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Regional Integration in North America and Europe: Lessons about Civil Rights and Equal Citizenship

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The panel on “Regional Integration, National Identities and the Rights of Citizenship in Comparative Perspectives” initiated the first annual colloquium on “The Spanish Legal System and LatCrit Theory: A Dialogue” in June 1999 at the Universidad de Málaga in Spain.1 In an era of globalization facilitated by rapid technological change, regional integration of national economies has grown in popularity around the world.2 As Professor Elizabeth Iglesias outlines in her symposium contribution, we have much to learn about the relationship between nations in a globalizing world.3 In the following papers, critical Latina/o, or LatCrit,4 and Spanish legal scholars offer intriguing comparative perspectives on the much-trumpeted regional integration. Europe and the Americas today both are in the midst of a grand integration

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2 See Frederick M. Abbott, Regional Integration and the Environment: The Evolution of Legal Regimes, 68 CHI.-KENT L. REV. 173, 173-74 (1992) (observing that “[r]egional integration is the dominant trend in the international trading system” and offering examples from around the world).


experiment. The North American Free Trade Agreement (NAFTA) facilitated a freer flow of goods and capital between the United States, Canada, and Mexico. Although the trade accord initially sparked controversy, all three nations ultimately approved the pact. The public controversy over the trade agreement focused little on human and civil rights. Nonetheless, these rights, particularly ones implicated by labor mobility, have emerged to the forefront in the years since NAFTA went into effect. Spain's experiences as part of the European Union's common market also hold valuable lessons about the impact of regional integration of national markets on human and civil rights.

At the same time, the history of Latina/os in the Americas should be of great interest to Spaniards, if not only because persons of Latin American ancestry represent the legacy of Spain's colonization of much of the Western Hemisphere. California, for example, once was part of the Spanish empire; the Spanish initially settled the territory that later became part of Mexico and ultimately California and the United States. Spain's imprint on the hemisphere remains intact as Latin America today is largely Spanish speaking. Understanding this colonial history helps place the ongoing regional integration into its proper context. Colonialism represented a form of expansion of markets and accumulation of resources similar to the desired economic impacts of regional integration. Although colonial relationships often came through

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8 See infra text accompanying notes 39-49.

9 See infra text accompanying notes 50-71.

10 See Ediberto Román, Common Ground: Perspectives on Latino-Latina Diversity, 2 HARV. LATINO L. REV. 483, 489 (1997) (opining that “Spanish imperialism provides [Latina/os] with our greatest common grounds. This history of imperialism stripped our ancestors of not only their language, but their lands and culture -- and even led to genocide.”) (footnote omitted). See generally Anthony Pagden, Spanish Imperialism and the Political Imagination (1990) (analyzing history of Spanish imperialism from 1513-1830).


force, regional integration constitutes the more acceptable modern alternative.

In this vein, the analysis of regional integration in the following series of essays reveals the economic, civil rights, and citizenship issues implicated by integration. The civil rights struggles of Latina/os in the United States, a focal point of LatCrit analysis, demonstrate the limits of integration as people move across the borders between the developing and developed worlds. With the help of Spanish legal scholars, LatCrit scholarship, which has been committed to investigating international law and human rights, stands to gain intellectually. As it grapples with the undocumented migration of North Africans into its territory, Spain, which like the United States, has a southern border with the developing world, also may learn from studying the struggles of persons of Latin American ancestry in the Western Hemisphere.

Part I discusses the various essays in this Colloquium issue and how they bear on the lessons of regional integration. Part II analyzes the specific human and civil rights consequences of the migration issues implicated by regional integration in North America and Europe.

I. Capital Flows and Civil Rights in Regional Integration

In both academic and public spheres, analysis of regional integration tends to focus on trade and capital and the economic costs and benefits of mutual cooperation. Such integration, however, also implicates civil and human rights concerns. In part because they are often ignored, these issues frequently have proven to be more intractable than purely economic ones.

Commencing with a discussion of the economic restructuring of Europe in the post-World War II period, Professor Juan Luis Millán Pereira analyzes the legal history and evolution of the European Monetary Union (EMU) with a unitary currency and fixed rates of exchange. In so doing, he details the EMU's advantages and disadvantages. Professor Millán specifically contends that the EMU will exacerbate regional economic disparities between nations and foster disparate economic development in Northern Europe, a modern day version of the old adage, "the rich get richer." This analysis is consistent with the LatCrit skepticism about the benefit

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14 One notable exception has been the public protests over the impact of the World Trade Organization on the environment and workers. See Susan Tiefenbrun, Free Trade and Protectionism: The Semiotics of Seattle, 17 ARIZ. J. INT'L & COMP. L. 257 (2000) (analyzing nature of protests); cf Gary Minda, Globalization of Culture, 71 U. COLO. L. REV. 589, 640 (2000) (contending that "[g]lobalization and the decline of the nation-state's sovereign status have brought about a huge transfer of wealth and power from lower-skilled workers and less-developed nations to the owners of capital assets and the new technological entrepreneurs.")

15 See Millán, supra note 15.

16 See id. at 45.
offered by international economic institutions to developing nations.\(^{18}\)

Although not without bumps in the road, the EMU's emergence, as Professor Millán recounts, has not generated heated controversy.\(^{19}\) In contrast, the implementation by the European Union (EU) of labor migration between the member nations, as provided for in relevant treaties, has proven to be both controversial and difficult.\(^{20}\) The migration of people across national borders raises deep concerns about national origin discrimination, the subject of the next two essays.

Professor Ana Salinas de Frias\(^{21}\) analyzes the foundational documents of the European Union that prohibit governmental discrimination against citizens of EU members on the basis of nationality.\(^{22}\) After analyzing the legal intricacies of the enforcement of the nondiscrimination principle, Professor Salinas concludes that deficiencies in ensuring compliance with the law render free labor movement within the EU far from complete and, in fact, make it unlikely to ensure the "real integration of Europe’s peoples."\(^{23}\) This conclusion finds support in the long history of discrimination against various minority groups – Arabs and Africans in France and Turks in Germany, for example – in various European nations.\(^{24}\)

Critical Race and LatCrit theorists have devoted considerable study to the difficulties of enforcing civil rights law in the United States.\(^{25}\) Despite the nation's


\(^{19}\) See infra text accompanying notes 50-71.


\(^{21}\) See generally NEW XENOPHOBIA IN EUROPE (Bernd Baumgartl & Adrian Favell eds., 1995) (collecting essays documenting new nativism in Europe); RACIST VIOLENCE IN EUROPE (Tore Bjorgo & Rob Witte eds., 1993) (offering perspectives on racist violence in Europe); ROBIN OAKLEY, TACKLING RACIST AND XENOPHOBIC VIOLENCE IN EUROPE (1996) (to same effect). The United States has a similar history of intolerance, which escalated in an outburst of anti-immigrant sentiment in the 1990s. See generally IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES (Juan F. Perea ed., 1997) (collecting essays analyzing rise of nativism in U.S. in 1990s).

formal legal commitment to equality under the law, various civil rights laws have proven difficult to enforce. The experience of the EU, as analyzed by Professor Salinas, offers a comparative example of the limits of law in guaranteeing fundamental civil rights.26

Building on previous scholarship focusing on the diminished U.S. citizenship rights of persons in Puerto Rico, the modern-day equivalent of a U.S. colony,27 Professor Ediberto Román analyzes the limited citizenship rights of subordinated and marginalized communities in the United States.28 As he documents, African Americans, Asian Americans, Latina/os, Native Americans, and other racial minorities formally guaranteed full citizenship rights under U.S. law, are in fact denied full membership in American social life.29 Along similar lines, LatCrit scholarship has analyzed the formal and informal limits imposed on Latina/o citizenship in the United States.30 Professor Román demonstrates the “marginality of law” to the lives of racial minorities.31 In light of the limits of law,32 we must consider political and other alternatives to secure social change.33 Once again, the problem becomes one of ensuring the full integration of newcomers into a country.

The essays together raise a number of deep concerns with regional integration. When financial and trade issues arise as issues of contention in integration, they generally are ironed out through negotiation. The more “human” problems, such as


See infra text accompanying notes 50-71.


See generally KENNETH KARST, BELONGING TO AMERICA (1989) (analyzing struggle for full membership by various minorities in United States).


See Martinez, supra note 30, at 334-39 (analyzing “the marginality of law” in connection with Mexican-American civil rights in United States).


ensuring effective enforcement of the anti-discrimination norm, prove more intractable, in no small part because of the negative public reaction of the host country to citizens of other (particularly developing) nations. Indeed, as we shall see with the heightened migration controls that often accompany the implementation of regional integration, human rights problems often have increased as nations cooperated economically. Put differently, although generally not the focus of regional integration, cooperative arrangements between nations often have human and civil rights impacts. The next section considers those consequences in the context of the evolution of border enforcement strategies in Europe and North America.

II. Regional Integration and Migration: A Comparison of North America and Europe

At the 1999 conference in Spain, my presentation entitled "NAFTA, the European Union, and Migration Controls: The Maintenance of Racial Hegemony Through the Increased Flow of Capital or the (Lack of) Color of Money," focused on labor migration between Canada, Mexico, and the United States, and compared it with that permitted within the European Union. In an era of globalization and the emergence of a truly world economy, labor migration has become increasingly important. Nonetheless, the developed world continues to struggle with how to address migration pressures from developing nations.

A. NAFTA and the Americas

Although NAFTA permits the free flow of capital between Canada, Mexico, and the United States, the accord fails to allow for the migration of labor between these three member nations. Economic theory, however, treats capital and labor as fungible factors of production. Racial, cultural, and class differences between the Mexican

34 See supra text accompanying notes 25-26.
35 See infra text accompanying notes 37-71.
36 See infra text accompanying notes 43-46, 52-71.
people and U.S. citizens, combined with fears of mass migration, prevented an agreement allowing for labor migration among the NAFTA nations. The fact that race and class precluded a comprehensive labor migration agreement is consistent with the denial of rights ordinarily associated with equal citizenship and full membership to Latina/os in the United States. It is difficult to understand why, absent a clearly perceived national benefit, the United States would enter into an agreement that would facilitate the migration, of Mexican people, who are viewed as inferior, into the United States.

Labor migration, however, has continued between the United States and Mexico, as it has throughout most of the post-World War II period. Undocumented migration outside official channels constitutes part of this labor flow. NAFTA expressly permits the member nations to enhance border controls to reduce undocumented migration. Consequently, the emergence of NAFTA saw increased militarization of the United States’s southern border with Mexico, resulting in harsh human consequences. The targets, and victims, of the enforcement efforts were policies from economic welfare perspective and showing that “liberalizing reforms, which are likely to increase levels of employment-based and family-based immigration by eliminating certain immigration barriers, would raise national economic welfare as well as global economic welfare”;


See supra note 30 (citing authorities).


See id. at 200 (Table N) (estimating undocumented population from various nations, including Mexico, in United States).

See NAFTA, supra note 5, art. 1601, 32 I.L.M. at 644 (providing that member nations have sovereign power “to ensure border security and to protect the domestic labor force and permanent employment in their territories.”).

primarily migrants from Mexico.

Despite NAFTA's evasion of the issue, labor migration has become a topic of public discussion. Newly-elected President of Mexico, Vicente Fox, a former corporate executive who brought an end to decades of Partido Revolucionario Institucional rule, advocates free labor movement between the United States and Mexico. Many in the United States view immigrant labor as economically invaluable and, in fact, now claim that a labor shortage necessitates a temporary foreign worker program. When economic demands conflict with public sentiment, tension results and change is more likely to occur. Only time will tell whether the United States will ultimately consider some version of labor migration within the NAFTA bloc.

NAFTA thus opened doors for decreased trade barriers and vastly increased migration barriers. It paved the way for an unprecedented escalation of border enforcement operations and the widespread use of military force in the border region to the detriment of Mexican migrants.

**B. Spain and the European Union**

Migration controls under NAFTA are similar to, but different from, those in the European Union (EU), which over a number of years saw the development of freer labor migration between member nations. Class and cultural similarities among Western Europeans facilitated agreement on labor movement. However, controversies have ensued over the possible incorporation into the EU of nations, such as Turkey, with populations viewed as racially, culturally, and otherwise different. Such
concerns suggest that limits exist on the future integration of labor markets.

Spain's implementation of migration controls as part of the EU implicates serious human rights issues. By their nature, integration agreements generate calls for the exclusion of labor (or trade, for that matter) from nations not part of the cooperative arrangement. Denominated the "Fortress Europe," the EU permits labor migration among member nations, but requires each nation to control migration from outside the common market. As the "Fortress Europe" moniker suggests, some contend that the migration control measures of EU nations are excessive and, for example, violate the rights of asylum seekers under international law.

Upon joining the EU, Spain added migration controls designed to fortify its border and bar undocumented migration from North Africa. Other EU nations, particularly France and Germany, had been concerned that, absent increased migration controls, Spain would become a port of entry for all of Europe. Almost simultaneously with its admission into the EU in 1985, Spain passed its first comprehensive immigration law. The delay in passing such a law was attributable to the fact that


See González & MacBride, supra note 52, at 158-61.

Spain historically had not been a nation of immigration but one of emigration. Rapid industrialization, however, and the growth of economic opportunity, transformed Spain into a country of immigration.

Regional integration transformed the labor market in Spain. Efforts to control labor migration across national lines created a population of low wage, undocumented workers from Morocco, which in many ways resembles the undocumented Mexican population in the United States. Moroccan migrants work for relatively low wages (although greater than they would earn in their homeland) in service, construction, and agricultural jobs that, given the relatively generous social welfare system, Spanish citizens will not. At the same time, Spanish citizens sporadically denounce the influx of immigrants. Anti-immigrant sentiment in certain regions of Spain, at times culminating in violence, has been on the rise.

Migration pressures in Spain continue to mount. Despite heightened border controls, an increasing number of Moroccans have attempted to unlawfully enter the country. Increased deaths at sea have resulted as Moroccan migrants hazard the voyage by boat across the Mediterranean Sea to Spain to avoid border checkpoints. This is similar to the fate of migrants from Haiti and Cuba attempting to cross the Caribbean to come to the United States. Similarly, reminiscent of the U.S. enforcement efforts along the southern border with Mexico, Spain has added


See González & MacBride, supra note 52, at 156.

See generally Calavita, supra note 55 (contending that Spanish immigration and civil rights law facilitates the exploitation of undocumented labor).


See, e.g., Roger Cohen, Europe’s Migrant Fears Rend a Spanish Town. N.Y. TIMES, May 8, 2000, at A1 (reporting on violent rampage in El Ejido, small town on Spain’s southern coast, directed at Moroccan immigrants and, more generally, discussing the growth of anti-immigrant sentiment in European Union); Marlise Simons, At Home, Resentment Hits Immigrants, INT’L HERALD TRIB., Feb. 15, 2000, at 1 (reporting on same). Similarly, since the fall of the Berlin wall dividing East and West Germany, the German government has fortified its border to the East to reduce undocumented migration. See ANDREAS, supra note 55, at 117-26.


See George Stolz, Europe’s Back Doors, ATL. MONTHLY, Jan. 2000, at 26 (reporting on efforts of migrants to enter two Spanish enclaves on the coast of Morocco, Ceuta and Melilla, in effort to enter European Union).


See supra text accompanying notes 44-46 & note 46.
sophisticated technology to detect and deter undocumented migration. As leaders in the United States call for economic development in Mexico, Spanish politicians advocate financial aid to foster growth in Africa to reduce unlawful immigration.

The striking similarities between the undocumented labor market and migration controls in the United States and Spain—both industrial nations that border the developing world—prove revealing. Both economies covet cheap labor, while the presence of undocumented workers in the country provokes domestic concern because of racial, cultural, and other differences. Both the U.S. and Spanish governments have responded by fortifying the borders and attempting to stem the migration pressures caused by the stark economic disparities between nations. Despite these measures, containment of undocumented migration remains uncertain at best, with the human toll rising.

Kitty Calavita refers to "globalization" as the "process of stepped-up integration of First World economies ... and their increasing reliance on Third World labor ...". Undocumented migration represents an inexpensive, disposable labor source for industrialized nations. Migration controls that contribute to the maintenance of this labor force are an unstated part of regional integration. As scholars, we must consider the human rights implications of regional integration.

III. Conclusion

The papers in this cluster suggest the potential of scholarly collaboration between LatCrit and Spanish academics in critically analyzing regional integration. In a globalizing economy, we must consider the effects of mutual cooperation on civil and human rights, as well as the economic benefits generated for certain sectors of industrialized nations. Importantly, capital and financial integration among nations may

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65 See ANDREAS, supra note 55, at 131-32, 135; see, e.g., Giles Tremlett, Spain Sets Migrant Radar Trap, TIMES (LONDON), Aug. 18, 2000 (stating that Spain would install radar system based on anti-terrorist technology along its southern sea border to detect illegal migrants from Africa).


68 See ANDREAS, supra note 55, at 126-39 (discussing increased enforcement of Spanish-Moroccan border and offering comparative perspective on border enforcement in United States).


70 Calavita, supra note 55, at 537 (italics in original omitted); see Frances Lee Ansley, Rethinking Law in Globalizing Labor Markets, 1 U. PA. J. LAB. & EMP. L. 369 (1998) (discussing impacts of globalizing economies on workers).

come about easier than the assimilation of people of different national origins. Labor exploitation based on treatment as outsiders within the regional market warrants serious scrutiny. Moreover, the human costs of heightened migration controls on people seeking better lives, should not be minimized or ignored.