

# University of Miami International and Comparative Law Review

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Volume 9

Issue 1 *THE FIRST ANNUAL LATCRIT SUMMER COLLOQUIUM: SPAIN, THE AMERICAS AND LATINO/AS: International and Comparative Law in Triangular Perspective*

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Article 4

1-1-2001

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

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### Recommended Citation

Kevin Johnson, *Introduction: Regional Integration in North America and Europe: Lessons about Civil Rights and Equal Citizenship*, 9 U. Miami Int'l & Comp. L. Rev. 33 (2001)

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

Kevin R. Johnson\*

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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.<sup>1</sup> In an era of globalization facilitated by rapid technological change, regional integration of national economies has grown in popularity around the world.<sup>2</sup> As Professor Elizabeth Iglesias outlines in her symposium contribution, we have much to learn about the relationship between nations in a globalizing world.<sup>3</sup> In the following papers, critical Latina/o, or LatCrit,<sup>4</sup> 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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<sup>1</sup> See program schedule of “The Spanish Legal System and LatCrit Theory: A Dialogue” Conference, *available at*, <http://nersp.nerdc.ufl.edu/~malavet/latcrit/consched.htm>. The program was followed by a second annual conference in the summer of 2000. See Second Annual LatCrit Summer Colloquium, “Spain, the Americas and Latinas/os: International and Comparative Law in Triangular Perspective,” *available at*, <http://nersp.nerdc.ufl.edu/~malavet/latcrit/spain/spain00.htm> (conference program).

<sup>2</sup> 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).

<sup>3</sup> See Elizabeth M. Iglesias, *Forward: LatCrit Theory: Some Preliminary Notes Towards a Transatlantic Dialogue*, 9 U. MIAMI INT’L & COMP. L. REV. 1 (2000-01).

<sup>4</sup> See Francisco Valdes, *Foreword: Under Construction—LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087 (1997) (summarizing LatCrit tenets); see also THE LATINO/A CONDITION: A CRITICAL READER (Richard Delgado & Jean Stefancic eds., 1998) (collecting foundational readings on law and Latina/os).

experiment. The North American Free Trade Agreement (NAFTA)<sup>5</sup> facilitated a freer flow of goods and capital between the United States, Canada, and Mexico. Although the trade accord initially sparked controversy,<sup>6</sup> all three nations ultimately approved the pact. The public controversy over the trade agreement focused little on human and civil rights.<sup>7</sup> Nonetheless, these rights, particularly ones implicated by labor mobility, have emerged to the forefront in the years since NAFTA went into effect.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> Spain's imprint on the hemisphere remains intact as Latin America today is largely Spanish speaking.<sup>12</sup> 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

<sup>5</sup> See North America Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 321 L.M. 296 (1994), [hereinafter NAFTA]. A previous agreement between the United States and Mexico, the Treaty of Guadalupe Hidalgo, which ended the U.S./Mexican War in 1848, is the focus of considerable LatCrit analysis. See, e.g., Guadalupe T. Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: On The Edge of a "Naked Knife"*, 4 MICH. J. RACE & L. 39 (1998); Symposium, *Understanding the Treaty of Guadalupe Hidalgo on Its 150th Anniversary*, 5 SW. J.L. TRADE IN THE AMERICAS 5 (1998).

<sup>6</sup> See, e.g., ROSS PEROT & PAT CHOATE, *SAVE YOUR JOB, SAVE OUR COUNTRY: WHY NAFTA MUST BE STOPPED -- NOW!* (1993).

<sup>7</sup> But see Symposium, *Free Trade and Democratic Values: NAFTA's Effect on Human Rights* 27 U.C. DAVIS L. REV. 791 (1994). Environmental and labor side agreements diffused concerns on related issues. See generally RALPH H. FOLSOM, MICHAEL WALLACE GORDON & DAVID LOPEZ, *NAFTA: A PROBLEM-ORIENTED COURSEBOOK* 598-742 (2000) (compiling materials on NAFTA side agreements).

<sup>8</sup> See *infra* text accompanying notes 39-49.

<sup>9</sup> See *infra* text accompanying notes 50-71.

<sup>10</sup> See Ediberto Román, *Common Ground: Perspectives on Latino-Latina Diversity*, 28 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).

<sup>11</sup> See LEONARD PITT, *THE DECLINE OF THE CALIFORNIOS: A SOCIAL HISTORY OF THE SPANISH-SPEAKING CALIFORNIANS, 1846-1890*, at 1-25 (1966) (summarizing early history of California); see also Myra K. Saunders, *California Legal History: The California Constitution of 1849* 90 LAW. LIBR. J. 447, 468 (1998) (providing a bibliography on California's early history); DALE L. WALKER, *BEAR FLAG RISING: THE CONQUEST OF CALIFORNIA, 1846* (1999) (analyzing history of U.S. conquest of California).

<sup>12</sup> See generally Christopher David Ruiz Cameron, *How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, 83 CAL. L. REV. 1347 (1997) (exploring the importance of the Spanish language to Latina/o identity).

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,<sup>13</sup> 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.<sup>14</sup> Such integration, however, also implicates civil and human rights concerns. In part because they often are 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.<sup>15</sup> In so doing, he details the EMU's advantages and disadvantages.<sup>16</sup> 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."<sup>17</sup> This analysis is consistent with the LatCrit skepticism about the benefit

<sup>13</sup> See, e.g., Colloquium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997); Elizabeth M. Iglesias, *Human Rights in International Economic Law: Locating Latinas/os in the Linkage Debates*, 28 U. MIAMI INTER-AM. L. REV. 361 (1997); Berta Esperanza Hernández-Truyol & Kimberly A. Johns, *Global Rights, Local Wrongs, and Legal Fixes: An International Human Rights Critique of Immigration and Welfare "Reform,"* 71 SO. CAL. L. REV. 547 (1998).

<sup>14</sup> 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.")

<sup>15</sup> See Juan Luis Millán Pereira, *Economic Restructuring and the European Monetary Union* 9 U. MIAMI INT'L & COMP. L. REV. 45 (2000-01). See Symposium, *The Euro: A New Single Currency for Europe?*, 4 COLUM. J. EUR. L. 219 (1998), for an analysis of various issues concerning formation of the European Monetary Union.

<sup>16</sup> See Millán, *supra* note 15.

<sup>17</sup> See *id.* at 45.

offered by international economic institutions to developing nations.<sup>18</sup>

Although not without bumps in the road, the EMU's emergence, as Professor Millán recounts, has not generated heated controversy.<sup>19</sup> 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.<sup>20</sup> 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 Frías<sup>21</sup> analyzes the foundational documents of the European Union that prohibit governmental discrimination against citizens of EU members on the basis of nationality.<sup>22</sup> 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."<sup>23</sup> 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.<sup>24</sup>

Critical Race and LatCrit theorists have devoted considerable study to the difficulties of enforcing civil rights law in the United States.<sup>25</sup> Despite the nation's

<sup>18</sup> See, e.g., Timothy A. Canova, *Global Finance and the International Monetary Fund's Neoliberal Agenda: The Threat to Empowerment, Ethnic Identity, and Cultural Pluralism of Latina/o Communities*, 33 U.C. DAVIS L. REV. 1547 (2000); Enrique R. Carrasco, *Opposition, Justice, Structuralism, and Particularity: Intersections Between LatCrit Theory and Law and Development Studies*, 28 U. MIAMI INTER-AM. L. REV. 313 (1996-97); Chantal Thomas, *Globalization and the Reproduction of Hierarchy*, 33 U.C. DAVIS L. REV. 1451 (2000); see also George A. Martínez, *Dispute Resolution and the Treaty of Guadalupe Hidalgo: Parallels and Possible Lessons for Dispute Resolution Under NAFTA*, 55 SW. J.L. & TRADE IN THE AMERICAS 147, 157-75 (1998) (contending that NAFTA's alternative dispute resolution mechanisms favor United States at Mexico's expense).

<sup>19</sup> See Patrick R. Hugg, *The Republic of Turkey in Europe: Reconsidering the Luxembourg Exclusion*, 23 FORDHAM INT'L L.J. 606, 610 (2000) (referring to "unpredictably smooth launch of the European Monetary Union") (footnote omitted).

<sup>20</sup> See *infra* text accompanying notes 50-71.

<sup>21</sup> See Ana Salinas de Frías, *Free Movement of Persons in the European Union, National Borders and Legal Reforms: The Principle of Nondiscrimination Based on Nationality (Article 12 ECT)*, 9 U. MIAMI INT'L & COMP. L. REV. 61 (2000-01).

<sup>22</sup> See, e.g., Preamble and Principle of the Treaty Establishing the European Community 39.2 ("[F]reedom of movement shall entail abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.").

<sup>23</sup> Salinas, *supra* note 21, at 61.

<sup>24</sup> 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).

<sup>25</sup> See Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987) (criticizing discriminatory intent requirement imposed by Supreme Court to establish Equal Protection violation); George A. Martínez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980, 27*

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.<sup>26</sup>

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,<sup>27</sup> Professor Ediberto Román analyzes the limited citizenship rights of subordinated and marginalized communities in the United States.<sup>28</sup> 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.<sup>29</sup> Along similar lines, LatCrit scholarship has analyzed the formal and informal limits imposed on Latina/o citizenship in the United States.<sup>30</sup> Professor Román demonstrates the “marginality of law” to the lives of racial minorities.<sup>31</sup> In light of the limits of law,<sup>32</sup> we must consider political and other alternatives to secure social change.<sup>33</sup> 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

U.C. DAVIS L. REV. 555 (1994) (analyzing inability of Mexican-Americans to vindicate civil rights through litigation).

<sup>26</sup> See *infra* text accompanying notes 50-71.

<sup>27</sup> See Ediberto Román, *The Alien-Citizen Paradox and Other Consequences of U.S. Colonialism*, 26 FLA. ST. U.L. REV. 1 (1998); Ediberto Roman, *Empire Forgotten: The United States' Colonization of Puerto Rico*, 42 VILL. L. REV. 1119 (1997); see also Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 MICH. J. RACE & L. (forthcoming 2001); Sylvia R. Lazos Vargas & Petra DeWitt, *One Hundred Years of Solitude for the Tropical Peoples of the Insular Territories: Transformations of National Identity, Race and Citizenship, 1896-1900* (unpublished manuscript on file with the author).

<sup>28</sup> See Ediberto Román, *Members and Outsiders: An Examination of the Models of United States Citizenship as Well as Questions Concerning European Union Citizenship*, 9 J. MIAMI INT'L & COMP. L. REV. 81 (2000-01); cf. Leti Volpp, “*Obnoxious to Their Very Nature*”: *Asian Americans and Constitutional Citizenship*, 5 CITIZENSHIP STUDIES (forthcoming 2001) (analyzing how race of Asian Americans diminishes their citizenship rights).

<sup>29</sup> See generally KENNETH KARST, *BELONGING TO AMERICA* (1989) (analyzing struggle for full membership by various minorities in United States).

<sup>30</sup> See, e.g., Kevin R. Johnson, “*Melting Pot*” or “*Ring of Fire?*”: *Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1259 (1997); Yxta Maya Murray, *The Latino-American Crisis of Citizenship*, 31 U.C. DAVIS L. REV. 503 (1998); George A. Martinez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, 2 HARV. LATINO L. REV. 321 (1997).

<sup>31</sup> See Martínez, *supra* note 30, at 334-39 (analyzing “the marginality of law” in connection with Mexican-American civil rights in United States).

<sup>32</sup> See generally RICHARD DELGADO & JEAN STEFANCIC, *FAILED REVOLUTIONS: SOCIAL REFORM AND THE LIMITS OF LEGAL IMAGINATION* (1994) (analyzing limits of law in securing social change).

<sup>33</sup> See Kevin R. Johnson, *Racial Hierarchy, Asian Americans and Latinos as “Foreigners,” and Social Change: Is Law the Way to Go?*, 76 OR. L. REV. 347, 362-67 (1997); Valdes, *supra* note 4, at 1093-94.

ensuring effective enforcement of the anti-discrimination norm,<sup>34</sup> 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,<sup>35</sup> human rights problems often have increased as nations cooperated economically.<sup>36</sup> 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.<sup>37</sup> In an era of globalization and the emergence of a truly world economy, labor migration has become increasingly important.<sup>38</sup> 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.<sup>39</sup> Economic theory, however, treats capital and labor as fungible factors of production.<sup>40</sup> Racial, cultural, and class differences between the Mexican

<sup>34</sup> See *supra* text accompanying notes 25-26.

<sup>35</sup> See *infra* text accompanying notes 37-71.

<sup>36</sup> See *infra* text accompanying notes 43-46, 52-71.

<sup>37</sup> This presentation was adapted from Kevin R. Johnson, *An Essay on Immigration, Citizenship, and U.S./Mexico Relations: The Tale of Two Treaties*, SSW. J.L. TRADE IN THE AMERICAS 121 (1998), reprinted in THE LEGACY OF THE MEXICAN AND SPANISH-AMERICAN WARS: LEGAL, LITERARY, AND HISTORICAL PERSPECTIVES (Gary D. Keller & Cordelia Candelaria eds. 2000); see also Kevin R. Johnson, *Free Trade and Closed Borders: NAFTA and Mexican Immigration to the United States*, 27 U.C. DAVIS L. REV. 937 (1994) [hereinafter Johnson, *NAFTA*] (discussing avoidance of migration issues in NAFTA).

<sup>38</sup> See generally Christopher W. Rudolph, *Globalization, Sovereignty, and Migration: A Conceptual Framework*, 3 U.C.L.A. J. INT'L L. & FOREIGN AFF. 325 (1998-99) (analyzing significance of labor migration to globalizing world economy).

<sup>39</sup> See Johnson, *NAFTA*, *supra* note 37, at 940-41 & n.15; see also Noemi Gal-Or, *Labor Mobility under NAFTA: Regulatory Policy Spearheading the Social Supplement to the International Trade Regime*, 15 ARIZ. J. INT'L & COMP. L. 365 (1998) (discussing mobility of labor between NAFTA nations); John A. Scanlan, *A View from the United States-- Social, Economic, and Legal Change, the Persistence of the State, and Immigration Policy in the Coming Century*, 2 IND. J. GLOBAL LEGAL STUDS. 79, 123-25 (1994) (finding it difficult to predict whether NAFTA will evolve to allow freer labor migration between member nations as occurred in the European Union). NAFTA included narrow provisions for temporary nonimmigrant visas for persons in trade-related activities. See William J. Benos, *The Movement of Professionals, Technicians, and Other Workers Across NAFTA Borders*, 8 U.S.-MEX. L.J. 25 (2000).

<sup>40</sup> See Howard F. Chang, *Liberalized Immigration as Free Trade: Economic Welfare and the Optimal Immigration Policy*, 145 U. PA. L. REV. 1147, 1153 (1997) (analyzing liberalized immigration

people and U.S. citizens, combined with fears of mass migration, prevented an agreement allowing for labor migration among the NAFTA nations.<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup> Undocumented migration outside official channels constitutes part of this labor flow.<sup>44</sup> NAFTA expressly permits the member nations to enhance border controls to reduce undocumented migration.<sup>45</sup> Consequently, the emergence of NAFTA saw increased militarization of the United States's southern border with Mexico, resulting in harsh human consequences.<sup>46</sup> The targets, and victims, of the enforcement efforts were

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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 also George A. Martínez, *Race and Immigration Law: A Paradigm Shift?*, 2000 U. ILL. L. REV. 517, 520-21 (stating that, despite economic gains that would accompany increased labor mobility, difference of race has prevented liberalization of rules concerning labor movement from Mexico to the United States).

<sup>41</sup> See Johnson, *NAFTA*, *supra* note 37, at 968-71. Some, however, contend that increased economic development in Mexico fostered by free trade may in the long run decrease migration pressures. See, e.g., UNITED STATES COMM'N FOR THE STUDY OF INT'L MIGRATION AND COOPERATIVE ECON. DEV., UNAUTHORIZED MIGRATION: AN ECONOMIC DEVELOPMENT RESPONSE (1990); Philip L. Martin, *Economic Integration and Migration: The Case of NAFTA* 3 UCLA J. INT'L L. & FOREIGN AFF. 419 (1998-99); see also THOMAS C. FISCHER, THE UNITED STATES, THE EUROPEAN UNION, AND THE "GLOBALIZATION" OF WORLD TRADE 59-60 (2000) (opining that the United States entered NAFTA with Mexico in an effort to help stabilize Mexican economy and reduce undocumented immigration and drug trade).

<sup>42</sup> See *supra* note 30 (citing authorities).

<sup>43</sup> See U.S. DEP'T OF JUSTICE, 1997 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 25-26 (1999), available at, <http://www.ins.usdoj.gov/graphics/aboutins/statistics/1997YB> (last visited October 16, 2000) (providing statistical information on numbers of Mexican citizens admitted as lawful immigrants into United States in recent decades).

<sup>44</sup> See *id.* at 200 (Table N) (estimating undocumented population from various nations, including Mexico, in United States).

<sup>45</sup> 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.").

<sup>46</sup> See Kevin R. Johnson, *Race, The Immigration Laws, and Domestic Race Relations: A "Magic Mirror" Into the Heart of Darkness*, 73 IND. L.J. 1111, 1136-40 (1998) (analyzing various efforts by U.S. government to curtail undocumented Mexican immigration); Karl Eschbach et al., *Death at the Border*, 33 INT'L MIGRATION REV. 430 (1999) (documenting deaths along U.S./Mexico border stemming from increased border enforcement measures); see also Ediberto Román, *Who Exactly is Living La Vida Loca?: The Legal and Political Consequences of Latino-Latina Ethnic and Racial Stereotypes in Film and Other Media*, 4 IOWA J. OF GENDER, RACE & JUSTICE 37, 56-58 (2000) (discussing how stereotypes of Latina/os as "foreigners" rationalizes harsh treatment of persons of Mexican ancestry under immigration laws). See generally AMNESTY INT'L, UNITED STATES OF AMERICA: HUMAN RIGHTS CONCERNS IN THE BORDER REGION WITH MEXICO (1998), available at



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.<sup>47</sup> 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.<sup>48</sup> When economic demands conflict with public sentiment, tension results and change is more likely to occur.<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup> Such

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<http://www.web.amnesty.org/ai.nsf/index/AMR510031998> (reporting on human rights abuses in U.S./Mexico border region) (last visited October 18, 2000); AMERICAN FRIENDS SERVICE COMM., HUMAN AND CIVIL RIGHTS VIOLATIONS ON THE U.S. MEXICO BORDER 1995-97 (1998), available at <http://www.afsc.org/border.htm> (same) (last visited October 17, 2000); TIMOTHY J. DUNN, THE MILITARIZATION OF THE U.S.-MEXICAN BORDER, 1978-92 (1996) (chronicling increasing use of military force by U.S. government to limit immigration from Mexico).

<sup>47</sup> See, e.g., Ginger Thompson, *Fox Urges Opening of U.S.-Mexican Border to Build New Partnership*, N.Y. TIMES, Aug. 14, 2000, at A1; see also Vicente Fox, *A New Kind of Neighbor*, N.Y. TIMES, Aug. 25, 2000, at A1 ("Within 25 years we envision a North American area of shared prosperity, where goods, services, capital and people can move freely across borders."); Esther Schrader, *Common-Market Plan for North America Gains Currency*, L.A. TIMES, Oct. 15, 2000, at C1 (reporting that Fox's open border concept had gained adherents).

<sup>48</sup> See, e.g., Technology Worker Temporary Relief Act, H.R. 4227, 106th Cong., (2d Sess. 2000); H.R. 4548, 106th Cong., (2d Sess. 2000) (temporary agricultural worker program). From World War II through the early 1960s, the United States through the "Bracero" Program brought workers from Mexico to work in agriculture; various wage and condition protections for workers proved difficult to enforce. See generally KITTIE CALAVITA, INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION AND THE I.N.S. (1992) (analyzing evolution of program).

<sup>49</sup> Cf. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980) (contending that social change for racial minorities occurs when it is in dominant society's interests for such change to occur).

<sup>50</sup> See Johnson, *NAFTA*, *supra* note 37, at 971-74; see also Christopher J. Cassise, Note, *The European Union v. the United States under the NAFTA: A Comparative Analysis of the Free Movement of Persons Within the Regions*, 46 SYR. L. REV. 1343, 1349-64 (1996) (discussing various legal issues arising with respect to free movement of workers in EU).

<sup>51</sup> See Hugg, *supra* note 19, at 606, 626-28, 669-71, 683-88 (discussing concerns with Turkey's possible admission into EU based on religious and cultural differences between Turks and citizens of other EU nations as well as with fears, that large numbers of Turks might migrate to other EU nations).

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.<sup>52</sup> 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.<sup>53</sup>

Upon joining the EU, Spain added migration controls designed to fortify its border and bar undocumented migration from North Africa.<sup>54</sup> 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.<sup>55</sup> The delay in passing such a law was attributable to the fact that

<sup>52</sup> See Lydia Esteve González & Richard MacBride, *Fortress Europe: Fear of Immigration? Present and Future of Immigration Law and Policy in Spain*, 6 U.C. DAVIS J. INT'L L. & POL'Y 153, 191 (2000) (referring to Spain as "one brick in the wall of 'Fortress Europe'") see also Julie A. Mertus, *The State and the Post-Cold War Refugee Regime: New Models, New Questions*, 2 MICH. J. INT'L L. 59, 79 (1998) ("... Germany and its neighbors are allies in the 'Fortress Europe' by coordinating their restrictive policies against refugees.") (footnote omitted); Kathleen Newland & Demetrios G. Papademetriou, *Managing International Migration: Tracking the Emergence of a New International Regime*, 3 UCLA J. INT'L L. & FOREIGN AFF. 637, 657 (1998-99) ("There has been an extraordinary growth of restrictive practices in asylum and immigration policy.").

<sup>53</sup> See Jacqueline Bhabha, *European Harmonisation of Asylum Policy: A Flawed Process* 35 VA. J. INT'L L. 101 (1994); Gabriela I. Conan, Note, *European Union Policy on Asylum and Its Inherent Human Rights Violations*, 64 BROOKLYN L. REV. 1217 (1998); see also James C. Hathaway, *Harmonizing for Whom? The Devaluation of Refugee Protection in the Era of European Economic Integration*, 26 CORNELL INT'L L.J. 719, 720 (1993) ("[T]he heightened restrictionism [in Europe] is a reflection of the fact that Europeans have come to see 'foreigners' as threats to regional stability and security. There is a pervasive belief that the cultural and racial heterogeneity which accompanies immigration jeopardizes European identity and solidarity.") (footnotes omitted) cf. Joan Fitzpatrick & William McKay Bennett, *A Lion in the Path? The Influence of International Law on the Immigration Policy of the United States*, 70 WASH. L. REV. 589 (1995) (analyzing United States's inconsistent compliance with international immigration and refugee law); Kevin R. Johnson, *The Moral High Ground? The Relevance of International Law to Remedying Racial Discrimination in the U.S. Immigration Laws* (analyzing various failures of U.S. immigration law and policy to comply with international law), in MORAL IMPERIALISM: A CRITICAL ANTHOLOGY (Berta Esperanza Trujol-Hernández ed., forthcoming 2001). Illustrating the differential treatment afforded trade and migration, regional solutions advocated for refugees have not been pursued like those allowing for freetrade. See generally James C. Hathaway, *A Reconsideration of the Underlying Premise of Refugee Law* 31 HARV. INT'L L.J. 129 (1990) (criticizing current international system for protection of refugees and advocating regional approach).

<sup>54</sup> See González & MacBride, *supra* note 52, at 158-61.

<sup>55</sup> See Organic Law on the Rights and Liberties of Foreigners in Spain (1985) see also PETER ANDREAS, *BORDER GAMES: POLICING THE U.S.-MEXICO DIVIDE* 129-30 (2000) ("Immigration control remained largely a nonissue [in Spain] until 1985-- the year before Spain's entry into the European Community. Until then, the country did not even have a comprehensive immigration law."); Kitty Calavita, *Immigration, Law, and Marginalization in a Global Economy: Notes from Spain*, 32 LAW & SOC'Y REV. 529, 542-48 (1998) (analyzing evolution of Spanish immigration law). This law was

Spain historically had not been a nation of immigration but one of emigration.<sup>56</sup> 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,<sup>57</sup> 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.<sup>58</sup> 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.<sup>59</sup>

Migration pressures in Spain continue to mount.<sup>60</sup> Despite heightened border controls, an increasing number of Moroccans have attempted to unlawfully enter the country.<sup>61</sup> Increased deaths at sea have resulted as Moroccan migrants hazard the voyage by boat across the Mediterranean Sea to Spain to avoid border checkpoints.<sup>62</sup> This is similar to the fate of migrants from Haiti and Cuba attempting to cross the Caribbean to come to the United States.<sup>63</sup> Similarly, reminiscent of the U.S. enforcement efforts along the southern border with Mexico,<sup>64</sup> Spain has added

amended in 1999 by a new Organic Law on Rights and Freedoms of Foreigners in Spain and Their Social Integration (1999).

<sup>56</sup> See González & MacBride, *supra* note 52, at 156.

<sup>57</sup> See generally Calavita, *supra* note 55 (contending that Spanish immigration and civil rights law facilitates the exploitation of undocumented labor).

<sup>58</sup> See Calavita, *supra* note 55, at 535-37.

<sup>59</sup> 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.

<sup>60</sup> See Isambard Wilkinson, *Illegal Migrants Flood in Through Med*, DAILY TELEGRAPH (London), Aug. 11, 2000, at 13 (reporting on increasing migration pressures from North Africa on south of Spain); Marlise Simons, *The Fault Line of Rich and Poor; Spain Fights a Losing Battle Against Illegal Immigrants*, INT'L HERALD TRIB., Mar. 31, 2000, at 1 (describing migrants seeking to enter unlawfully in southern Spain); see also Roger Cohen, *Illegal Migration Rises Sharply in European Union*, N.Y. TIMES, Dec. 25, 2000, at A1 (reporting that, despite increased enforcement efforts, undocumented immigration into European Union has increased).

<sup>61</sup> 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).

<sup>62</sup> See *Over the Sea to Spain*, ECONOMIST, Aug. 12, 2000; Marlise Simons, *Between Migrants and Spain: The Sea That Kills*, N.Y. TIMES, Mar. 30, 2000, at A3; see also Sinikka Tarvainen, *Strait of Gibraltar Becoming a "Mass Grave" for Africans*, DEUTSCHE PRESSE-AGENTUR, Oct. 17, 2000.

<sup>63</sup> See *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155 (1993) (upholding U.S. policy directed at Haitians seeking to come to U.S. on rafts and boats); *Cuban American Bar Ass'n v. Christopher*, 43 F.3d 1412 (11th Cir. 1995) (same for Cubans).

<sup>64</sup> See *supra* text accompanying notes 44-46 & note 46.

sophisticated technology to detect and deter undocumented migration.<sup>65</sup> As leaders in the United States call for economic development in Mexico,<sup>66</sup> Spanish politicians advocate financial aid to foster growth in Africa to reduce unlawful immigration.<sup>67</sup>

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.<sup>68</sup> Both economies covet cheap labor, while the presence of undocumented workers in the country provokes domestic concern because of racial, cultural, and other differences.<sup>69</sup> 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 . . .”<sup>70</sup> 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.<sup>71</sup>

### 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

<sup>65</sup> 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).

<sup>66</sup> See, e.g., Robert Matsui, *Introduction—Symposium on Free Trade and Democratic Values: NAFTA's Effect on Human Rights*, 27 U.C. DAVIS. L. REV. 791, 792 (1994); see also *supra* note 41 (citing authorities).

<sup>67</sup> See Tito Drago, *Rights-Spain: African Aid Best Way to Stem Illegal Immigration*, INTER PRESS SERV., June 8, 2000.

<sup>68</sup> 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).

<sup>69</sup> See Linda S. Bosniak, *Exclusion and Membership: The Dual Identity of the Undocumented Worker Under United States Law*, 1998 WIS. L. REV. 955 (1998) (exploring dual identity of undocumented workers in United States society as both members and outsiders of national community).

<sup>70</sup> 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).

<sup>71</sup> See, e.g., Antony Anghie, *Time Present and Time Past: Globalization, International Financial Institutions, and the Third World*, 32 N.Y.U. J. INT'L L. & POL. 243 (2000); Louis Henkin, *That "S" Word: Sovereignty, and Globalization, and Human Rights, Et Cetera* 68 FORDHAM L. REV. 1 (1999); see also Penelope E. Andrews, *Globalization, Human Rights and Critical Race Feminism: Voices from the Margins*, 3 IOWA J. GENDER RACE & JUST. 373 (2000) (calling for study of globalization's impact on women); Ibrahim J. Gassama, *Transnational Critical Race Scholarship: Transcending Ethnic and National Chauvinism in the Era of Globalization*, 5 MICH. J. RACE & L. 133 (1997) (calling for Critical Race Theorists to take global, as opposed to national, view of racial subordination).

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.