

2011 LATCRIT SOUTH-NORTH EXCHANGE:
MIGRATORY CURRENTS IN THE AMERICAS/
CORRIENTES MIGRATORIAS EN LAS AMÉRICAS

PONENCIA

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I. Introduction

The South-North Exchange on Law, Theory and Culture is designed 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 a global South country and, afterward, a scholarly publication based on the live proceedings.¹ 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.

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¹ See for example, The South-North Exchange on Theory, Culture, and Law (SNX 2003), *Proceedings from the South-North Exchange*, 38 Rev. Jurídica U. Inter. P.R. 1 (2003); The South-North Exchange on Theory, Culture, and Law (SNX 2003), *Law, Culture, and Society: LatCrit Theory and Transdisciplinary Approaches* 16 Fla. J. Int'l. L. 539 (2004); The South-North Exchange on Theory, Culture, and Law (SNX 2004), *Law, Culture And Indigenous People: Comparative And Critical Perspectives* 17 Fla. J. Int'l. L. 1 (2005); and The South-North Exchange on Theory, Culture, and Law (SNX 2006), *Free Market Fundamentalism: A Critical Review of Dogmas and Consequences*, 5 SJSJ 497 (2007).

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. To do so, each year the Exchange examines a topical general theme, and participants “exchange” views, ideas, experiences and work through a series of interactive plenary sessions.

The first South-North Exchange (SNX) was held at the law school of the Universidad Interamericana de Puerto Rico in 2003. Since then, the SNX has met seven times in various Latin American countries.² The Eight Annual SNX was held the Dominican Republic and was hosted by the law school of the Universidad Iberoamericana (UNIBE). The 2011 SNX, titled *Migratory Currents in the Americas/Corrientes migratorias en las Américas*, examined various dimensions of contemporary immigration debates in the Americas. Scholars, activists, and jurists from various countries offered multiple perspectives on the intersection of immigration and labor, crime, terrorism, identity, the environment, human rights, nationalism, among other topics. This year’s exchange created a critical space where various polemics were engaged and participants offered important insights about the increasingly disciplinary dimensions of immigration law and policy in the Americas. For many local participants, the presentations opened a series of debates that challenged prevailing nationalist and nativist interpretations of the relationship between law, immigration policy, and power.

The 2011 LatCrit SNX proceedings are being published in the *Revista Jurídica de la Universidad Interamericana de Puerto Rico* and the *NOVA ILSA Journal of International and Comparative Law*. The presentations contained in this volume are divided in two overlapping clusters. The first cluster provides presentations that emphasize critiques of nationalism and the xenophobic use of the law. The second cluster of articles provides interpretations centered on prevailing legal debates and offer more instrumental insights about the intersection of law and immigration. The articles contained in this volume provide a sample of more than twenty-eight papers presented during the 2011 Exchange.

II. Presentations

A. Nationalism and Xenophobic Use of Law

The first cluster begins with Yanira Reyes-Gil’s contribution, *Migración e identidades transnacionales*, which discusses research on prevailing research on migratory patterns between Puerto Rico and the United States.³ Reyes-Gil argues

² For more information: South-North Exchange, *LatCrit*, <http://www.latcrit.org> (accessed on April 16, 2012).

³ Yanira Reyes-Gil, *Migración e Identidades transnacionales: Lucha por la identidad translocal puertorriqueña*, __ *Rev. Jurídica U. Inter. P.R.* __ (2012).

that the constant mobility of Puerto Ricans between the island and the United States has resulted in the creation of a divided and displaced or translocal community. More specifically, she explains that mobility separates the Puerto Rican community from the traditional framework of national formation. She also argues that the absences of a defined territory (including the fact that more than twice of the Puerto Rican population resides outside of the island), of a distinct language, and the breath of cultural diversity, have questioned the notion that the Puerto Rican national identity can be the sole axle in the formation of social struggles in Puerto Rico. This article proposes a new perspective on the notion of self-determination that draws on the prevailing LatCrit debates over identity politics, postcolonial theory, and multidimensionality. Reyes-Gil concludes by arguing for a new perspective on self-determination grounded on multiple identities rather than on an exclusionary notion of national unity.

Jorge Duany's keynote presentation, *La racialización de la etnicidad en el Caribe hispanohablante*, examines the subordinating effects of the racialization of Dominican migrants in Puerto Rico and Haitians in the Dominican Republic.⁴ Duany applied Michael Omi and Howard Winant's argument to the latter cases and demonstrates how racist arguments affirmed the ascriptive or inferior status of Dominicans and Haitians.⁵ He concludes by highlighting the continuities and discontinuities between the experiences of racialized Dominicans and Haitians. Ultimately, Duany demonstrates how racist and xenophobic narratives of the *Other* reproduced shared experiences of subordination.

Charles R. Venator-Santiago's article, *When Literature Becomes Law* describes how Dominican nationalists used an interpretation of the *Case of the Prisoners of Galindo* to construct a racist and misogynist narrative of the Haitian Unification period (1822-1843/4).⁶ Venator-Santiago shows how César Nicolás Pénson's story, *Las virgenes de Galindo*, uses the actual penal case to construct an anti-Haitianist narrative that was subsequently appropriated by nationalist historians. Venator-Santiago shows how narratives of race, gender, crime, and the nation converge in Dominican nationalist rhetoric.

⁴ Jorge Duany, *La racialización de la etnicidad en el Caribe hispanohablante: Una comparación de los haitianos en República Dominicana y los dominicanos en Puerto Rico*, __ Rev. Jurídica U. Inter. P.R. __ (2012).

⁵ Michael Omi & Howard Winant, *Racial Formation In The United*, 2nd Ed. (New York: Routledge, 1994).

⁶ Charles R. Venator-Santiago, *When Literature Becomes Law: Clarifying Cesar Nicolás Pénson's Rendition of the Case of the Prisoners of Galindo*, __ Rev. Jurídica U. Inter. P.R. __ (2012).

B. Immigration and contemporary legal iteration

The cluster on *Immigration and Contemporary Legal Iterations* opens with a contribution by Sagrario Feliz de Cochón, the Associate Dean for the Universidad Iberoamericana (UNIBE) in Santo Domingo and host of the 2011 Exchange. Dean Sagrario Feliz de Cochón's contribution examines the role of the global labor crisis on migrations.⁷ Her article analyses how the claim that a global labor crisis has been used to weaken national labor laws and related international conventions. Moreover, Dean Feliz de Cochón seeks to identify legal and administrative proposals imposed by states that foster repatriation (both voluntary and forced) as a means to reduce migratorias flows that impact their respective national labor markets. Dean Feliz de Cochón's substantiates her analysis through a discussion of employment, unemployment, and repatriation laws. While Dean Feliz de Cochón contribution recognized the autonomy of workers to engage transnational labor markets, she also concludes with a call to strengthen state borders in order to protect national interests.

Paola Pelletier Quiñones' contribution provides a sketch of the impact of the Inter-American Court of Human Rights (*ICHR*) immigration jurisprudence on the Dominican Republic.⁸ Her article provides a summary of the *ICHR*'s immigration jurisprudence and specific rulings affecting the Dominican Republic. More specifically, Pelletier Quiñones discusses both the *ICHR* rulings addressing the Dominican Republic's violation of Dominican-Haitian and Haitian migrants human rights, and the Dominican government's responses to the Court's judgements. Pelletier Quiñones explains that the Dominican government has responded in three ways. First, it has neglected to implement the *ICHR*'s judgements on several rulings. Second, the Dominican Supreme Court adopted a disingenuous interpretation of the status of Dominicans of Haitian heritage in order to govern these subjects as immigrants, a status that would deny them access to Dominican constitutional rights. Finally, Pelletier Quiñones notes how the Dominican Congress incorporated a new immigration provision in its 2010 Constitution that normalized the Supreme Court's prior rulings. In sum, drawing on the case of the Dominican Republic, Pelletier Quiñones's article provides a succinct, but useful synthesis of the Dominican government's efforts to curtail the implementation of the relevant *ICHR*'s immigration rulings.

Drawing on an analytic framework of agency relations, Patricia S. Mann's presentation, *Contingencies of Immigrant Agency*, analyzes her experiences as an immigration attorney engaged in removal defense cases of two Chinese nationals married to U.S. citizens.⁹ Mann explains the different ways that U.S. immigration

⁷ Sagrario Feliz de Cochón, *Desempleo y Migración: Desigualdades laborales de los trabajadores migrantes*, __ Rev. Jurídica U. Inter. P.R. __ (2012).

⁸ Paola Pelletier Quiñones, *Criterio de la Corte Interamericana de Derechos Humanos respecto a las migraciones y su impacto en la República Dominicana*, __ Rev. Jurídica U. Inter. P.R. __ (2012).

⁹ Patricia S. Mann, *Contingencies of Immigrant Agency*, __ Rev. Jurídica U. Inter. P.R. __ (2012).

laws establish disciplinary hierarchies that subordinate vulnerable immigrants facing removal. Mann concludes by arguing that contemporary U.S. immigration removal policies are “ruled by arbitrary and capricious and cruel varieties of agency discretion.”¹⁰ Although Mann’s presentation is grounded in an analytical conceptual framework, her description of the removal process explains in a clear and concise manner the technologies of power employed by the United States immigration system to both affirm new hierarchies of exclusion and subordination, as well as to discipline immigrants more generally.

The 2011 SNX created a critical environment that enabled activists, scholars from multiple disciplines, and jurists to question the boundaries of prevailing immigration debates. The Exchange enabled the participants to engage in an interdisciplinary dialogue that identified multiple intersections of power and subordination. Ironically, unlike prior Exchanges, the 2011 SNX also fostered competing interpretations of the status of immigrants that spanned across various ideological spectrums. This volume tries to capture the spirit of these debates.

¹⁰ *Id.* at ____.

