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## Transnational Critical Race Scholarship: Transcending Ethnic and National Chauvinism in the Era of Globalization

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# TRANSNATIONAL CRITICAL RACE SCHOLARSHIP: TRANSCENDING ETHNIC AND NATIONAL CHAUVINISM IN THE ERA OF GLOBALIZATION

Ibrahim J. Gassama\*

*Globalization is compounding the gap between rich and poor nations and intensifying U.S. Dominance of the world's economic and cultural market.*<sup>1</sup>

[M]ore than 1.3 billion people in the developing world still struggle to survive on less than a dollar a day, and the number continues to increase. Every year nearly 8 million children die from diseases linked to dirty water and air pollution, 50 million children are mentally or physically damaged because of inadequate nutrition, and 130 million children—80 percent of them girls—are denied the chance to go to school.<sup>2</sup>

Eric Yamamoto's article, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*,<sup>3</sup> brings a needed perspective to scholarship seeking to place domestic social justice struggles within the context of a broader and more complex mix of forces at play. While Yamamoto does not highlight a critical transnational perspective in this particular article,<sup>4</sup> he writes from a perspective that presumes transnational analysis is essential in making sense of the socio-economic and political

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1. See generally UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1999. For a brief "mainstream" treatment of the growing domestic wealth gap, see Jacob M. Schlesinger, *Wealth Gap Grows: Why Does it Matter?*, WALL ST. J., Sept. 13, 1999, at A1 (explaining why, despite overall economic growth, the increase in difference in wealth between the richest and poorest Americans is still a problem).

2. THE WORLD BANK, POVERTY REDUCTION AND THE WORLD BANK, vii (1996).

3. Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821 (1997) [hereinafter Yamamoto, *Critical Race Praxis*].

4. For a more directly transnational approach by Yamamoto, see Eric K. Yamamoto, *Race Apologies*, 1 J. GENDER, RACE & JUST. 47 (1997) [hereinafter Yamamoto, *Race Apologies*] (examining the reparatory efforts of South Africa's post-apartheid Truth and Reconciliation Commission in an effort to evaluate the potential of a recent wave of apologies around the world to aid domestic redress of racial injustice); see also Erik K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 B.C. L. REV. 477 (1999) [hereinafter Yamamoto, *Racial Reparations*] (examining the connections between Japanese American and other redress movements).

forces affecting our lives as individuals and members of multiple, intersecting communities. The local, the national, and the international are inextricably bound and present in all his work.<sup>5</sup> This article, as well as his larger body of works, helps puncture the self-satisfied attitude of American national exceptionalism, or superiority, that now so crudely bestrides the world.<sup>6</sup>

In *Critical Race Praxis*, Yamamoto employs two ongoing litigations in the San Francisco area to develop his argument for the cultural and professional stance he terms critical race praxis. In the first case, *Ho v. San Francisco Unified School District*,<sup>7</sup> Chinese American plaintiffs sued to overturn "a 1983 judicial consent decree desegregating San Francisco's schools."<sup>8</sup> The decree aimed to promote ethnic diversity in these schools by, among other things, placing a cap on the number of students from any racial or ethnic group admitted into a magnet school.<sup>9</sup> While Chinese Americans had benefited initially from this judicial resolution, over time some in the community began to see the cap as an unfair ceiling on their numbers.<sup>10</sup> Citing relatively higher entrance test scores, plaintiffs argued that implementation of the decree resulted in discrimination against Chinese American students in favor of "less qualified" students from the Latino and African American communities.<sup>11</sup> Plaintiffs sought an end to racial classification and quotas, calling for a colorblind system that recognized individual merit.<sup>12</sup> Pitted against the plaintiffs were the NAACP and others from the traditional civil rights establishment.<sup>13</sup>

In the second case, *United Minorities Against Discrimination v. San Francisco*,<sup>14</sup> African American and Latino plaintiffs charged that the local

5. See Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741, 741 (1994); KEITH AOKI, *SPACE INVADERS: THE CONVERGENCE OF RACE, SPACE AND PLACE IN THE 1990s* (Apr. 30, 1998 draft on file with author) [hereinafter AOKI, *SPACE INVADERS*]; L. Hope Lewis, *Lionheart Girls Facing the Dragon: the Human Rights of Inter/national Black Women in the United States*, 76 OR. L. REV. 567 (1997) [hereinafter Lewis, *Lionheart Girls*]; Elizabeth Iglesias, *Human Rights in International Economic Law*, 28 INTER-AMERICAN L. REV. 361 (1996-97) [hereinafter Iglesias, *Human Rights*].

6. This salutary contribution also comes across in Yamamoto, *Race Apologies*, *supra* note 4; Yamamoto, *Racial Reparations*, *supra* note 4, at 477.

7. 965 F. Supp. 1316 (N.D. Cal. 1997), *appeal dismissed*, 641 F.3d 854 (9th Cir. 1998).

8. Yamamoto, *Critical Race Praxis*, *supra* note 3, at 821.

9. See *Ho*, 965 F. Supp. at 1318-19.

10. See *id.*

11. See *id.* at 1319.

12. See *id.*

13. See *id.* (noting that the consent decree at issue was entered into between the San Francisco Unified School District and the San Francisco NAACP).

14. Third Amended Complaint for Monetary, Declaratory, & Injunctive Relief, *United Minorities Against Discrimination v. City of San Francisco*, No. C-91-2350

government discriminated against African American and Latino personnel analysts when making hiring and promotion decisions.<sup>15</sup> The complaint indicated that most of the alleged perpetrators and beneficiaries of the discriminatory practices were "less-qualified" Asian Americans.<sup>16</sup>

Reviewing the specific and broader arguments made by the parties and their supporters in these lawsuits, I have to caution myself against an impulse to dismiss much of the intricate, and seemingly interminable battles for political and economic advantages between and across ethnic, racial, and social groups in the United States. I am often filled with an overriding sense that most of these "domestic," intergroup conflicts revolve around each group's desire to take its perceived "rightful" place inside a bloated and acquisitive American<sup>17</sup> machine that so aggressively polices the world economically, culturally, politically, and militarily. Put another way, many of those engaged in these internal squabbles send signals that often appear to be coded pleas to be better integrated within the American vision of a New World Order—the neo-imperial efforts to rationalize and sustain America's insatiable grab for greater and greater proportions of the world's resources.<sup>18</sup>

Today, as we are reminded time and again, the United States is the world's sole remaining superpower with a superheated economy that is the envy of the rest of the world. Yet, with less than five percent of the world's population, the United States unapologetically consumes far more than a proportionate share of the world's resources.<sup>19</sup> The American

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(N.D. Cal. filed Nov. 9, 1994), *cited in* Yamamoto, *Critical Race Praxis*, *supra* note 3, at 837.

15. *See id.*

16. *See id.*

17. I consciously use the terms "America" and "American" in this article to refer to the United States and to its citizens, residents and representatives. I recognize that this is sometimes offensive to other inhabitants of the Americas and admire the irony of succumbing to this usage given my criticism of the new imperial global order being propagated from the United States. *See* David Kennedy, *The Disciplines of International Law and Policy*, 12 LEIDEN J. INT'L L. 9, 10 & n. 1 (1999) (adopting the adjective "United Statesean" from Spanish to "avoid imprecision and offense").

18. At the heart of the program, of course, is the full scale press for open markets under the rubric of the new World Trade Organization (WTO). This grand structure has given energy and focus to the older General Agreement on Tariffs and Trade (GATT). Together with the World Bank and the International Monetary Fund, the WTO-GATT regime today polices global inequality. *See* David C. Korten, *The Failures of Bretton Woods*, in *THE CASE AGAINST THE GLOBAL ECONOMY* 28-30 (Jerry Mander & Edward Goldsmith eds., 1996).

19. *See* LESTER R. BROWN, ET AL, *STATE OF THE WORLD* 12 (1998). According to the United Nations, "more than three-fourths of the world's people live in developing countries, but they enjoy only 16% of the world's income-while the richest 20% have 85% of global income." UNITED NATIONS DEVELOPMENT PROGRAMME, 1995 HUMAN DEVELOPMENT REPORT 14 (1995); *see also* Ignacio Ramonet, *The Politics of Hunger*, LE

economy, largely dependent on an apparently irrepressible demand for cheaply made foreign consumer goods, propels along as the twentieth century comes to an end even as most of the rest of the world—Europe, Japan, China, Southeast Asia, Africa, and Latin America—struggles to stay afloat.<sup>20</sup> American economic supremacy is not new and neither are some of the governmental policies and practices that proceed along with it: pitifully small amounts of economic assistance to the world's poor, an unbridled military-industrial complex that leads the world in the export of arms,<sup>21</sup> and a propensity to employ military force against foreigners who challenge its dominance.<sup>22</sup>

There are, of course, domestic parallels to all these examples of fundamental injustices and these, perhaps understandably, dominate the thinking of most American activists and scholars engaged in anti-subordination work. Nonetheless, it appears from my particular vantage point<sup>23</sup> that significant within every oppressed community in the United

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MONDE DIPLOMATIQUE (Barry Smerin trans. 1998) <<http://www.monde-diplomatique.fr/en/1998/11/01leader.html>> (noting that in 1995, the income of the 20% of the world's population living in the richest countries was 82 times greater than that of the 20% of the poorest countries).

20. See William Greider, *The Global Crisis Deepens: Now What?*, THE NATION, Oct. 19, 1998, at 13–15; Judith Miller, *Globalization Widens Rich-Poor Gap*, U.N. Report Says, N.Y. TIMES, July 13, 1999, at A8.

21. The United States is also the largest deadbeat member of the UN. Indeed its failure to pay all of its dues has caused serious problems in all facets of UN operation. See David Stout, *A Deal is Reached on Family Planning Money*, N.Y. TIMES, Dec. 1, 1999, at A21; Eric Schmitt, *U.S. Decides to Pay Up*, N.Y. TIMES, Nov. 21, 1999, at A2.

22. In a sense, the century is ending much as it began in terms of American use of force against foreign enemies. It began with American military forces spreading out to create a Pax Americana around the world including Cuba, the Philippines, Hawaii, and China, and it is ending with growing military commitments in the Middle East and the Balkans. See HAROLD EVANS, *THE AMERICAN CENTURY* 48–80 (1998) (containing snapshots of burgeoning American imperialism in the early part of the century). Note that even as the United States officially speaks ad nauseum about the need for the rule of law in international relations, its military attacks on other nations rarely follow core international rules such as gaining the approval of the United Nations Security Council. In this vein, mention must be made also that after calling for a permanent international criminal court, the United States now remains the main barrier to the creation of one because such a court conceivably could assert jurisdiction over American officials. The opposition can be characterized as fundamentally founded upon the arrogance inhering in the belief that American officials and representatives should be above collective judgment in the international arena even though others, especially from the third world, should submit.

23. Some disclosure about my background is in order. While I have lived in the United States for far longer than anywhere else, I was not born here. I was born in Sierra Leone, a small country by most standards, where a focus on the international and global was not an option; it was a necessity. See Norimitsu Onishi, *Sierra Leone Victims and Rebels Hear Albright's Message of Peace*, N.Y. TIMES, Oct. 19, 1999, at A1; James Rupert, *Riches Complicate African Conflict*, REG. GUARD, Oct. 17, 1999, at 18A.

States is a perspective that could be summarized as follows: if the United States is going to be the world's principal enforcer of a global regime of inequality, our members should at least get equal opportunity to participate in this imperial enterprise whether it is to command military forces in Iraq or Korea; to run C.I.A. stations in Paris or Kuala Lumpur; to negotiate drilling rights in Ogoniland or Baku; to deny visas to "economic immigrants" in Bangkok or Freetown; or to win scholarships endowed by some dead imperialists. This is what I observe as the many "firsts" that are celebrated and we dutifully keep count of the numbers of representatives of this or that excluded community recruited into higher levels in the machinery of global supremacy. The fights over which disadvantaged groups get seats at the imperial dinner table, or get to taste some of the dribblings from it, usually occur without much heed paid to the broader transnational picture.

The relative absence of a transnational or global perspective in the unfolding of many of these "domestic" struggles for justice is the focus of my comment on Eric Yamamoto's work. This absence is rarely challenged. Indeed, the attitude of neglect is so pervasive, it often operates unacknowledged.<sup>24</sup> It is testimony to the enormous strength of the myth of American national exceptionalism that even those acutely and historically oppressed by its operation adopt its precepts uncritically, and actually nurture it in their struggles. At its core are the twin notions of fundamental faith, both in the integrity and sufficiency of the "American" nation and in the mythology of social progress. Great care is taken among mainstream activists not to destabilize the nation, or appear to do so, even at the expense of social justice.

There is a part of me that understands, accepts, and sometimes even supports the highly contextualized desires and demands energizing these intra-American "domestic" struggles.<sup>25</sup> I have lived in the United States too long not to appreciate what drives them. I have lived in other places and studied other societies enough to know that excluded groups everywhere behave in much the same way: seeking to survive or prosper as

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24. See generally DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987) (providing a comprehensive examination of the African American struggle for racial justice); Robert S. Chang, *The End of Innocence or Politics after the Fall of the Essential Subject*, 45 AM. U. L. REV. 687 (1996) (exploring how to account for differences while at the same time allowing participation in others' struggles through the use of coalition building).

25. The argument here is similar to the one justifying the use of "rights" language by members of oppressed communities. As one writer puts it in the South African context, "we must accept the imagery and language and symbolism that is most appropriate to the occasion." Albie Sachs in *ECONOMIC AND SOCIAL RIGHTS AND THE RIGHT TO HEALTH* 13 (1995); see also Patricia Williams, *Alchemical Notes: Reconstructing Ideals From Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987).

best as possible, making tactical alliances, sometimes even defending aspects of the overarching system.<sup>26</sup> An example can be found in a recent international human rights law class, where a Korean student, who could be described as progressive and by no means a friend of corporate dominance, presented a powerful denunciation of the scavenger-like moves of American financial institutions into the devastated Korean economy.<sup>27</sup> These moves were facilitated by the eager bureaucrats of the International Monetary Fund and excess cash from a booming American stock market. The American companies were chasing opportunities to acquire major Korean companies for pennies on the dollar.<sup>28</sup> Heretofore, Korea had managed to successfully limit foreign control of key sectors of the Korean economy and developed homegrown conglomerates that competed resolutely in the international arena. Now, with the presumed death of Asian "Crony" capitalism, and the "triumph" of the supposedly resilient, individualistic American version, nothing short of prostration or open markets is expected from countries that want IMF (read American-sanctioned) aid.<sup>29</sup>

The student was quite distressed at the profound threat to Korea's "economic sovereignty." However, I found it difficult to be moved by the likely demise of several Korean multinational conglomerates. I wondered whether Samsung or Hyundai or any of the other once high-flying Jaebols,<sup>30</sup> with their export platforms all over the world, really should

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26. For example, in recent visits to South Africa, I have detected a developing impatience, perhaps even distaste, for outsiders, especially Americans among newly enfranchised South Africans. Recalling that it was not long ago that many South Africans pleaded passionately for outside support for their struggle against apartheid, I am distressed but not entirely surprised by the new-found disdain for outside intervention and uncritical embrace of traditional notions of national sovereignty.

27. See, e.g., Stephanie Strom, *Korea To Sell Control of Bank to U.S. Investors*, N.Y. TIMES, Jan. 1, 1999, at C1; Stephanie Strom, *U.S. Firm has Control of Korea's First Bank*, N.Y. TIMES, Sept. 18, 1999, at C2.

28. See Republic of Korea, *IMF Stand-By Arrangement: Summary of the Economic Program*, (visited Oct. 1, 1999) <<http://www.imf.org/external/np/oth/korea.htm>> (requiring, among other things, that "the schedule for allowing foreign entry into the domestic financial sector will be accelerated . . ." and that steps be taken to "liberalize foreign investment in the Korean equity market by increasing the ceiling on aggregate ownership from 26 percent to . . . 55 percent by end-1998"). For additional examples of such moves by U.S.-based companies into the broader Asian economy, see Jathon Sapsford, *Citibank Sets an Ambitious Credit Line in Japan*, WALL ST. J., Oct. 2, 1998, at A10.

29. See William Pfaff, *Globalization Drive is Getting Dangerous*, BALTIMORE SUN, Jan. 26, 1998, at 11A. (stating that the United States as the largest shareholder in the IMF, which employs a weighted voting system, can easily exercise a veto over the organization's "aid" programs).

30. *Jaebols* or *Chaebols* are Korean integrated industrial groups, conglomerates of many companies clustered around one holding company. Examples include Hyundai and

mean more; that is, command greater fidelity among Koreans than say Citicorp, WorldCom-MCI, Daimler-Chrysler, or Toyota.<sup>31</sup> Of course over the years, I have grown weary of asking the same questions of American students who were concerned about the survival of Harley-Davidson or the American electronic, footwear, or automobile industries.<sup>32</sup>

So what? Americans, Koreans, and everyone else tend to see the world from their own highly particularized standpoints. There is nothing new about that. Defending the "national interest" is a crowd pleaser anywhere in the world. Still, domestic inter-group conflicts in the United States often seem especially hyper-chauvinistic to me, even as I acknowledge the contextual validity of particular claims. These debates and struggles occur within boundaries that are largely impervious to transnational implications or solidarity, although on occasion, some of these struggles pause to incorporate critical global dimensions or realities.<sup>33</sup> Such instances are, however, quite rare, narrowly confined, and generally for instrumental purposes.

In this so-called post-Cold War era<sup>34</sup> when perhaps the most fundamental of all human rights—self-determination—can no longer be limited to discrete privileged groups or confined within any national boundary<sup>35</sup>

Daewoo. Until recently, the top four *chaebols* account for 40–45 percent of South Korea's gross national product. See Samuel Len, *Korean Conglomerates Remain Entrenched*, N.Y. TIMES, Sept. 21, 1999, at C8.

31. Does anyone care anymore whether Daimler-Chrysler, for example, is an "American" or "German" company? Who owns Firestone or Dr. Pepper or the Pillsbury Doughboy? Most American machine tool companies have been "foreign" owned for years. See Joseph B. White, *Global Mall: There are no German or U.S. Companies Only Successful Ones*, WALL ST. J., May 7, 1998, at A1.

32. In keeping with this transnational trend, the U.S. Department of Defense recently has embarked on a policy of encouraging American defense companies to sell some of their more sophisticated weaponry to "foreigners." See R. Jeffrey Smith, *Arms Trade Menaces U.S. Security, Panel Says*, WASH. POST, June 24, 1996, at A9; Laurie Goering, *U.S. Role as S. America's Arms Supplier Debated*, CHI. TRIB., May 31, 1998, at 3; Frank O. Mora & Antonio L. Pala, *U.S. Arms Transfer Policy for Latin America*, AIRPOWER J., Apr. 1, 1999, at 76.

33. See e.g., Tina Kelley, *Whaling Standoff in Neah Bay*, CHRISTIAN SCI. MONITOR, Nov. 12, 1998, at 3 (describing the controversy between the Makah tribe and anti-whaling activists over the tribe's decision to re-engage in the traditional hunt of Gray whales).

34. It should be observed that the choice of the term "Cold War" is unlikely to resonate positively with many people in the Third World. In Afghanistan, Angola, Cambodia, Cuba, Chile, Guatemala, Mozambique, South Africa, and Vietnam—to name just a few places—the deadly East-West rivalry during this period was anything but cold. See ERIC HOBBSBAWN, *THE AGE OF EXTREMES* 245–56 (1996).

35. From Canada, where French-speaking Quebecois are demanding independence, to Chechnya, Kosovo to Scotland and Wales, the demands for greater autonomy and human rights grow. These demands are of course illustrative in many cases of the same



and where communities everywhere are struggling to respond to enormous global economic and socio-cultural forces, such a persistently myopic vision illuminates hubris or madness. Tragedy is inevitable. Think about a recent example: when American embassies were bombed in Kenya and Tanzania in 1998, scores of people—some Americans but mostly “others”—died.<sup>36</sup> The United States then responded by bombing Afghanistan and the Sudan, killing more faceless “others.”

There is more. Hundreds of American FBI agents and military personnel descended on Kenya and Tanzania to investigate. Captured suspects were flown unceremoniously to the United States for trial. The main suspect, we are told, is a Saudi national, Osama bin Laden, formerly based in Sudan but now living in Afghanistan.<sup>37</sup> Aside from this, about all we know of him is that he is wealthy and hates the United States, even though in the past he received support from the United States via Pakistan and Saudi Arabia to wage war on the former Soviet Union.<sup>38</sup> As complex and confusing as this picture is, one searches the traditional news sources for signs of a fuller, more textured appreciation of the transnational perspective but finds only the same narrow American-interest concerns, even from liberals who distinguish themselves today mainly by their muted expressions of regret as they acquiesce in whatever official actions do not threaten their material possessions. Where is the global community? The question must be asked not only of the establishment types, but also of those engaged in anti-subordination struggles in the United States. Where does the idea of global community fit into the intra-American struggles for rights and opportunities?<sup>39</sup>

Kenyans, Tanzanians, Sudanese, Saudis, Afghans, and others do not exist merely to satisfy or die for American interests. They too have their perspectives, their hopes and visions. Furthermore, their everyday lives, their triumphs and failures as they confront their justice issues, whether

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persistent chauvinistic tendency criticized here—the failure of the human spirit in a community to reach out with bonds of understanding and solidarity to others with similar hopes and desires struggling against the same. See WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP* 187–91 (1995).

36. More than two hundred and fifty people, including 12 American citizens, were killed in the August 7 bombings in Kenya and Tanzania. See *FBI: 2 Vehicles Used to Bomb U.S. Embassy*, DALLAS MORNING NEWS, Oct. 17, 1998, at 14a; David Johnston, *Bombing Suspect Found in Pakistan*, PORTLAND OREGONIAN, Aug. 18, 1998, at A1.

37. See Johnston, *supra* note 36, at A1; Amos Perlmutter, *Haphazard War on Terrorism*, WASH. TIMES, Aug. 27, 1998, at A19.

38. See Perlmutter, *supra* note 37, at A19.

39. For an example of the type of transnational perspective that I am advocating in this article, see RANDALL ROBINSON, *DEFENDING THE SPIRIT* (1998).

similar or different from Americans', could help Americans as they struggle with their own justice issues.<sup>40</sup>

Yamamoto's orientation is especially attractive because it pushes the slow and difficult process of purging American progressive politics of the crude and virulent strain of ethnocentric chauvinism.<sup>41</sup> This strain has generally been associated with right-wing politics but has crept into racial justice struggles—a consequence perhaps of failed aspirations of erstwhile leaders of the dispossessed to buy their way into national acceptance. By opening wider the door of transnational analysis, Yamamoto's articles help shift progressive race scholarship away from racial or national exceptionalism toward a more meaningful, less myopic appreciation of global interconnectedness and the necessity for a scholarship and politics of solidarity.<sup>42</sup>

In the rest of this essay, I focus on two themes developed by Yamamoto in his analysis of the forces and circumstances surrounding the two litigations<sup>43</sup> that provide the platform for his argument: (1) an intensifying dissociation of law (as it conceives of justice) from racial justice (as experienced by racialized groups); and (2) a disjuncture between progressive race theory and frontline political lawyering practice. Critical race praxis, according to Yamamoto, provides the appropriate response to the problems of dissociation and disjuncture. As he conceives it, "[C]ritical race praxis combines critical, pragmatic, socio-legal analysis with political lawyering and community organizing to practice justice by and for racialized communities. Its central idea is that racial justice requires antistatist practice."<sup>44</sup> My comment locates these themes, and the insights emanating from them, within a newer, more vibrant direction in critical race scholarship that recognizes how United States' domestic and international policies promote and police the globalization or

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40. See generally Yamamoto, *Race Apologies*, *supra* note 4 (listing examples of injustices towards various groups and individuals deserving of apologies).

41. For example, in another work, Yamamoto describes how the case for Japanese-American reparations for internment during World War II was sold to the American public and Congress by advocates who stressed the "superpatriotism" of Japanese Americans "who are loyal to and willing to sacrifice for the United States." Yamamoto, *Racial Reparations*, *supra* note 4, at 500.

42. See, e.g., ERNESTO LACLAU & CHANTAL MOUFFE, *HEGEMONY AND SOCIALIST STRATEGY: TOWARD A RADICAL DEMOCRATIC POLITICS* 176 (1985) (analyzing the development of "new social movements" as contributing to diffusion of social conflicts and the emergence of new social relations).

43. See Yamamoto, *Critical Race Praxis*, *supra* note 3, at 827–30.

44. *Id.* at 829.

transnationalization of everyday life.<sup>45</sup> This newer direction understands that those who seek justice within the domestic sphere of American life cannot afford to divorce their struggles from the much larger global endeavor.<sup>46</sup>

### A. An Intensifying Dissociation: Transnational Implications

In analyzing the *Ho* and *United Minorities* cases, Yamamoto identifies a phenomenon that he describes as an “intensifying dissociation of law (as it conceives of racial justice) from racial justice (as it is experienced by racialized groups).”<sup>47</sup> He sees this dissociation as one aspect of a general national “retreat from racial justice.”<sup>48</sup> His analysis highlights three dimensions of this dissociation: (1) how law in general has helped to maintain historic racial oppression;<sup>49</sup> (2) how anti-discrimination laws have largely failed and, indeed in significant ways, betrayed racial minorities;<sup>50</sup> and (3) how limited the utility of the dominant bipolar Black-White jurisprudential paradigm is in dealing with complex conflicts among communities of color.<sup>51</sup> The parallels and interrelationships between his immediate analytical terrain and the global perspective leap from the pages.

While Yamamoto’s broad message about the limited efficacy of “the Rule of Law” vision of the American establishment in dealing with racial oppression is much remarked upon and generally well understood,<sup>52</sup> his

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45. See Harris, *supra* note 5, at 741 (signifying the new direction that critical race scholarship has taken); AOKI, *SPACE INVADERS*, *supra* note 5 (Apr. 30, 1998 draft on file with author) (surveying how legal scholars incorporate political geography in their examination of the interaction between race and law); Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395 (1997); Keith Aoki, *(Intellectual) Property and Sovereignty: Notes Toward a Cultural Geography of Authorship*, 48 STAN. L. REV. 1293 (1996); Robert S. Chang, *Reverse Racism!: Affirmative Action, the Family, and the Dream that is America*, 23 HASTINGS CONST. L.Q. 1115 (1996); Robert S. Chang, *The End of Innocence or Politics After the Fall of the Essential Subject*, 45 AM. U. L. REV. 687 (1996); Robert S. Chang, *Foreword: Towards A Radical and Plural Democracy*, 33 CAL. W. L. REV. 139 (1997); Iglesias, *Human Rights*, *supra* note 5, at 361; Hope Lewis, *Women (Under)Development: The Relevance of “The Right to Development” to Poor Women of Color in the United States*, 18 LAW & POL’Y 281 (1996); Hope Lewis, *Lionheart Girls*, *supra* note 5.

46. See, e.g., Yamamoto, *Race Apologies*, *supra* note 4, at 47 (describing recent efforts around the world to tackle historic wrongs against minorities or subjugated communities).

47. Yamamoto, *Critical Race Praxis*, *supra* note 3, at 828.

48. *Id.* at 828 (citing STEPHEN STEINBERG, *TURNING BLACK: THE RETREAT FROM RACIAL JUSTICE IN AMERICAN THOUGHT AND POLICY* 213 (1995)).

49. See *id.* at 828, 840–44.

50. See *id.* at 828, 844–52.

51. See *id.* at 840, 852–66.

52. See e.g., BELL, *supra* note 24 (1987) (providing a critical examination of the African American struggle for racial justice); Alan Freeman, *Racism, Rights, and the Quest for Equality of Opportunity: A Critical Essay*, 23 HARV. C.R.-C.L. L. REV. 295 (1998)

analysis buttresses a key indictment of how law-as-practiced confers inferior status on many while limiting opportunities for comprehensive social transformation.<sup>53</sup> More importantly, however, Yamamoto's analysis weaves together the gnarled threads of socio-economic and cultural derogation that bind oppressed communities all over the world.<sup>54</sup> His examples range from the coldly rational and brutal state law-sanctioned slave system<sup>55</sup> and the infamous and pragmatic "three-fifths" treatment of blacks in the United States Constitution<sup>56</sup> to the transcontinental "ethnic cleansing" of Native Americans,<sup>57</sup> the denial of naturalization opportunities to nonwhites,<sup>58</sup> the brutal and cynical annexation of Hawaii,<sup>59</sup> the Chinese Exclusion Acts,<sup>60</sup> and the internment of Japanese-Americans.<sup>61</sup> With these varied examples Yamamoto exposes not only the dark past of the present order that many would prefer to forget but also historic, transgenerational and transnational chains of oppression upon which worldwide solidarity could be forged. Can the analysis be complete without noting, for example, the United States' support for apartheid South Africa during the Cold War years or the forty plus years of economic warfare that the United States has waged upon Cuba?<sup>62</sup>

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(addressing Critical Legal Studies in addition to exploring whether there exists a standard Critical Legal Studies critique of rights).

53. For example, he quotes Rennard Strickland as follows: "I am talking not about . . . cold blooded atrocities but about law and the ways in which [cultural] genocidal objectives have been carried out under color of law . . . . These were legally enacted policies whereby a way of life, a culture, was deliberately obliterated." Yamamoto, *Critical Race Praxis*, *supra* note 3, at 843 (quoting Rennard Strickland, *Genocide-at-Law: an Historic and Contemporary View of the Native American Experience*, 34 KAN. L. REV. 713, 719 (1986)).

54. See generally LACLAU & MOUFFE, *supra* note 42.

55. See KENNETH M. STAMP, *THE PECULIAR INSTITUTION* (1972) (discussing pre-Civil War southern slavery and the effect of its social remains upon American society).

56. See MARK TUSHNET, *THE AMERICAN LAW OF SLAVERY, 1810-1860* (1981).

57. See ROBERT A. WILLIAMS, JR., *THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST* (1990).

58. See SUCHENG CHAN, *ASIAN AMERICANS: AN INTERPRETIVE HISTORY* (1991) (discussing the common refugee and immigrant experiences among Asian Americans).

59. See HAUNANI-KAY TRASK, *FROM A NATIVE DAUGHTER: COLONIALISM AND SOVEREIGNTY IN HAWAII* (1999).

60. See ALEXANDER SEXTON, *THE INDISPENSIBLE ENEMY: LABOR AND THE ANTI-CHINESE MOVEMENT IN CALIFORNIA 177-78* (1971) (discussing the enactment of the Chinese Exclusion Act); RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE* 111-12 (1989) (discussing the socio-economic and legislative background of the Chinese Exclusion Act).

61. See JACOBUS TEN BROECK ET AL., *PREJUDICE, WAR AND THE CONSTITUTION* (1954) (discussing the social, political, theoretical and legal aspects of the Japanese American internment camps).

62. For a critical perspective on the United States role in maintaining apartheid see Ibrahim J. Gassama, *Reaffirming Faith in the Dignity of Each Human Being: The United*

It should be expected, given the intensity, duration, and pervasiveness of legally-sanctioned racial oppression, that communities of color within the United States would not find it difficult to be skeptical of the assumed superiority of a law-centered approach to ending racial oppression. As Yamamoto reminds us, however, the law-centered, traditional, "integrationist," civil rights approach has dominated racial justice efforts for several decades. This approach is built on the favored mythical image of the United States as a "country of laws, not men"—where the legal system, hence its core social structure, is fundamentally sound, albeit occasionally subject to unrepresentative acts of some bad people trying to pervert the process.<sup>63</sup> Nowhere does one hear this mantra more often than when the issue is the way in which racialized minorities fare in the criminal justice system.<sup>64</sup> Reform efforts within this national mirage are thus aimed at eliminating minor "pockets" of deviance—the few "bad cops," etc. Essentially, everything in the United States is more or less all right and the legal system is more than up to the task of "fixing" the problem when "isolated" incidents of injustice occur.

One sees this attitude reflected also in the traditional law school curriculum where "human rights" is relegated to the study of the unjust things that happen to *other* people in *other* countries; within the United States, the orthodox concern is about a subset of constitutional law denoted "civil rights." The other, or "international," human rights syllabus is usually quite broad, a rather "soft" quasi-legal collection of politics, economics, philosophy, anthropology, sociology, etc. The subject is fundamentally aspirational; these *other* people still have a long way to go in developing their legal system or culture. Civil rights study, on the other hand, is very much located in the sphere of hard law—indeed closeted within the hardest of hard law: Constitutional Law. Politics, economics, and the like are only tangentially at play since "we" basically have a national consensus that "we" are basically all right and certainly doing better than these *other* countries or people with undeveloped legal cultures. What liberal has not sought to wrap up a discussion on problems in the United States by pointing to the "progress" that "we"

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*Nations, NGOs, and Apartheid*, 19 FORDHAM INT'L L.J. 1464 [hereinafter Gassama, *Reaffirming Faith*](discussing the embargo on Cuba); IBRAHIM J. GASSAMA, FORTY YEARS OF HOSTILITY: INHUMANE CONSEQUENCES OF THE U.S. ECONOMIC EMBARGO ON CUBA (Report of the TransAfrica forum Cuba Delegation, Mar. 1999); Shari-Ellen Bourque, *The Illegality of the Cuban Embargo in the Current International System*, 13 B.U. INT'L L.J. 191 (1995).

63. See Yamamoto, *Critical Race Praxis*, *supra* note 3, at 845–51.

64. See AMNESTY INTERNATIONAL, UNITED STATES OF AMERICA RIGHTS FOR ALL (1998) for a recent comprehensive report on human rights violations in the United States.

have made, the long way that “we” have come?<sup>65</sup> The limits, pitfalls, and social costs of “this sharply constricted” and compartmentalized approach to the concerns of the dispossessed in the United States are now much better and more broadly appreciated because of the work of scholars like Yamamoto.<sup>66</sup>

Yamamoto’s analysis reveals yet again the tragedy of the “liberal impulse to escape politics” through law.<sup>67</sup> American liberalism’s faith in an orderly, progressive dismantling of historic structures of oppression through litigation and legislative enactments has repeatedly come face to face with the hostility of an unrelenting, neo-conservative judiciary, as well as other political forces which feel threatened by the rather marginal steps toward racial justice taken in the brief flowering of the early civil rights era. Agents of the traditional civil rights paradigm, having failed to demand accountability for past injustices from perpetrators and beneficiaries found their token demands easily rebuffed. In this respect, they were easily seduced by token acceptance into apparently inner rings of power as well as by their own rhetoric of the inevitability of progress.

Richard Nixon unveiled the take-back program with his “Southern Strategy” during his presidential campaign in the late Sixties.<sup>68</sup> Ronald Reagan and George Bush made it the norm as they populated the judiciary with righteously indignant reactionaries, often politely referred to

65. Even sophisticated observers cannot seem to help resorting to this syrupy type of analysis. For example, Douglass Brinkley accounts that “the United States’ embrace of its melting pot—or what Martin Luther King, Jr., called ‘a single garment of destiny’—has produced a country and a people such as the world has never seen.” DOUGLAS BRINKLEY, *AMERICAN HERITAGE: HISTORY OF THE UNITED STATES* 609 (1998). This was written about a period when a largely disproportionate number of Black men were incarcerated, large numbers of Haitian “boat people” were forcibly returned to the control of a tyrannical regime and asylum seekers were being discouraged with harsh treatment. See AMNESTY INTERNATIONAL, *supra* note 64, at 87–98.

66. See Yamamoto, *Critical Race Praxis*, *supra* note 3, at 846–52; see also Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest Convergence Dilemma*, 93 HARV. L. REV. 518 (1980) (suggesting the interests of blacks in quality education does not necessarily coincide with any interest in integration); Mark Tushnet, *What Really Happened in Brown v. Board of Education*, 91 COLUM. L. REV. 1867 (1991) (describing limitations and failures of *Brown v. Board of Education* and subsequent Supreme Court jurisprudence in desegregating schools).

67. The phrase is borrowed from Martti Koskeniemi, *The Politics of International Law*, 1 EUR. J. INT. L. 4, 6 (1990); see also *id.* at 7 (arguing that “our inherited ideal of a World Order based on the Rule of Law thinly hides from sight the fact that social conflict must still be solved by political means . . .”).

68. See NICHOLAS LEHMANN, *THE PROMISED LAND* 203 (1991) (pointing out that Nixon’s decreasing delegate strength in the south during the 1968 election led him to implement a “Southern Strategy” aimed at reassuring white southerners that they would not experience radical racial change); C. VAN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 211–14 (3rd rev. ed. 1974).

as neo-conservatives.<sup>69</sup> Bush's appointment of Clarence Thomas to the U.S. Supreme Court symbolized not just the triumph of "neo-conservatives," but the contempt that they nurtured for the traditional civil rights vision.<sup>70</sup> To a significant degree, the liberal vision, whatever its other lasting contributions, helped to soften up racialized groups for reactionary counterattacks.

Keith Aoki has pointed out a fundamental flaw in the traditional civil rights paradigm: its mistaken analysis of racism as essentially the manifestation of irrational desires of the mind.<sup>71</sup> As such, racism is aberrational, merely the product of unenlightened thinking. Ameliorative measures to cure this deviancy thus focused on integration and exaggerated the benefits that would flow from racial and ethnic mixing. These efforts failed to address to any substantial degree the core problem of concrete maldistribution of power and the unequal social system that it creates and nurtures.<sup>72</sup> Indeed, the narrowly-targeted program of the traditional civil rights movement was explicitly conditioned, like the granting of reparations to Japanese Americans, for example, upon allegiance to the core social structure including both its domestic power differential and the external imperial enterprise. Those recently noticed, acknowledged, or emancipated, like conquered armies of old, often saw few options other than rallying, at least publicly, to the defense of the triumphant order. The struggles, as interpreted or reinterpreted over time, were not for any

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69. See Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

70. See generally JANE MAYER & JILL ABRAMSON, *STRANGE JUSTICE: THE SELLING OF CLARENCE THOMAS* (1996) (recounting the "selling" of Clarence Thomas to Americans through the use of distortions and falsehoods).

71. See AOKI, *SPACE INVADERS*, *supra* note 5; see also Stokely Carmichael, *Power and Racism*, in *CRISIS: A CONTEMPORARY READER* 58 (1969) (arguing that the civil rights movement's tone was adapted to fit a white, liberal audience).

72. Writer and human rights activist, Randall Robinson, describes the situation in more eloquent language:

African-Americans, perhaps still placated by the fool's gold of integration as an endgame achievement, seem not to have noticed our worsening condition with any alarm. At some point beyond the peak of the civil rights movement, we lost our bearings, as if sleepwalking. When we thought about it at all, we reckoned that we were forward of where we had been before. But if we had progressed, it hadn't been by much. Our longitude had changed but our latitude was virtually the same. If the new social terrain looked unfamiliar, it was only because we had drifted sideways, if not backward as well.

ROBINSON, *supra* note 39, at xiv; see also BELL, *supra* note 24 (providing a comprehensive examination of the African American struggle for racial justice).

wide-ranging set of fundamental human rights, but for *civil rights*<sup>73</sup>—a manifestation and triumph of the old order of American national exceptionalism. Belying Gil Scott Heron's predictions, the civil rights "revolution" gradually became a televised spectacle; indeed, it became part of regular programming, rated G, systematized, and compromised. When neo-conservatives began quoting the late Reverend Martin Luther King, Jr. to rebut the traditional civil rights establishment, it was time to switch channels.<sup>74</sup>

Law, as Yamamoto points out, was a critical instrument in this process of co-optation or domestication.<sup>75</sup> Its alienated and alienating structure and procedures provided an opiate for civil rights escapist.<sup>76</sup> In reality, a few more drummers were added to the band as it played on, missing nary a beat.

Yamamoto's dissociation theme readily accommodates a transnational perspective. The separation of law as enunciated and applied by those in command from law as experienced by outsiders constructs a transnational path that at a minimum should go back to the start of the "American Century."<sup>77</sup> Indeed, Yamamoto ends his article with a brief excursion into the event which perhaps best epitomizes the beginning of this century. . .the ignoble annexation of Hawaii by the United States at the behest of multinational corporate interests.<sup>78</sup> After almost a century of struggle for justice, the Hawaiian tragedy remains, as Yamamoto acknowledges, "messy" and "never-finished."<sup>79</sup> Yet the Hawaiian struggle for justice provides an important reminder of the blurry lines between the domestic and the international and of the necessity for transnational understanding.

73. Of course, one can also define human rights so narrowly as to deprive the concept of any broad transformative potential. See G.J.H. van Hoof, *The Legal Nature of Economic, Social and Cultural Rights: A Rebuttal of Some Traditional Views*, in *THE RIGHT TO FOOD* 97 (P. Alston & K. Tomasevski eds., 1984). This issue is also at the center of debates over the current United Nations practice of focusing on elections in societies coming out of brutal dictatorships. See Ibrahim J. Gassama, *Safeguarding the Democratic Entitlement: A Proposal for United Nations Involvement in National Politics*, 30 CORNELL INT'L. L. J. 287, 287-93 (1997).

74. See Paul Greenberg, *King's Message, Values Endure*, REG. GUARD, Jan. 18, 1999, at 13A.

75. See Yamamoto, *Critical Race Praxis*, *supra* note 3, at 844-52.

76. See *id.*

77. "The twentieth century is the American century. The British dominated the nineteenth century, and the Chinese may cast a long shadow over the twenty-first, but the twentieth century belongs to the United States because of the triumph of its faith in the founding idea of political and economic freedom." EVANS, *supra* note 22, at xiv.

78. See Yamamoto, *Critical Race Praxis*, *supra* note 3, at 895-900; see also EVANS, *supra* note 22, at 48-73 (providing a brief and benign description of early overseas American imperialism).

79. See Yamamoto, *Critical Race Praxis*, *supra* note 3, at 831, 900.



As the twentieth century draws to a close, we confront the full flowering of American triumphalism. Not too long ago, many American commentators argued freely that the economic crisis in Asia and other parts of the world confirmed the singular superiority of the American vision of capitalism.<sup>80</sup> This is a persistent imperial vision, stated gently, even apologetically this time, but still largely a reaffirmation of one that can be traced directly to when American presidents like James Monroe, Theodore Roosevelt, Woodrow Wilson, and Franklin D. Roosevelt held the world stage.<sup>81</sup> The first comprehensive planning for a twentieth century new world order under American leadership—the ultimate expression of national exceptionalism—must be credited to the United States' entry into the First World War.<sup>82</sup> This early world orderist vision stumbled initially in the face of strong currents of isolationism that misperceived twentieth century internationalism as an abandonment of national exceptionalism;<sup>83</sup> but the idea did not die. Indeed, even before the United States entered the Second World War, liberal legalist planners were hard at work, devising an even more comprehensive post-war global, political, and economic order.<sup>84</sup>

Every one of the intergovernmental institutions engaged in managing global security and economic relations today originated from this U.S.-centered effort. Both the United Nations system as well as the Bretton Woods economic institutions—the World Bank, the International Monetary Fund, and the General Agreement on Tariff and Trade—should be seen as deriving from early twentieth century Americas efforts to reconceptualize the world to preserve its vision of human and national relations. No other combination of national influences comes close to matching those of the United States in the designing and nur-

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80. See, e.g., Tim Smart, *It was a Very\_\_\_ Year; 1998: (a) Volatile, (b) Merger-rific, (c) Cyber-spaced, (d) All of the Above*, WASH. POST, Dec. 27, 1998, at H1.

81. See EVANS, *supra* note 22, at 50–67.

82. See DANIEL PATRICK MOYNIHAN, ON THE LAW OF NATIONS 33–79 (1990) (discussing the period from Woodrow Wilson's unsuccessful efforts to get the United States into the League of Nations to Franklin Roosevelt's rekindling of internationalist passions culminating in the United Nations).

83. See *id.* at 55–69. The continuing force of this isolationist tendency may be found in the rhetoric of conservative gadfly Pat Buchanan: "I want to say to all the globalists up there in Tokyo and New York and Paris, when I raise my hand to take the oath of office, your new world order comes crashing down." Steven Stark, *Right Wing Populist*, ATLANTIC MONTHLY, Feb. 1996, at 20C.

84. President Roosevelt was the critical force behind this renewed internationalism which argued that unless the United States used its influence to create post war order, it would inevitably be drawn into international conflicts. See MOYNIHAN, *supra* note 82, at 70–79; ROBERT C. HILDERBRAND, DUMBARTON OAKS 5–9 (1990).

turing of these structures.<sup>85</sup> The Cold War, third world nationalism, and irredeemable pockets of American isolationism delayed, but clearly did not derail, this enterprise.<sup>86</sup>

Nelson Mandela, for example, has written about how he and other anti-apartheid freedom fighters were inspired by the modernistic vision emanating from the United States in the inter-war years.<sup>87</sup> Ironically, those who provided the foundation on which the apartheid system was constructed were also moved by this vision. Prominent among those assisting the American conceptualizers of the post World War II order was Jan Smuts, prime minister of the Union of South Africa.<sup>88</sup> The irony of such connections between defenders of freedom and racists and the apparent neutrality of law toward their condition did not escape Mandela and other South Africans who experienced the profound racism of the Smuts era.<sup>89</sup> Nor could it have escaped millions in the third world under colonial rule, or for that matter, many in western countries who were confronting "domestic" racial injustice. This was a period characterized by great idealism with lofty rhetoric from western conceptualizers about peace, freedom, human rights and justice, as well as hash pragmatism as they defended their advantages. The aspirations and interests of millions of subordinated non-White people in the United States, South Africa, and the many European colonies throughout the world rarely penetrated the rarified atmosphere and grand settings of what was at its core a hegemonistic project.

The transnational institutions that were created from this early twentieth century process—largely from the minds of committed American internationalists and their westernized allies—supposedly elevated

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85. Neither Japan nor Germany, the two most economically powerful nations today after the United States, participated at Bretton Woods.

86. For example, the World Trade Organization (WTO) was first conceived as the International Trade Organization in the 1940s. Opposition centered in the United States Senate derailed its establishment. The General Agreement on Tariffs and Trade (GATT) was the compromise that lasted until 1995 when the GATT was merged into the WTO. See Paul Demaret, *The Metamorphoses of the GATT: From the Havana Charter to the World Trade Organization*, 34 COLUMBIA J. TRANSNAT'L L. 123 (1995).

87. See NELSON MANDELA, *LONG WALK TO FREEDOM* 83–84 (1994).

88. The Cambridge-educated Smuts was considered an Anglophile and very influential with the British. He participated in the creation of the League of Nations at Versailles at the end of the First World War and successfully pushed for South Africa to enter the Second World War as an ally of Britain. He served as prime minister of South Africa from 1939 until the Afrikaner National Party took over in 1948. See LEONARD THOMPSON, *A HISTORY OF SOUTH AFRICA* 157–86 (1990).

89. Of course the Smuts administration was not racist enough for many white South Africans who voted to replace his administration in 1948 with an Afrikaner nationalist regime advocating a comprehensive and more rigid racial discrimination and violence program called apartheid. See *id.* at 187–220; MANDELA, *supra* note 87, at 96–97.

rules, principles, and "the Rule of Law" over politics and power realities. The new UN structure, for example, came with an International Court of Justice whose statute duly codified the sources of international law. Recall also the elaborate efforts to legalize the victors' treatment of the vanquished in the Nuremberg trials.<sup>90</sup> The Americans pushed the trials over objections from people such as Stalin and Churchill who would have rather lined up and executed the most objectionable of the defeated leaders.<sup>91</sup> However, United States' support for the "Rule of Law"—universal standards promoted in the international military tribunals, the United Nations Charter, the Universal Declaration of Human Rights, the Genocide Convention, and the international human rights covenants, for example, did not prosper under pressure from communism and third world independence movements. As the United States' role in apartheid South Africa and its rejection of the World Court in the Nicaraguan case illustrated,<sup>92</sup> the dissociation between justice as represented in the mythologies of these international institutions and justice as actually experienced by invisible racialized masses all over the world is palpable.<sup>93</sup>

Decolonization and third world revolutions brought other voices with different ideas about justice and a post war order into these institutions. The idealism of the original conceptualizers metamorphosized quickly into harsh pragmatism dedicated to preserving the status quo. The United States and its allies have held steadfastly to advantages they have built into the systems supporting the new world order and rejected

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90. See *International Military Tribunal (Nuremberg), Judgment and Sentences*, Oct. 1, 1946, 41 AM. J. INT'L. L. 172 (1947); IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 562 (4th ed. 1990).

91. See BURNS H. WESTON ET AL., *INTERNATIONAL LAW AND WORLD ORDER* 6 (2nd ed. 1990).

92. In January, 1985, rather than face certain defeat at the World Court over the government of Nicaragua's claim that the United States had violated international law by engaging in illegal covert warfare against it, including sponsoring a rebel movement and mining its harbors, the United States terminated its acceptance of the compulsory jurisdiction of the World Court. See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. U.S.)*, 1986 I.C.J. 14 (June 27); see also Tom J. Farer & Christopher C. Joyner, *The United States and the Use of Force: Looking Back to See Ahead*, 1 TRANSNAT'L L. & CONTEMP. PROBS. 15, 28-30 (1991) (discussing United States involvement with Nicaragua rebels, later known as "contras"); MOYNIHAN, *supra* note 82, at 4-6, 120-48.

93. The general western support of or acquiescence in apartheid during the Cold War era is another harsh illustration of this dissociation. See Gassama, *Reaffirming Faith*, *supra* note 62, at 1526. Another prime example was the failure to support the elaborate peace and security structure and processes outlined in the United Nations Charter. See U.N. CHARTER, arts. 42-48. The actuality of a United Nations that could intervene independent of major power support and supervision soon frosted earlier support for standing UN forces.

demands that would interfere with their power even when those demands were cast in terms of the principles they generally extolled in the abstract.

In the trade and economic development area, the United States has long promoted a global trading and investment regime centered around free trade and the free movement of capital.<sup>94</sup> At the same time, the United States has profligately imposed restrictions and trade embargoes that have hurt very poor as well as disfavored nations.<sup>95</sup> United States trade legislation is replete with conditions, restrictions, and exceptions designed to advance a vision of world order that would be impossible to explain to millions of desperately poor Africans, Asians, or Latin Americans.<sup>96</sup> Indeed, their attitudes would likely mirror those of many United States citizens who increasingly are pawns in this project called globalization. Few of these people, inside and outside the United States, are likely to decipher an integral association between "justice" as they would conceive it and "justice" as the new world orderists project it in their press releases.<sup>97</sup> The disjuncture in the inter/national provides opportunities to deepen and expand liberal democratic ideology.<sup>98</sup> Critical race praxis suggests an important perspective for analyzing the role of traditional categories such as ethnicity and nationality in this radical democratic project.

### B. *Disjuncture Between Race Theory and Political Lawyering Practice*

The second theme outlined by Yamamoto is the disjuncture between progressive race theory and frontline political lawyering. According to Yamamoto, while progressive race theorists and progressive lawyers share the same passion and goals about ending racial injustice, a growing gulf exists between theorists and practitioners. He charges the two camps with operating in "separate realms: [theorists] in the realm of

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94. See Demaret, *supra* note 86; JOHN H. JACKSON, *WORLD TRADE AND THE LAW OF GATT* (1969).

95. For example, the United States has maintained and gradually expanded an economic embargo against Cuba since the early sixties. See IBRAHIM J. GASSAMA, *FORTY YEARS OF HOSTILITY: INHUMANE CONSEQUENCES OF THE U.S. ECONOMIC EMBARGO ON CUBA* (Report of the TransAfrica forum Cuba Delegation, Mar. 1999); Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States Against Cuba, G.A. Res. 48/16, U.N. GAOR, 48th Sess., Agenda Item 30, at 1, U.N. Doc. A/RES/48/16 (1993); Iglesias, *Human Rights*, *supra* note 5, at 371; Bourque, *supra* note 62.

96. See Iglesias, *Human Rights*, *supra* note 5.

97. See Jonathon Peterson, *Two Visions of Global Economy to Clash*, REG. GUARD, Nov. 29, 1999, at A1; Rebecca Cook, *Up to 50,000 Protesters Ready for 'Battle in Seattle'*, REG. GUARD, Nov. 29, 1999, at A1.

98. See LACLAU & MOUFFE, *supra* note 42, at 176.

ideologies, discursive strategies, and social construction, [practitioners] in the realm of civil rights statutes, restrictive doctrinal court rulings . . . .”<sup>99</sup> Yamamoto sees this growing divide as a consequence of both camps reacting to the relentless neo-conservative assault characterizing post-civil rights America. Theorists have responded to the backlash by becoming more critical, attacking not only the neo-conservative position but also the broader liberal agenda that underpinned the civil rights movement.<sup>100</sup> On the other hand, progressive lawyers, according to Yamamoto, have continued to labor within the “shrinking confines of the civil rights paradigm,”<sup>101</sup> becoming increasingly estranged from their more theoretical allies. Yamamoto concludes this discussion by highlighting the work of activist-scholars like himself who have demanded increased sensitivity to the need for a merger of theory and practice.<sup>102</sup>

I think it would be illuminating to replay this insightful theme in the transnational context both to illustrate the relationship in that milieu between progressive activists (many but by no means all of whom are lawyers) and theorists and, perhaps more importantly, to iterate the fundamental insufficiency of analyzing justice struggles without due appreciation of the transnational context. I shall do so by examining two transnational campaigns that I have worked on: the Free South African Movement of the 1980s and a more recent campaign against Chiquita, a multinational company with headquarters in the United States that has worked aggressively to eliminate European trade subsidies for the banana export of several small Caribbean nations. These two cases amply illustrate, in the transnational context, the complex and often strained relationship between progressive theory on the one hand and progressive activism on the other. Yet they also echo Yamamoto’s plea for rebuilding connections in order to accomplish limited but important goals in the service of justice.

### 1. South Africa : The Nature of Victory

The growth of the United States’ Free South African Movement (FSAM) in the 1980s was a direct response to two developments concerning apartheid in South Africa: the Reagan administration’s policy of constructive engagement<sup>103</sup> and growing social unrest inside South Af-

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99. Yamamoto, *Critical Race Praxis*, *supra* note 3, at 832.

100. See BELL, *supra* note 24, for an elaboration of this ongoing dialogue.

101. Yamamoto, *Critical Race Praxis*, *supra* note 3, at 834.

102. See *id.* at 838–39.

103. See PAULINE BAKER, *THE UNITED STATES AND SOUTH AFRICA: THE REAGAN YEARS 22–53* (1989).

rica.<sup>104</sup> Constructive engagement tied the United States even more closely to the White minority regime in South Africa and was part of an overall U.S. foreign policy which gave the highest priority to combating the perceived threats of communism. United States foreign policy in this period complemented a domestic policy that increasingly marginalized the interests of poor and minority communities within the United States. Indeed, as the Reagan administration spent profligately to achieve military superiority and to defeat communism in the third world, it also severely cut domestic social spending that benefited the poor. Much of the military and security spending went into sponsoring or sustaining conflicts in third world countries, especially in already devastated parts of Africa and Latin America. A new "Reagan doctrine" was deployed to counter the "Brezhnev doctrine."<sup>105</sup> The results were as horrific as they were absurd. Largely destitute people died in large numbers in a conflict between doctrines and ideologies emanating from distant imperial centers.

The Free South African Movement that developed in the United States in the mid 1980s, while only one of many historic efforts to affirm the connections between domestic and foreign policies, was perhaps the most successful. Its success, however, derived from its appeals to American national exceptionalism—ideals or myths—to combat a neo-conservative, or "Realist," dominance of the national foreign policy establishment. Seizing upon television-fed images of brave South Africans fighting and dying for freedom, human rights activists (theorists and lawyers) focused on getting the United States government to legislate and enforce a broad set of economic sanctions against the apartheid regime.<sup>106</sup>

Much of the public discourse that fueled the movement in the United States was conducted around a set of modernistic beliefs—an uncritical global integrationist vision of a world bound together by the supposed universality and indivisibility of a set of core human rights. A considerable amount of progressive scholarly critique of this narrow and fragile vision of law-based justice existed but it rarely disturbed the warm and wholesome imagery that sustained this fundamentally liberal imperialistic enterprise. The dominant "international" human rights perspective paralleled the "domestic" civil rights establishment's fetishization of rights in the struggle for justice. Unsurprisingly then, the compromise solution that ended apartheid—much like the domestic compromise on civil

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104. See Nicholas Haysom, *The Total Strategy: The South African Security Forces and the Suppression of Civil Liberties*, in *THE LAST YEARS OF APARTHEID: CIVIL LIBERTIES IN SOUTH AFRICA* (John Dugard et al. eds., 1992).

105. See generally Moynihan, *supra* note 82.

106. See Edward Walsh, *Grass-Root Pleas Stir Lawmakers: GOP Conservatives Demanded Reagan Shift on South Africa*, WASH. POST, Sept. 16, 1985, at A1; Gassama, *Reaffirming Faith*, *supra* note 62, at 1500–09.

rights—offered democracy to the masses in the political or “public” sphere while leaving the grossly unequal relationships in the economic or “private” sphere virtually untouched.<sup>107</sup> This was not by accident; it was an explicit quid pro quo. Rights rhetoric was lifted out of the socio-political context of South African society and stripped of substantive challenges to the condition of gross material inequity that characterized the society. In effect democracy was confined largely to the election of parliamentary representatives. To make this apartheid-ending compromise work, the image of Nelson Mandela as a kind, grandfatherly, irreproachable and rather depoliticized figure—defender of an emasculated conception of democracy characterized primarily by the demobilizing mantra of gradualism—was constructed and then deployed to distract, hypnotize or satiate mass demands for substantive social change.<sup>108</sup> At least in the case of the Reverend Martin Luther King, Jr., defenders of the status quo waited until his death.

There was a particular moment in the course of my involvement in FSAM when the easy promises of modernistic faith and the insights of post-modernism came face to face. Shortly after the official release of Nelson Mandela from prison, I was privileged to have a meeting with him. I was accompanying one of the leaders of the anti-apartheid movement—Randall Robinson of TransAfrica<sup>109</sup>—and we went to Johannesburg to meet with Mandela to discuss his expected visit to the United States. After a very pleasant meeting, we ran into Thabo Mbeki, Mandela’s successor as President of South Africa, then a senior official of the African National Congress, at our hotel. After exchanging pleasantries, he informed us that he was about to address a gathering of western business leaders and selected others about his movement’s plans for a post-apartheid South Africa. Mr. Mbeki was well known to us as he had visited our anti-apartheid offices often in the past to strategize about ending U.S. government support of apartheid. We asked him if we could attend the gathering with him, and he readily agreed until one of the organizers who had been listening pulled him aside. He returned after a brief conversation with the organizer to apologize and inform us that he lacked the power to invite us to the conference. As we walked away, we

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107. See Freeman, *supra* note 52.

108. See Richard Alm, *Mandela Shows Caution in Approach to Rebuilding World View*, DALLAS MORNING NEWS, June 13, 1994, at 1D; Patti Waldmeir, *Mandela Pleases Business*, FIN. TIMES, May 25, 1994, at 4.

109. TransAfrica was created by African-American leaders in the 1970s to foster greater African-American influence in the making and implementing of United States foreign policy. As the most prominent American anti-apartheid organization in the 1980s, it sponsored, among many other things, a daily protest outside the South African embassy in Washington that later spread to many parts of the United States and lasted for more than a year. See Gassama, *Reaffirming Faith*, *supra* note 62, at 1506–07.

could see several people—representing American business and business-funded organizations—who had for years opposed virtually every anti-apartheid initiative, warmly greet Mbeki as they strolled into this meeting on South Africa's future. It was a meeting to which anti-apartheid activists were not invited.<sup>110</sup>

Perhaps the largely liberal, law-oriented anti-apartheid movement in western nations (that I was a part of) could have benefited from greater appreciation of the work of critical legal theorists. In retrospect, the seductive power of the "Rule of Law" as the pragmatic possibility was too great. Indeed, it appears that no one has discovered a more effective way than rights rhetoric to successfully mobilize large numbers of people to give their all to a struggle for justice. Theory that admits to no certain outcome other than continued struggle lacks the punch of the traditional mobilization for the attainment of a specific set of rights.<sup>111</sup> Yet, rights discourse, orphaned from a critical perspective, sows the ground for a harvest of despair. Liberal opportunists rush to sell out at the moment of triumph, often in the name of pragmatism.

## 2. Caribbean Banana Trouble: Limits of Concern

Chicago columnist Clarence Page was one of those who could not understand why Representative Maxine Waters, chairperson of the U.S. House of Representative's Congressional Black Caucus, was getting involved in a dispute ostensibly between the United States and the European Union over trade preferences for banana producers in the Caribbean.<sup>112</sup> After all, African Americans have enough problems of their own to be wasting precious time and resources dealing with "other" people's problems.

The Page perspective, which is rather common, even if generally unarticulated among many Americans, is rather odd given that African Americans were some of the earliest victims of a peculiar turn at globalization. The TransAtlantic slave trade was the most wretched by far of a global enterprise that made human misery another commodity to be

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110. See ROBINSON, *supra* note 39, at 184–86 (describing an account of this particular incident as well as similar ones making the same point); see also *\$30 Million Donated to Mandela Charities*, N.Y. TIMES, Dec. 11, 1999, at A14 (testifying to the business embrace of this once revised political leader and movement).

111. See also DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* ix (1992) (arguing that although "racism is an integral, permanent, and indestructible" part of society, the struggle against it is still justified).

112. See ROBINSON, *supra* note 39, at 120–121.



exchanged for gold, cotton, sugar, molasses, spices, etc.<sup>113</sup> The perspective is also surprising today, given that, deprived of their only viable export industry, people in these Caribbean islands—situated half-way between the cocaine-producing countries in Latin America and the largest cocaine consumer market in the world—could respond by selling their location and services to international drug traffickers.<sup>114</sup> Additionally, there are the historical bonds that significant numbers of Americans share with people in these islands. American cities are teeming with recent immigrants and children of not-so-recent-immigrants from these islands. Finally, what about elementary notions of human solidarity in confronting global injustice? Martin Luther King, Jr. once offered that perspective and Malcolm X pushed it as he sought international support for black liberation in the United States.<sup>115</sup>

The banana campaign began in earnest when the U.S. complained to the World Trade Organization (WTO) at the behest of the Cincinnati-based multinational company, Chiquita (formerly the United Fruit Company). Chiquita's chairman, Carl Lindner, traditionally a Republican benefactor, coincidentally had just donated more than \$500,000 to the Clinton campaign and the Democratic party a few months before the 1996 general elections.

These Caribbean islands are by and large one crop economies. Their people live permanently on the verge of destitution. Chiquita, with its vast plantations in Latin America, could at best gain only a tiny increase in its share of the world trade in bananas if the WTO intervention proves successful. Under the standards of the world trade regime that today is the cynosure of globalization, however, the meager preferences these islands receive from European nations are illegal.<sup>116</sup> The rules of the General Agreement on Tariffs and Trade do not focus on equality, social stability, or socio-economic survivability as such.<sup>117</sup> Free trade—trade without

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113. See generally S.E. ANDERSON, *THE BLACK HOLOCAUST FOR BEGINNERS* (1995) (examining the slave trade and its impact on African Americans); HUGH THOMAS, *THE SLAVE TRADE* (1997) (documenting the history of the Atlantic Slave Trade from 1440 to 1870).

114. See Jeff Harrington, *Chiquita's Slippery Trade Dispute*, CINCINNATI ENQUIRER, Dec. 22, 1996, at 11; Brook Larmer, *Brawl Over Bananas*, NEWSWEEK, Apr. 28, 1997, at 43; Thomas W. Lippman, *An Appeal for Banana Peace; General Suggests U.S. Trade Fight May Undercut Caribbean Drug Battle*, WASH. POST, June 6, 1996, at A27.

115. See *An Appeal to African Heads of State*, in MALCOLM X SPEAKS 72-87 (George Breitman ed., 1966).

116. A WTO panel ruled against the European trade preferences. See Office of U.S. Trade Representative, Press Release, *WTO Banana Report Confirms U.S. Win*, May 22, 1997.

117. See Demaret, *supra* note 86; JEFFREY J. SCHOTT, INSTITUTION FOR INTERNATIONAL ECONOMICS, *THE URUGUAY ROUND: AN ASSESSMENT* (1994); *THE CASE AGAINST THE GLOBAL ECONOMY* (Jerry Mander & Edward Goldsmith eds., 1996). But see Paul

barriers—is believed uncritically to lead to good things which may include social stability. These are of course the same rules that encourage the routine export of manufacturing jobs to cheaper locales in a seemingly never-ending global race to the bottom.

The international campaign to preserve the socio-economic viability of these small islands should be seen as an act of transnational solidarity. The campaign was built upon an understanding of the chains, philosophical and pragmatic, historical and current, that tie oppressed communities together even across national boundaries. The Slave trade that brought most of the current inhabitants to these islands, as well as the longstanding devastation caused by multinationals, were important considerations. So also was the fact that Chiquita has only a tiny percentage of its workforce employed in the United States; most work in Central American plantations under conditions many consider substandard. Thus the banana campaign was fundamentally about the alienation and devastation caused to multiple communities across national boundaries by multinational corporations lacking deep or lasting connections to any community or nation. In this case the growing threat posed to all communities by international drug smuggling gave added urgency to the campaign.

The banana campaign challenged ordinary people to seek diverse ways to confront powerful transnational business alliances that are comprehensive in their reach and insatiable in their appetite.<sup>118</sup> In this particular instance, the interests of a multinational corporation, possessing little or no abiding loyalty to any discernible community of people, combined with the blunt power of the most powerful nation in the world to threaten the very existence of many small but vital communities. The alliance employed the rhetoric of the “Rule of Law” to mask the crude and brutal operations of the new imperialism.

This new imperialism demonstrates no respect for boundaries—not race, ethnicity, religion, gender, or even national sovereignty. Indeed, today more than ever, as the barriers to transnational corporate combinations are eroded, there is a pathetic sameness in the structures of oppression that people all over the world confront. How soon before we must all in our numerous tiny communities face one global bank, insurance company, software monopoly, telecommunication provider, etc.? Understanding the scope and manner in which this new imperialism functions

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Krugman, *Enemies of the WTO: Bogus Arguments Against the World Trade Organization* (last modified Nov. 23, 1999) <<http://www.state.com/Dismal/99-11-23/Dismal.asp>>.

118. See generally RICHARD J. BARNET & JOHN CAVANAGH, *GLOBAL DREAMS: IMPERIAL CORPORATIONS AND THE NEW WORLD ORDER* (1994); *THE CASE AGAINST THE GLOBAL ECONOMY*, *supra* note 18 (challenging the perceived benefits of economic globalization); WILLIAM GREIDER, *ONE WORLD READY OR NOT: THE MANIC LOGIC OF GLOBAL CAPITALISM* (1977).

could very well increase the despair of those who perhaps dream of challenging it. It could provide, however, a powerful transboundary vehicle for illuminating the disjuncture between law and order as conceived by the international global elites and law-as-justice experienced by ordinary people in their everyday lives all over the world.<sup>119</sup> Furthermore, it could buttress the critique of the liberal faith in the fair operations of traditional legal structures, thus saving successive generations from futile investments in this regard. The end result could well be the identification of possibilities for constructing lines of solidarity for the dispossessed of the world not just across racial or ethnic lines but across all artificially created boundaries.

### CONCLUSION: THE SULTAN'S OBSESSION

I have often reflected on the obsession of Sultan Mehmet II (1451-81) with the city of Constantinople. Assuming the Ottoman throne at the age of 19, he was "determined from the outset to take Constantinople."<sup>120</sup> He succeeded in 1453 after a two month long siege and immediately proceeded to transform the heart of the Byzantine Empire into a symbol of Islam's growing power. My interest in the Sultan's obsession, however, relates to the impetus his triumph at Constantinople gave to those European adventurers seeking an alternate trade route around Africa to Asia. When Christopher Columbus' persistence paid off in Queen Isabela's backing, the "new world" was "discovered." Centuries of misery followed for many in Africa and what later came to be known as the Americas. I have often wondered what those who would be so tragically affected were doing or were concerned about as the Sultan's obsession grew. Were they so consumed by the press of their immediate needs and conflicts that they could not see this looming, all-transformative threat? Perhaps this is the fate of communities.

Today, however, what excuse do we have to remain ignorant or chauvinistic in our concerns? Everyday we are confronted by the evidence of the interconnectedness of our lives. Yamamoto's call for critical race praxis was fundamentally a call to communities to look beyond their immediate interests to try to envision the larger picture and to forge alliances for the common global good. While this point can be made

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119. See Edwina Gibb, *New Seattle Clashes, Curfew Reimposed*, REUTERS, Dec. 1, 1999.

120. READER'S DIGEST, WHEN WHERE & HOW IT HAPPENED 113 (1993). Sultan Mehmet II was by no means the first Ottoman leader to seek control of Constantinople or other European cities. Indeed, the Ottoman Empire and various European powers had been engaged in centuries of conflict that would continue even after the fall of Constantinople. See JOHN FREELY, *ISTANBUL: THE IMPERIAL CITY* 164-78 (1996) (discussing the fall of Byzantium).

about groups in conflict anywhere on this planet, it is especially important to emphasize it in response to intergroup relations within the world's sole superpower. It is not possible to resolve these apparently local disputes without looking at the global structures of power and oppression. The responses cannot succeed without going global. Critical race praxis makes a strong demand on leaders in antiracism struggles to bridge artificial and destructive divides: between progressive race theory and frontline political lawyering practice on the one hand, and between law (as it conceives of justice) and racial justice (as it is experienced by racialized groups). Whether the issue is the fate of affirmative action in California at the close of the twentieth century, police brutality in the inner cities, the treatment of women under the Taliban in Afghanistan, or the role of the World Trade Organization in maintaining global inequality, the message to those struggling for progressive change is the same: reach out to learn from others, to care and build solidarity across all artificial boundaries.