad Inter-Americana de Puerto Rico, Facultad de Derecho.*



WWW.LATCRIT.ORG

LATCRIT@LAW.MIAMI.EDU

## ***Reconstituting Constitutions and Cultures: Neoliberalism, Social Justice and the Rule of Law***

SAN JUAN, PUERTO RICO \* DECEMBER 9-11, 2004

# **PROGRAM AND SCHEDULE**

### **Sponsored by:**

Center for Human Rights, Facultad de Derecho, Universidad Inter-Americana de Puerto Rico

REG-Justice Project

&

Center for Hispanic and Caribbean Legal Studies, University of Miami School of Law

### **Co-Sponsored by:**

Florida Journal of International Law

### **Presented by:**

LatCrit, Inc.

(Latina and Latino Critical Legal Theory, Inc.)

## **The South-North Exchange: Introduction, Welcome and Overview**

Saludos, Amigas/os! Welcome to the inaugural South-North Exchange on Law, Theory and Culture, which will be held December 9-11, 2004 at the Inter-American University School of Law in San Juan, Puerto Rico. This new scholarly initiative is designed to foster and sustain a trans-national, cross-disciplinary and intercultural dialogue on current issues in law, theory and culture that are of common interest across the Americas. To do so, this new project will examine topical general themes as participants "exchange" views, ideas, experiences and work through a series of interactive plenary Sessions formatted as interactive roundtable discussions. Ideally, this South-North Exchange will help to build enduring networks of critical knowledge that, over time, will help to foster social justice awareness and activism, and help to inform public discourse and policymaking nationally, hemispherically and globally. Travel and lodging information follow below, after the introductory and overview notes.

This new project consists of two parts: a three-day encounter in Puerto Rico consisting of interactive plenary Sessions and, afterward, a scholarly publication based on the live proceedings. Each Session is timed to last one hour and 45 minutes and is formatted to lead up to interactive discussion akin to a roundtable but including the audience as well. The Exchange Sessions open with a 5-minute Substantive Introduction by that Session's Introducer and Facilitator, followed by the presenters' 15-minute presentations, culminating in interactive discussion among the participants as well as between the participants and the audience after the presentations conclude. In addition, all participants and attendees at the live Exchange are invited to submit short essays by February 20, 2005 for publication as a law review symposium based on the proceedings: final details for symposium submissions will be provided on site. Both the "live" and published versions of the South-North Exchange aim to bring to bear on a contemporary topic the combined specialties of multiply diverse scholars.

This year's Exchange theme, **Reconstituting Constitutions and Cultures: Neoliberalism, Social Justice and the Rule of Law**, is designed to query the social and political significance of recent efforts or experiments in constitutional reforms in the South and North of the Americas. In the South, constitutional and structural reforms during the past decade or two have been rooted in twin principles that, in practice, oftentimes seem at odds: first, to protect human and civil rights, to assure substantive equality and democracy, and to promote social justice among the citizenry; and second, to implement neoliberal fiscal and social policies that privatize basic sectors of the economy, deregulate labor rights and open internal economies to international capital. As a result, the experience in the South is that national aspirations for social justice tend to be overwhelmed by the demands of global capital. In the North, the national fiasco in 2000 over selection of a new President in the United States prompted calls for constitutional amendments to overhaul the practices of democracy and ensure that voters' choices win elections while the recent recognition of same-sex marriages in several cities or states have triggered additional calls for a federal amendment to ban them. Consequently, in the North constitutional efforts have focused on cultural engineering to reinforce neocolonial traditions, relations and arrangements. And in both the North and South, these national battles over constitutional law and policy have raised competing claims over the meaning of the Rule of Law as both a foundation and aspiration of societies across the Americas. In light of these ongoing developments, this Exchange aims to gather a diverse group of interdisciplinary scholars to interrogate critically the social and legal implications for the hemisphere of these policy reforms and political struggles. With these introductory thoughts in mind, we invite and welcome you to the inauguration of the South-North Exchange on Law, Theory and Culture.

Due to the generous sponsorship of the Inter-American University and the University of Miami, no registration fee applies to this event. To attend, simply: (1) send us a reply email to [latcrit@law.miami.edu](mailto:latcrit@law.miami.edu) with your name and institutional affiliation; (2) arrange your travel plans to arrive in San Juan in time to join us at the campus of the Inter-American University School of Law by 3 PM on Thursday, December 9<sup>th</sup>, and; (3) make your hotel reservation directly with the Wyndham Condado Plaza by calling 1-800-468-5228 and identifying yourself as a member of the "LatCrit Group." For more information about this or other LatCrit programs and projects, please contact us via email [latcrit@law.miami.edu](mailto:latcrit@law.miami.edu) or visit our website [www.latcrit.org](http://www.latcrit.org).

Hasta San Juan!!!

**Day 1:**

**THURSDAY, December 9, 2004**

*All scheduled events take place at the law campus of the Inter American University of Puerto Rico School of Law unless otherwise noted.*

**3:00 – 3:30 PM: Registration and Welcome Reception**

**3:45 – 4:00 PM: Opening Remarks**

Francisco Valdes, University of Miami, Law, USA

**4:00 – 5:45 PM: Session I: NAFTA**

Globalization and increased South-North commerce offer opportunities for greater democracy and development across the hemisphere. At least the promise associated with such relationships does. This panel examines the record. NAFTA and similar trade arrangements are, at a minimum, incomplete: they focus on investor rights to the detriment of labor, the environment, and other governance concerns. Even more troubling, the free-trade driven approach to globalization threatens to reverse even the limited social gains achieved by national polities. Trade agreements grant rights against governmental regulation, limiting the workings of democracy. Rather than simply an incomplete and gradual approach to greater well-being for all, the Americas' variety of globalization may result in the affirmative dismantling of social, labor and environmental legislation throughout the region. Is this process irreversible? Are democracy and development incompatible?

**Introduction and Facilitation:**

Martin Saavedra, Universidad de Buenos Aires, Law, Argentina

**Presenters:**

Helena Alviar, Universidad de los Andes, Law, Colombia

*The Unavoidable Road to Progress?: Ideological Limits of the Colombian Debate Surrounding Free Trade*

Fran Ansley, University of Tennessee, Law, USA

*Crazy Mixed-Up Constitutions: Grassroots Activists Meet Global Takings*

Colin Crawford, Georgia State University, Law, USA

*The Environmental and Land Use Implications of Free Trade: Aftah NAFTA*

Jorge Esquirol, Florida International University, Law, USA

*Defining Development in Latin America: A U.S. Perspective*

Imer Flores, Universidad Autonoma Nacional de Mexico, Law, Mexico

*Reconstructing Constitutions, Institutions and Cultura: The Mexican Constitution and NAFTA*

Becky L. Jacobs, University of Tennessee, Law, USA

*NAFTA/FTAA/CAFTA - The New Religion – Deifying Commerce*

**6:00 - 7:00 PM: On-Campus Reception**

**8:00 - 10:00 PM: Group Dinner (unhosted)**

**DAY 2:**

**FRIDAY, December 10, 2004 (morning)**

*All scheduled events take place at law campus of the Inter American University of Puerto Rico School of Law unless otherwise noted.*

**9:00 – 9:45 AM: Coffees and Sweet Things**

**10:00 - 11:45 AM: Session 2: International Law**

This panel explores the ability of communities to work with or against the constitutional framework in which they are inscribed. Contemporary constitutional law is able to accept to coexistence of different “societies” within a single political unit. National constitutions no longer desire to bring all those societies within a single constituting structure, nor do they wish, at least on the surface, to continue with a project of general assimilation of their diverse population. Constitutions recognize different forms of pluralism: legal, political, cultural, economic, etc. Is this trend a worthy component of progressive politics? What has happened in different parts of the world in terms of pluralistic constitutionalism? Can we make significant south-south comparisons? How does recognition of pluralism interact with recent trends in economic governance?

**Introduction and Facilitation:**

Tanya Hernandez, University of Rutgers, Law, USA

**Presenters:**

Daniel Bonilla, Universidad de los Andes, Law, Colombia  
*Indigenous Groups' Self-Government Rights and Political Unity: A Contradiction?*

Duncan Earle, IDCE Clark University, Law, USA  
*Other Globalizations Are Possible: Zapatista Constructions of Popular Authority, Policy and Constitutionality*

Anashri Pillay, University of Cape Town, Law, South Africa  
*Accessing Justice in South Africa*

Jim Wilets, Nova Southeastern University, Law, USA  
*The Globalization of Gender Minority Rights in the Americas*

**12:00 – 1:15 PM: Luncheon and Welcome Remarks:**

Luis Mariano Negron, Dean, Universidad Inter-Americana, Law, Puerto Rico

## **DAY 2:**

## **FRIDAY, December 10, 2004 (afternoon)**

*All scheduled events take place at the law campus of the Inter American University of Puerto Rico School of Law unless otherwise noted.*

**1:30 – 3:15 PM:**

### **Session 3: Transitional Regimes**

This panel explores various legal mechanisms in the South and North that have accompanied paradigmatic societal shifts. Emphasizing mostly events in the South which have heralded the advent of greater justice, emancipation, and de-colonization, this panel examines the institutions and processes that have facilitated these transitions. Comparing an array of examples from Brazil to South Africa, our panelists explore the promises and limitations of structures such as truth commissions, constitutional reform, judicial councils, and criminal trials among others. Throughout the panel discussion, we will explore how the incidents of globalization impact the formation and functioning of these mechanisms.

#### **Introduction and Facilitation:**

Hugo Rojas, Universidad Alberto Hurtado, Law, Chile

#### **Participants:**

Paul Brietzke, Valparaiso University Law School, Law, USA  
*Globalization, Nationalism and Human Rights*

Humberto Dalla, Universidade Do Estado Do Rio De Janeiro, Brasil  
*The New Constitutional Reforms in Brazil and Its Effects in Citizenship, Culture and The Rights of the Brazilian People*

Diego Lopez Medina, Universidad de los Andes, Law, Columbia  
*Constitucional Politics and Economy in Latin America*

Angel Rivera, Universidad de Puerto Rico, Sociology, Puerto Rico  
Yanira Reyes, Universidad Interamericana, Law, Puerto Rico  
*De-Colonization in the Post-Colonial Setting: The Puerto Rican Constitutional Assembly*

Rich Shore, Seattle University School of Law, Law, USA  
*Transitional Justice: An Examination into Methods of Transitional Justice in South America and South Africa*

**3:30 – 4:30 PM:**

**On-Campus Reception**

**DINNER:**

**Everyone On Their Own!**

**10:00 - 12:00 PM:**

**Fiesta! – Meet at the LatCrit Hospitality Suite**

## **DAY 3**

**Saturday, December 11, 2004**

*All scheduled events take place at the law campus of the Inter American University of Puerto Rico School of Law unless otherwise noted.*

**9:00 - 9:45 AM: Coffees and Sweet Things**

**10:00 - 11:45AM: Session 4: Constitutional Communities**

The latest wave of new or heavily amended Latin American constitutions have turned towards a “social” model of governance, usually described as “estado social de derecho”. At the same time, however, concrete statutory measures in all fields of economic activity have veered towards well-known recipes of neo-liberal governance. Constitutional law, then, meets statutory law at a time when constitutional law has resumed an interventionist role, away from the merely programmatic nature of French constitutionalism, and towards the self-applying nature of American constitutionalism. Self-applying constitutionalism, plus the political divergence between the new constitutions and the neoliberal reforms set the stage for a fascinating discussion that encompasses the last 15 years of Latin American constitutional discourse: the constitutional party, rooting for the social, and the statutory party, rooting for the liberal. Critical and radical constitutionalists in the U.S. tradition have already enough data to make them weary of the constitutional promise and would probably recommend circumspection to the Latin American progressive and constitutional party. Can we further analyze legal progressivism along the North/South American divide? What is the role of constitutionalism in progressive politics? The panel will explore in detail this fascinating dilemma trying to give us ideas as to its development in the future.

### **Introduction and Facilitation:**

Celina Romany, Universidad Inter-Americana, Law, Puerto Rico

### **Presenters:**

Conrado Hübner, Fundação Getulio Vargas, Law, Brasil

*Judicial Review of Constitutional Amendments in Brazilian Supreme Court*

Lolita Buckner Inniss, Cleveland Marshall School of Law, Law, USA

*Juridical Statehood, State Failure, and the Case of Haiti: Some Musings*

Beth Lyon, Villanova University School of Law, Law, USA

*New International Human Rights Standards On Unauthorized Immigrant Worker Rights: Seizing An Opportunity To Pull Governments Out of the Shadows*

Angel Oquendo, University of California at Berkeley, Law, USA

*Constitution as Catharsis*

**11:45 – 12:00 PM: Concluding Remarks**

Robert Westley, Tulane University, Law, USA

**LUNCH: Everyone On Their Own!**