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LIVING HISTORY INTERVIEW
With

RICHARD DELGADO & JEAN STEFANCIC

One of the unique features of ***Transnational Law and Contemporary Problems*** **("TLCP")** is the publication of a "Living History Interview" with a person of international accomplishment and renown. The Living History Interview complements the symposium format of TLCP by blending theory and practice, thus giving a practical perspective to the questions examined in the symposium. The purpose of the Living History Interview is to invite the responses of a prominent international scholar, jurist, or politician—not to explore his or her professional point of view, but to gain insight into his or her personal perspectives as shaped by historical events in order to better understand the complex nature of international law. For this feature of TLCP, we conducted an interview with two pioneers of critical race legal theory, Jean Stefancic and Richard Delgado.

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BIOGRAPHY OF RICHARD DELGADO

One of the leading commentators on race in the United States, Richard Delgado has appeared on Good Morning America, the MacNeil-Lehrer Report, PBS, NPR, the Fred Friendly Show, and the Canadian Broadcasting Corporation.

Author of over 150 journal articles and twenty-seven books, his work has been praised or reviewed in The Nation, The New Republic, The New York Times, The Washington Post, and The Wall Street Journal. His books have won eight national book prizes, including six Gustavus Myers Outstanding Book Awards for books on human rights in North America, the American Library Association's Outstanding Academic Book, and a Pulitzer Prize nomination. Stanley Fish described Delgado's career and book, THE RODRIGO CHRONICLES, in the following terms:

> Richard Delgado is a triple pioneer. He was the first to question free speech ideology; he and a few others invented critical race theory; and he is both a theorist and an exemplar of the importance of storytelling in the workings of the law. This volume brings all of Delgado's strengths together in a stunning performance.

Delgado lives with his wife, legal writer Jean Stefancic, in Seattle, Washington, where he holds the title of University Professor at Seattle University School of Law.

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BIOGRAPHY OF JEAN STEFANCIC

Jean Stefancic is Research Professor of Law at Seattle University, where she writes about civil rights, law reform, social change, and legal scholarship. She has written and co-authored over forty articles and fifteen books, many with her husband Richard Delgado, with whom she shared writing residencies at Bellagio, Bogliasco, and Centrum. Their book, CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR, won a Gustavus Myers Outstanding Book Award. Her latest book, HOW LAWYERS LOSE THEIR WAY, examines how law practice can stifle creativity. Stefancic and Delgado also serve as co-editors for three book series.

Before joining the Seattle University faculty, Stefancic spent ten years at the University of Colorado Law School, where she was affiliated with the Latino/a Research & Policy Center and served on the advisory committee of the Center of the American West. During her five years at the University of Pittsburgh, she was a Research Professor of Law and a Derrick Bell Scholar.

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LIVING HISTORY INTERVIEW WITH RICHARD DELGADO & JEAN STEFANCIC

Members of the TLCP Editorial Board conducted the following interview on Saturday, April 4, 2009, during the Critical Race Theory at 20 Conference held at the University of Iowa College of Law on April 2–4, 2009. The Conference commemorated the twentieth anniversary of the first critical race conference, held in 1989 in Madison, Wisconsin.

The preeminent scholar and Pulitzer Prize nominee Richard Delgado, a founder of critical race theory, gave the keynote address. Jean Stefancic, renowned for her work on civil rights, law reform, social change, and legal scholarship, participated in a roundtable discussion regarding critical race theory and interdisciplinarity.

Critical race theory emerged in legal scholarship in the 1980s as a framework to analyze and understand how race and America's racial history shape American law. This field is one of the most important and revolutionary developments in legal scholarship in the last century. Critical race theory has recently taken root in other academic disciplines, including sociology, social work, and education. Recently, it has begun influencing areas of U.S. law with an international nexus, such as the laws and policies of U.S. immigration.

Our interview with Professors Delgado and Stefancic touches on the founding of critical race theory, race in America after the election of President Obama, immigration, U.S. foreign policy, and international human rights.

TLCP: Last night in your keynote address you talked for some time about the beginnings of critical race theory, highlighting some of the conditions that explain why it took off the way it did, when it did. We would like to memorialize that in the Journal. Can you talk about how you personally found your way to focusing on this academic subject and tell us, a bit more broadly, about what your contemporaries were doing at the same time?

DELGADO: My father was an immigrant from Mexico, probably undocumented, and we kept on the move when I was young. I've always been interested in the rights of immigrants and asylees, and, having lived through the movements of the 1960s and 1970s, I was very much caught up in the ideas students were bringing to the nation in those times.

Before I went to law school I was a high school Math teacher in California. Many of my students were being drafted. I sympathized with their desire to avoid that fate and trained as a draft counselor outside of school hours. This brought me into a relationship with the lawyers to whom we referred the most difficult cases—for conscientious objectors, those with medical problems, and those planning to refuse induction. I got to know highly committed political lawyers through that experience.

After a period of draft counseling on a volunteer basis through the Quaker church and offices of attorneys in the evening, it hit me that as effective as

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draft counseling was in Marin County, California—which was very effective (some months we succeeded in having the local draft board draft nobody at all, and they could not fill their quota many months in a row)—the draft nationally was not slowing down. The system was drafting someone from somewhere, such as individuals from poor communities within Oakland and Watts, California. I began to think systematically about social problems. A few years later, I went to law school at Berkeley, and I've been a civil rights and human rights lawyer ever since.

TLCP: Can you talk about the evolution of critical race theory since its founding, and what, if anything, surprises you about that movement as it exists today?

DELGADO: I was a member of the founding conference. Two dozen of us gathered in Madison, Wisconsin to see what we had in common and whether we could plan a joint action in the future, whether we had a scholarly agenda we could share, and perhaps a name for the organization. I had taught at the University of Wisconsin, and Kim Crenshaw later joined the faculty as well. The school seemed a logical site for it because of the Institute for Legal Studies that David Trubek was running at that time and because of the Hastie Fellowship program. The school was a center of left academic legal thought. So we gathered at that convent for two and a half days, around a table in an austere room with stained glass windows and crucifixes here and there—an odd place for a bunch of Marxists—and worked out a set of principles. Then we went our separate ways. Most of us who were there have gone on to become prominent critical race theorists, including Kim Crenshaw, who spoke at the Iowa conference, as well as Mari Matsuda and Charles Lawrence, who both are here in spirit. Derrick Bell, who was doing critical race theory long before it had a name, was at the Madison workshop and has been something of an intellectual godfather for the movement. So we were off and running.

At the outset, I had no idea that critical race theory would become a household word. If you type critical race theory into the legal databases, it has roughly 3500 citations, and if you type critical legal studies [to which critical race theory was a response] you find roughly 6300. Critical race theory has taken root in many disciplines outside of law, and has even jumped the Atlantic. British Critical Race Theorists are holding conferences about critical race theory in education.

STEFANCIC: In the mid 1990s, educators began to hear about critical race theory, and a few of them started out studying basic writings in the hope of finding ideas that they could apply to the problems they were studying. African American, Latino, and other minority graduate students who planned to go out into the community and become teachers and reform schools began to find each other in their field, just as the critical race theory and law people found each other there earlier. They decided they would publish a collection of writings some of them had been working on in the International Journal of Qualitative Studies in Education, exposing a broader audience to their ideas.

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The ideas took hold quickly because they addressed misunderstandings of the way that racism functions in education and the public schools. You hear of critical race theory in other disciplines like public health, sociology, philosophy, and social work. Critical race theory functions on a more abstract level in those fields than in education. In education, educators were trying to figure out ways to address inadequacies in curriculum, school discipline, tracking, funding, standardized tests, power dynamics in schools, and the canonical debates. In 2006, at the annual conference of the American Educational and Research Association, the umbrella association of education scholars, a major theme was "Critical Race Theory in Education." Internationally, a conference on exactly this subject took place in June 2009 in the United Kingdom.

DELGADO: We didn't set out to colonize, but found a natural affinity in education. In education, race neutrality and color-blindness are the reigning orthodoxy. Teachers believe that they treat their students equally. Of course, the outcome figures show that they do not. If you analyze the content, the ideology, the curriculum, the textbooks, the teaching methods, they are the same. But they operate against the radically different cultural backgrounds of young students. Seeing critical race theory take off in education has been a source of great satisfaction for the two of us. Critical race theory is in some ways livelier in education right now than it is in law, where it is a mature movement that has settled down by comparison.

STEFANCIC: Here is an example that Richard and I came across recently when teaching a class using the *Race and Races* casebook that we co-authored with three other authors. This text addresses comparative racial histories and how race issues affect five minority groups in the United States: Native Americans, African Americans, Latinos, Asian Americans, and ethnic whites. Part of the course includes writing a short reflection paper on how the student has formed her own racial identity. A couple of weeks ago, we read a reflection written by one of our white students, who had grown up on an Indian reservation. Her parents wanted to expose her to other cultures, and so bought a house from a developer who had purchased the ocean-view land from the reservation. The white children all lived in wealthy households, being bused into school on the reservation, while Native American children lived in their comparatively impoverished village on the reservation. Our student attended school there through the eighth grade. Upon reflection, she saw how this wonderful opportunity to educate children together in a diverse way, to share history and share culture, fell prey to the white paradigm. The children learned about the Pilgrims in Massachusetts, for example, without any education about the Pacific Northwest or the tribes that resided there. It was extremely colonial. The curriculum in an environment where white kids and Indian kids are attending school together is a wonderful example of the issues that critical race theorists in education examine.

TLCP: During this conference we've heard a lot about the new "post-racial" America since the election of President Obama, in particular, a critique of

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that concept. What are your thoughts on this term and on race in America in general, after the election?

DELGADO: I would be absolutely astonished if we are in anything like a post-racial America. A conference speaker mentioned how a high-up officer in the NAACP pointed out that the organization's work is by no means over; they're the National Association for the Advancement of Colored People, not one "colored person." The election means little, but could mean something later on. During the campaign, Obama was at great pains to avoid seeming to be an activist/angry black man. He appointed a conventional cabinet, avoiding social activists, gays, lesbians, Latinos, and even many African Americans. What's more, it is unclear if this one symbolic success will lead to improved high school graduation rates for Latinos or African Americans, or better housing integration—that is to say, if the government will actually address the economic ills that continue to affect racial minorities. I think that housing segregation will be significantly worse in the coming years because of the economic downturn. We cannot expect inclusion if the economic basis of the economy is not going to change: factories are leaving for other countries, unions are weak, people are losing their jobs, and consumers are not buying. Economic pressures are always more potent than ideological ones, and currently they are surely outweighing the symbolic message of the election. This is true even when the message comes from the President.

STEFANCIC: People really jumped on that term. You see an odd alliance between liberals and conservatives in declaring this a post-racial America. Both sides have something to gain by the concept. They gain by not having to deal with racial issues anymore. We have learned from the civil rights movement in the 1960s that many liberals will only follow a movement like this for so long before giving up. Looking at U.S. immigration policy, it is clear that things have gotten worse for some Latinos. And, for many blacks, little has improved in this "post-race" era. Americans have bought many more guns, however.

TLCP: To follow up on that, and because we are an international law journal, do you see Obama's Administration addressing matters of race on a global scale in terms of equality and human rights?

DELGADO: Obama seems to have good instincts about what to do, and people of diverse groups—including Muslims outside the U.S. and other similar groups—are more open to him than they were to his predecessors. But it is still questionable whether the President will fully exploit the advantages he has. He started off his time in office with some symbolic gestures in the right direction, like closing Guantanamo and releasing a few of the prisoners who were patently innocent. Still, he has yet to address global problems that lead to poverty and racial imbalance, problems like the lack of unionization, money flowing into developing economies and then leaving so quickly that the whole system breaks, and the race to the bottom in workers' rights. Right now, America is in a weakened state, with only so much international power to use in shaping other countries' actions. It seems

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doubtful that Obama will use his remaining power of persuasion to pursue human rights issues when he has to worry about domestic economic problems every day.

STEFANCIC: We still are not able to see how much his symbolic power will be limited by the reality of his position. What he is able to do, the important legacy he can create, relates to the space he can open up for other reformers to work. He has energized a generation of young people. They should seize on his message of hope and change so they can make something of this situation.

DELGADO: This relates to a Marxist concept, that of "surplus value." Essentially, Marx held that workers in a shoe factory are never going to be paid enough by their employer to afford the product they make. Capitalism always functions in this way, by expanding and moving products up to consumers with more money than the producers are paid. That is what creates a positive profit margin. My theory of "surplus education" relates to the surplus value concept. In surplus education, the system provides education for workers so that they are able to function in their work. But the education is "surplus" in that someone who is taught how to count is able to use that knowledge both for her work and in her life outside of work. In this way, education has unintended positive effects in society, and empowers workers to change the system that they are meant to inhabit. Obama's message of hope is expansive like this surplus education. However Obama's allies, his handlers, want business as usual. That is why he is still in the business of expanding America's war in Afghanistan and NATO's military capacities; it benefits powerful capitalists. Millions of young people are against this war profiteering. They know it is time for Obama to rethink our perpetual wars and the trillions of dollars going to Wall Street. Hope, once unleashed in young people, is hard to cabin. Perhaps the young will push Obama to go past what his advisors want, as they only want small incremental changes. He needs to be pushed by the very people who fueled his campaign.

STEFANCIC: This is similar to the era that began with the presidency of John F. Kennedy. It is clear that the Bush era was more horrific than the presidency of Eisenhower, but the feeling of relief is similar. Back then, the Prince of Camelot was speaking to a generation, and with their support he made some impressive changes. He created the Peace Corps and worked on our international image. When he died in 1963, the whole world came crashing down on the movement. Things really fell apart for us. Leadership passed on to the baby boomers, who took it in a very different direction than Kennedy's. Instead of social reform they focused on personal development. Some turned to drugs. Even if Obama disappoints us all by not going far enough, it will not be as crushing as the assassination of Kennedy. It seems inevitable that some positive change is in store for young people.

DELGADO: People need to use this time in history to create structural reform, and reverse the counter-reform of the past Presidential terms. The lifetime judges that George W. Bush appointed to the federal bar will be

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continuing his policies for twenty or thirty years at the least. Citizens must push Obama to concentrate on structural change, and even scale back the power that Bush concentrated in his office. Without such pressure, he won't prosecute the war criminals who masterminded the war in Iraq or support workers through this tough economic time.

STEFANCIC: This is what motivated us to write the book, NO MERCY: HOW CONSERVATIVE THINK TANKS AND FOUNDATIONS CHANGED AMERICA'S SOCIAL AGENDA. Not too long ago, the conservative movement rallied money and ideas to create a more repressive culture. It was a concerted program of structural reform. Liberals do not take structural reform as seriously as conservatives do and consequently are less successful in the same realm. They are not as dedicated as they could be. Liberals cannot continue to sit back and wait for someone, even someone like Obama, to do their work for them.

TLCP: Just looking at the Postville, Iowa workplace immigration raid in the summer of 2008, it is clear that immigration policy is more aggressive now than it was ever before. Can you speak about how immigration matters relate to critical race theory?

DELGADO: It is amazing how our society will freely demonize immigrants, when the same statements, if they target other groups, are clearly inappropriate after the growth of racial awareness from the critical race movement. Respected scholars and TV figures will say terrible things about Latino immigrants without making the connection to the racist underpinnings of their distrust. The most effective way to point out that hypocrisy to these people is to not preach their ignorance to them, but rather to point out the advantages to America that immigrants bring with them. Immigrants improve the overall economy. Some communities profit more than others, but economists almost uniformly believe that immigration brings a net benefit to the U.S. economy. Immigrants contribute their labor, payroll taxes, sales taxes, and keep the economy moving and expanding. They are more law abiding than citizens at large—as immigrants move into a community, the level of crime goes down. Stereotypes of immigrants tend to assert the opposite of these truths. So, at its heart, much of the argument against immigrants is really motivated by racism and nativism, not factual arguments.

TLCP: You've written how at the beginning of critical race theory, an elite cohort of white male legal academics writing about civil rights would only cite one another, not trusting the works by scholars of color because of their mistaken belief that these scholars would be biased, and in order to maintain their own positions of power. In your opinion, how much of a good old boys club is it today?

DELGADO: You are referring to my Imperial Scholar article, among others. That same old boy citation network still operates. I wrote a follow-up article in the University of Pennsylvania Law Review in which I analyzed white

scholars' citation practices. Ten years later, I found that things had not changed. Even the young generation of white constitutional law and civil rights scholars were citing themselves and each other, with only a token reference or two to Derrick Bell, Charles Lawrence, or me. By citing someone, you validate their work and include them in your discursive community. These patterns have been slow to change.

STEFANCIC: I co-edited a symposium issue of a major law review on trends in symposium publishing. In it, I analyzed who was invited to participate in these publishing events. Even though many scholars of color are now among the nation's most-cited, very few of them receive invitations to publish in major law reviews, especially when the symposium topic is something other than race, for example, civil procedure or law and economics. Minority scholars have had much to say about many of these other fields, but the academy seems not to want to hear it.

TLCP: What can you say about self-censorship in today's legal scholarship? What role do you think self-censorship plays for outsider scholars today, and do you ever find yourselves self-censoring?

STEFANCIC: Self-censorship, even the old-fashioned kind, is an increasing problem today. Minority scholars realize that if they offend their colleagues by taking too outspoken a stand in favor of immigration, say, or criticizing the government's agenda in the area of torture and human rights, it can come back to haunt them at tenure time. Conservative students and alumni may cause trouble, as they did at Colorado for Ward Churchill when he described 9/11 as some people pushing back. Another kind of self-censorship sets in when an outsider scholar criticizes the dominant trend in outsider scholarship. Such a scholar can easily find himself marginalized among the moderate left.

DELGADO: And a third type of self-censorship sets in when one writes, as many of us do, for a dominantly white audience. Jean and I have written about the difficulties of "crossover" writing, in the pages of American Indian Law Review. We think it is a mistake for a minority scholar to write too much of his or her work with a white audience in mind. If you do, you end up pulling your punches and choosing words and topics that will resonate with your audience. Even the very vocabulary in which you write—terms like "villager," "folk medicine," "undocumented alien," "tribe," "hut," and "merit"—carry meanings that render your people one-down. Sometimes it feels better to write in your native language or vernacular and for an audience consisting of people like you.

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