

2010

Introduction

Follow this and additional works at: <http://open.mitchellhamline.edu/lawraza>

Recommended Citation

(2010) "Introduction," *Law Raza*: Vol. 1: Iss. 1, Article 3.

Available at: <http://open.mitchellhamline.edu/lawraza/vol1/iss1/3>

This Article is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in *Law Raza* by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.

© Mitchell Hamline School of Law

The William Mitchell Law Raza Journal

Founding Editor-in-Chief

PABLO SARTORIO

Editor-in-Chief

DUCHESS HARRIS

Faculty Advisor

J. DAVID PRINCE

Advisory Board

HON. PAUL ANDERSON
WILLOW ANDERSON
TAMARA CABAN-RAMIREZ
SAM HANSON
HON. HELEN MEYER
HON. ELENA OSTBY
PETER REYES
MAJ. PETER SWANSON
HON. EDWARD TOUSSAINT JR.

Editors

NATALIA DARANCOU
CRAIG GREEN
GRETA E. HANSON
ANDREW T. POOLE
SIOBHAN TOLAR
ROBERT T. TROUSDALE

INTRODUCTION

In his seminal essay, “Nuestra America” (“Our America”), the 19th century Cuban writer and revolutionary Jose Marti issued a clarion call to the people of Central and South America and the Spanish-speaking Caribbean:

Lo que quede de aldea en América ha de despertar. Estos tiempos no son para acostarse con el pañuelo en la cabeza, sino con las armas en la almohada... las armas del juicio, que vencen a las otras. Trincheras de ideas valen más que trincheras de piedra.... Es la hora del recuento, y de la marcha unida, y hemos de andar en cuadro apretado....

What remains of the villages in America must wake up. These are not times to lie down with a handkerchief on one’s head, but to rest with a gun under the pillow...the gun of judgment, which trumps all others. The battlefield of ideas is worth more than those of stone.... Now is the hour of rewriting [our history], of the united front, and it’s up to us to walk together in formation...

Those words were written in 1891, yet they remain a touchstone of Latin American political, legal, and social theory. Marti called for an active reinscribing and reinterpretation of Latin American histories. He envisioned histories written by, for and about the people. Marti resisted the dominant narratives of Latin America, which had traditionally been written by the colonizer — not by those whose lives were being described. In “Nuestra America,” Marti urged his compatriots whose voices had been silenced, and whose experiences and very existences had been marginalized, to claim their autonomy, and to “take up the gun of judgment” in the battle of ideas in order to write their own histories and to map out their own futures.

Although Marti was not trained as a lawyer, his arguments were as impassioned and persuasive as the best closing arguments in court. The consequences of describing Latin Americans as mere historical subjects, and not actors, was clear. The “villagers”, without taking

control of their narratives or their societies, would be left out of the very discourses and decision-making that would ultimately govern their own lives. Marti found this scenario intolerable.

More than 100 years later, the words of Marti continue to resonate, and not only among Spanish-speakers in Central and South America and the Caribbean basin. In the years since Marti wrote “Nuestra America,” the Latin American diaspora has grown more expansive, its boundaries redrawn continuously in ever-widening circles, its roots dropping deeper into “foreign” soil. Here in the United States—not The America, but one of the Americas—the Latino/Hispanic population has grown exponentially larger. In accordance with its size, Latino communities have also become increasingly more influential in all areas of public life, including the law.

WHY LAW RAZA NOW?

With these ideas in mind, the editorial board of this publication is pleased to introduce The William Mitchell Law Raza Journal. We contend that there are at least three reasons why this journal is a necessary addition to the already expansive offering of American law journals. First, as alluded to above, the Latino population in the United States is growing at a steady pace. While the U.S. Census currently being conducted will provide updated statistics to substantiate this fact, other sources indicate Latino communities continue to expand. A significant number of Hispanics will experience some form of contact with the U.S. legal system during their lives, whether as a result of their immigration/residency status, as defendants or plaintiffs in a civil or criminal case, or as professional or civil stakeholders in legal processes. For this reason alone, a journal exploring the intersection of race and the law, with a particular emphasis on Latino communities, represents a positive and much-needed contribution to the existing offerings.

The second reason why *Law Raza* fills a gap in the existing canon of scholarly legal journals is because a troubling number of those journals are inscribing the kind of narrative against which Marti was resisting, to wit, a narrative that excludes, even if unintentionally, work written by the very groups it proposes to “explain.” To date, few journals have incorporated the voices of Latino scholars and other academics of color. Furthermore, they have largely failed to reach out actively to quite literally cross borders. Journals published in the United States are generally preoccupied only with what is happening here, overlooking the ways in which legal issues in neighboring countries intersect with and influence our own and vice versa. To that end, you can expect to see *Law Raza*’s editorial board inviting participation from legal scholars both here in the United States and in the “other” America. One particularly representative example in our debut issue is the thought-provoking article by João M. da Fonseca on the subject of land reform law and the Brazilian constitution.

News of land rights and reform issues in Brazil have trickled into the United States, with articles appearing in national newspapers like *The New York Times*. Such articles have done an adequate job of suggesting how land issues in Brazil are relevant to Americans in the United States. The encroachment of U.S. and international mega-corporations on indigenous lands has resulted in detrimental social, political, economic, and environmental outcomes that affect people in Brazil and abroad. Yet few, if any, of these articles have framed pertinent land rights and reform issues within the context of a constitutional analysis, and none has been written from the perspective of a native Brazilian, who may bring a distinct perspective with unique knowledge to such an analysis. *Law Raza* is pleased to publish da Fonseca’s article to fill such a gap. We anticipate that it will inspire thought and conversation about the way social and legal issues

which are seemingly local cross borders, incorporating and affecting stakeholder groups that have been all but ignored by mainstream media and other commentators and observers.

The third reason Law Raza is a welcome and critical addition to the range of legal journals currently published is because the United States, both its government and its citizens, are growing ever-more aware that we, the “neighbors to the North,” know disturbingly little about our neighbors to the South. This truism is particularly disturbing considering our overlapping political, legal, and social needs. When Marti titled his essay “Nuestra America,” he was making a tacit acknowledgment that the fate of the North American and South American continents was intertwined. This, he reasoned, was the justification for such urgency to “wake up” and take up metaphorical arms against passivity and ignorance. Such an urgency has not abated since 1891. In fact, it has only grown more acute.

Law Raza, then, is an academic, intellectual taking up of arms. The articles you can expect to see in the pages of this virtual journal are inarguably scholarly, but they are also unapologetic in their insistence that the supposed objectivity with which legal issues tend to be treated in journals is just that: supposed, more aspirational fantasy than real-life possibility. One exceptional example of such unapologetic yet academically grounded writing is found in Rob Trousdale’s reflection on the operation of whiteness in contemporary legal education.

The editorial board demands that the critical issues that affect our communities be engaged critically. What this means, with respect to the content of Law Raza, is that a representative sample of articles we publish will be conveyed by a first-person narrator who is the author, working through legal issues and dilemmas in which first-hand experience and knowledge produce both nagging questions and the need to find answers by engaging an issue critically in a public forum where the audience—namely, you, the readers—can shape the

narrative and its resolution. The contributors to Law Raza are diverse, but they share the desire to take their own experiences, both personal and professional, and to hold them up to the light, turning them over and over, examining them to determine what, exactly, they are seeing, and how their observations can be useful and relevant to others. You, readers, are a vital part of the meaning-making process, and we invite you to engage critically in dialogue with us.

The Law Raza editorial board invites you, your identity and your voice to participate alongside ours. We look forward to engaging in discussion from across the legal spectrum—and from across geographical borders and other boundaries of identity, to contribute scholarly articles that advance our collective understanding of the historical and contemporary legal concerns that affect us all. Legal issues of special interest to Latinos are our focus, but the journal is not dedicated exclusively to these experiences. The editorial board recognizes that most issues of importance to any society are systemic and are far-reaching; the purview of the journal reflects such dynamics.

HOW LAW RAZA BEGAN

Before moving forward to present the articles to you, we reflect upon the origins of this journal. The event that precipitated this inaugural issue of Law Raza was the appointment of Puerto Rican judge Sonia Sotomayor to the Supreme Court. The significance and the symbolism of the appointment are profound; the first African American president conferring the mantle of Supreme Court Justice on the first Latina to hold such a position represented a formal and critical acknowledgment that public life in the United States is no longer merely black and white. Yet we also recognize and emphasize emphatically that Justice Sotomayor's appointment to this nation's highest bench is not merely a token action, a nod to the increasing diversity of this

nation. Indeed, even the most casual observer of Justice Sotomayor's confirmation hearings can confirm the fact that the very nomination of Sotomayor raised urgent questions about Latinos' participation in public life, in decision-making, in shaping public policy. And her confirmation did not resolve these questions; it merely admitted her to a bench of influencers to engage these questions on an ongoing basis through the formal discourse of the Supreme Court.

For the members of William Mitchell's Law Raza Journal Editorial Board, Sotomayor's nomination and ascension to the Supreme Court, along with the subsequent news that Justice Stevens is retiring and will be replaced forthwith, are key indicators that affirm the need for this journal. We are students who are not only diverse in ethnicity and in thought, but we are extremely passionate about the 21st century legal issues related to race. As such, our goal is to create a virtual forum to encourage nationwide dialogue, discussions, and even debates about momentous shifts that continue to evolve in political life, both here in the United States and in our neighboring countries.

Taking these ideas into consideration, the theoretical piece that ties Trousdale and da Fonseca's pieces together, while engaging deeper issues relevant to the overarching goal of this journal is Cheryl I. Harris's "Whiteness as Property." Harris argues that Whiteness, which she conceptualized as a form of property, has perpetuated and produced a heavy legacy of American injustice:

It is a ghost that has haunted political and legal domains in which claims for justice have been inadequately addressed for far too long.... It has blinded society to the systems of domination that work against so many by retaining an unvarying focus of systematic racialized privilege that subordinates those perceived as a particularized few—the 'others.' It has thwarted not only conceptions of racial justice but also conceptions of property that embrace more equitable possibilities.... It is long past time to put the property interest in whiteness to rest.

Harris' article issues a call, one that echoes the call made by Marti in "Nuestra America." It is a call that the editorial board of Law Raza answers. We invite you to answer it as well. The William Mitchell Law Raza Journal is here to effectively release us all from the "restrictive covenant" of silence. We invite you to speak your mind, share your voice, dissent, argue, and challenge our publication in the true spirit of debate, in the true spirit of justice and intellectual progress.

Editorial Board | Spring 2010