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Recommended Citation

Josué López, *CRT and Immigration: Settler Colonialism, Foreign Indigeneity, and the Education of Racial Perception*, 19 U. Md. L.J. Race Relig. Gender & Class 134 ().

Available at: <https://digitalcommons.law.umaryland.edu/rrgc/vol19/iss1/7>

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**CRT AND IMMIGRATION:
SETTLER COLONIALISM, FOREIGN INDIGENEITY,
AND THE EDUCATION OF RACIAL PERCEPTION**

JOSUÉ LÓPEZ*

INTRODUCTION

A wall will not end immigration, and neither will immigration laws and policies. Rather, these policies and practices serve to dehumanize immigrants and position them in precarious legal positions where their personhood is constantly called into question. Analyses of immigration from Latin America do not usually focus on Indigenous peoples.¹ When Indigeneity is centered, an examination of immigration policies is made more complex due to the relationship between the State's power over regulating the movement of people across its borders and a legacy of settler colonialism that recognizes the State exists on stolen lands.² Immigration policies are a contemporary manifestation of the legacy of settler colonialism.³ In this article, I specifically examine the power of the United States to set the standard for what constitutes a legitimate asylum claim.⁴ I ask two principal questions: (1) What happens to the lived experience of Indigenous peoples when filtered through an asylum claim? (2) How does a settler colonial framework illuminate the relationship between facts and asylum claims for Indigenous peoples?⁵

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¹ See generally M. Bianet Castellanos, *Rewriting the Mexican Immigrant Narrative: Situating Indigeneity in Maya Women's Stories*, 15 *LATINO STUD.* 219, 219–22 (2017) (discussing how Indigenous immigrants are often invisible or excluded from depictions of Mexican immigration).

² See *infra* Part VI.

³ See *infra* Part II.

⁴ See *infra* Part VII.

⁵ See *id.*

I argue that asylum claims require “foreign” Indigeneity to be narrated in a way that reflects the denial of a U.S. history of genocidal and violent behavior.⁶ To qualify for asylum, Indigeneity must be narrated to the State as a concern with one’s biological/corporeal life rather than with a standard of living.⁷ This results in a detrimental education of racial perception whereby the State-accepted narrative of Indigeneity must be one of victimization and cannot be one of empowerment or justice in order to win an asylum claim.⁸ Though educational scholarship often centers institutions of learning, such as K-12 schooling, I argue that other institutions and policies of the State, such as the judicial system and immigration policies, also provide a ‘lesson’ that reflects colonial ideologies of what it means to be human.⁹

Critical Race Theory (CRT), by centering the role of racism in education, provides a framework for this transnational analysis on immigration and the education of racial perception.¹⁰ In order to capture the experiences of Indigenous peoples from Latin America migrating to

⁶ See *infra* Part IX.

⁷ See *infra* Parts VII, IX.

⁸ See Michael Monahan, *The Education of Racial Perception*, 36 PHIL. & SOC. CRITICISM 209, 215–21 (2010) (discussing racial perception and the “racial status quo” which exists from a “tendency to accept overly simplistic, coarse understandings of what race is and how it functions”); *infra* Part VII.

⁹ See *infra* Parts III, VI. See generally Magaly Lavadenz, *Como Hablar in Silencio (Like Speaking in Silence): Issues of language, Culture, and Identity of Central Americans in Los Angeles*, in BUILDING ON STRENGTH: LANGUAGE AND LITERACY IN LATINO FAMILIES AND COMMUNITIES 93, 103–04, 106–08 (Ana Celia Zentella ed., 2005) (noting the importance of advocating “sociocultural principles to advance culturally responsive teaching” to “foster classroom and school climates that value” different cultures); Lourdes Alberto, *Coming Out as Indian: On Being an Indigenous Latina in the US*, 15 LATINO STUD. 247 (2017) (discussing contact zones between Indigeneity and Latinidad in K-12 schooling).

¹⁰ See Adrienne D. Dixson & Marvin Lynn, *Introduction*, in HANDBOOK OF CRITICAL RACE THEORY IN EDUCATION 1, 2–4 (Marvin Lynn & Adrienne D. Dixson eds., 2013) (discussing the purpose and expansion of CRT into education and its ability to “illuminate the ubiquitous nature and ‘permanence of race’ in the U.S.”).

the United States, both TribalCrit¹¹ and LatCrit¹² serve as a theoretical framework.¹³ Specifically, TribalCrit facilitates an analysis emphasizing settler colonialism¹⁴ and LatCrit supports an analysis of immigration.¹⁵ Both are critical in unpacking the power of the State to distort the experiences of Indigenous peoples from Latin America moving across settler-state borders to the United States.¹⁶

Drawing from a larger transnational ethnographic and participatory action research project working with Indigenous students in Guatemala and in the United States, I utilize Critical Discourse Analysis¹⁷ in order to emphasize the violent history of the United States, its impact on Indigenous peoples in Guatemala, and the subsequent performance of Indigeneity in order to be recognized by the US government as deserving of asylum.¹⁸ I advance this sociohistorical analysis to suggest

¹¹ See Bryan McKinley Jones Brayboy, *Tribal Critical Race Theory: An Origin Story and Future Directions*, in HANDBOOK OF CRITICAL RACE THEORY IN EDUCATION 88, 92–97 (Marvin Lynn & Adrienne D. Dixson eds., 2013). TribalCrit is a branch of CRT which remains committed to the centrality of race and racism as an analytical tool but goes beyond to incorporate concepts specific to racialized subgroups. *Id.* at 92. TribalCrit notably emphasizes alternative ways of being and knowing, the role of colonialism and settler colonialism, the power of storytelling as a mode of knowledge and knowledge for the production of Indigenous peoples. *Id.* at 92; see also Bryan McKinley Jones Brayboy, *Toward a Tribal Critical Race Theory in Education*, 37 URB. REV. 425, 429–30 (2006) (outlining the nine tenets of TribalCrit, emphasizing the “basic tenet” is that “colonization is endemic to society”) [hereinafter Brayboy, *Toward a Tribal Critical Race Theory in Education*].

¹² See Delores Delgado Bernal, *Critical Race Theory, Latino Critical Theory, and Critical Raced-Gendered Epistemologies: Recognizing Students of Color as Holders and Creators of Knowledge*, 8 QUALITATIVE INQUIRY 105, 108–09 (2002). LatCrit emphasizes the role of immigration, language, ethnicity, nationality, and citizenship status as tools of racialization particularly for Latinx populations in the United States. *Id.* at 108.

¹³ See Brayboy, *Toward a Tribal Critical Race Theory in Education*, *supra* note 11, at 427; Delgado Bernal, *supra* note 12, at 107–09 (“As theoretical frameworks in the field of law, CRT and LatCrit explore the ways that so-called race-neutral laws and policies perpetuate racial and/or ethnic and gender subordination. They emphasize the importance of viewing laws and lawmaking within the proper historical and cultural context to deconstruct their racialized content.”).

¹⁴ Brayboy, *Toward a Tribal Critical Race Theory in Education*, *supra* note 11, at 429–30.

¹⁵ Delgado Bernal, *supra* note 12, at 108, 119.

¹⁶ See *infra* Part III.

¹⁷ See JAMES PAUL GEE, AN INTRODUCTION TO DISCOURSE ANALYSIS: THEORY AND METHOD 9 (4th ed. 2014) (noting the goal of critical discourse analysis is often to “speak to” and “intervene in, social or political issues, problems, and controversies in the world”) [hereinafter GEE, AN INTRODUCTION TO DISCOURSE ANALYSIS: THEORY AND METHOD]; JAMES PAUL GEE, HOW TO DO DISCOURSE ANALYSIS: A TOOLKIT xi (2011) (“A discourse analysis is based on the details of speech (and gaze and gesture and action) that are arguably deemed relevant in the context where the speech was used and that are relevant to the arguments the analysis is attempting to make.”) [hereinafter GEE, HOW TO DO DISCOURSE ANALYSIS: A TOOLKIT].

¹⁸ See *infra* Parts IV, V.

asylum claims are concerned with the protection of physical life rather than with the quality of living, and this reflects a denial of U.S. settler colonial history and a refusal of accountability for historical and contemporary injustices.¹⁹

II. IMMIGRATION AND SETTLER COLONIALISM

People continue to migrate to the United States and are criminalized in their search of a better future. In 2017, there were more than 44.5 million immigrants living in the United States (13.7% of the population), and it is estimated that over 11.3 million of those are undocumented immigrants.²⁰ While the majority of immigrants in the United States are Mexican, there is significant migration from Central America, namely Honduras, El Salvador, and Guatemala.²¹ The Pew Research Center found that in 2013 there were over 1.3 million people of Guatemalan descent in the United States, with 64%, or 834,000, being foreign-born.²²

Guatemala has over 16 and a half million people²³ and the history, as well as the demographic composition of the country, reveals an important juncture at the intersection of immigration, racialization, and education.²⁴ The history of violence against Indigenous peoples has been well documented in Latin America, particularly in Guatemala.²⁵ In

¹⁹ See *infra* Part VI.

²⁰ Jie Zong et al., *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POL'Y INST. (Feb. 8, 2018), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states#Unauthorized>.

²¹ *Largest U.S. Immigrant Groups Over Time, 1960-Present*, MIGRATION POL'Y INST., <https://www.migrationpolicy.org/programs/data-hub/charts/largest-immigrant-groups-over-time> (last visited Apr. 5, 2019); Gabriel Lesser & Jeanne Batalova, *Central American Immigrants in the United States*, MIGRATION POL'Y INST. (Apr. 5, 2017), <https://www.migrationpolicy.org/article/central-american-immigrants-united-states>.

²² Gustavo López, *Hispanics of Guatemalan Origin in the United States, 2013*, PEW RES. CTR. (Sept. 15, 2015), <http://www.pewhispanic.org/2015/09/15/hispanics-of-guatemalan-origin-in-the-united-states-2013>.

²³ *The World Factbook: Central America: Guatemala*, CENT. INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/the-world-factbook/geos/print_gt.html (last visited Apr. 7, 2019).

²⁴ See GREG GRANDIN, *THE BLOOD OF GUATEMALA: HISTORY OF RACE AND NATION* 7–16 (2000) (highlighting the historical, racial, and educational dynamics of Guatemala); SUSANNE JONAS & NESTOR RODRÍGUEZ, *GUATEMALA-U.S. MIGRATION: TRANSFORMING REGIONS* 21, 26–27, 69 (2014) (describing the complex and controversial process of migration and immigration).

²⁵ See GRANDIN, *supra* note 24, at 7–8 (describing the four decades of “state terror” and violence in Guatemala); Commission for Historical Clarification, *Acts of Genocide*, in *THE*

the Guatemalan Civil War (1960-1996), the U.S.-sponsored Guatemalan regimes enacted horrific violence against Indigenous communities.²⁶ The Commission for Historical Clarification found that over 200,000 were killed or disappeared, identifying 83% of the victims as Mayans.²⁷ The impact of the violence in the second half of the 20th century reverberates in the sociopolitical and economic conditions Indigenous peoples face presently.²⁸ Still, Indigenous peoples in Guatemala manage to survive and preserve parts of their culture, with over twenty-three Indigenous languages spoken by over 40% of the population.²⁹ Part of survival for Indigenous peoples has meant resorting to migration, particularly to the United States,³⁰ as a means to escape violence and find better opportunities.

Many scholars continue to debate whether we have entered a *postcolonial* moment of history and point to the formation of independent nation-states as evidence.³¹ However, Indigenous peoples often dispute this assertion.³² Settlers migrate to lands that originally belonged to Indigenous peoples, occupy spaces, establish laws, build institutions, develop societies, and establish a perpetual, colonial situation.³³ Settler colonialism involves the occupation of lands and the lack of accountability the occupiers feel to the original inhabitants of the land and the

GUATEMALA READER: HISTORY, CULTURE, POLITICS 386, 386 (Greg Grandin et al. eds., 2011) (explaining that at the end of the Guatemalan guidance in 1996, eighty-three percent of the victims were indigenous).

²⁶ GRANDIN, *supra* note 24, at 7–8; Commission for Historical Clarification, *supra* note 25, at 386, 390 (discussing how the “annihilation of Maya populations was intentional”).

²⁷ Commission for Historical Clarification, *supra* note 25, at 386

²⁸ See SITUATION OF HUMAN RIGHTS IN GUATEMALA: DIVERSITY, INEQUALITY AND EXCLUSION, INTER-AMERICAN COMM’N HUMAN RIGHTS & ORG. OF AM. STATES 38–58 (2015), <http://www.oas.org/en/iachr/reports/pdfs/Guatemala2016-en.pdf> (discussing the issues Indigenous Guatemalans face currently, including discrimination, inequality, social exclusion, and poverty).

²⁹ Huilin Wang, *Cleaned Slate? Mayan Troubles in Guatemala*, 28 HARV. INT’L REV. 10, 10 (2006).

³⁰ See JONAS & RODRÍGUEZ, *supra* note 24, at 2 (describing the common motivations for Guatemalan migration, including, political instability, violence, and economic decline).

³¹ See Fazal Rizvi et al., *Postcolonialism and Education: Negotiating a Contested Terrain*, 14 PEDAGOGY, CULTURE & SOC’Y 249, 250–52, 257–59 (2006) (summarizing the highly contested political and theoretical concept of postcolonialism).

³² See LINDA TUHIWAI SMITH, *DECOLONIZING METHODOLOGIES: RESEARCH AND INDIGENOUS PEOPLES* 25, 34–35 (2nd ed. 2012) (noting how the “colonial experience traps” indigenous people and how the prefix ‘post’ silences the conversation of the “still lingering” historical formations).

³³ See Eve Tuck & K. Wayne Yang, *Decolonization Is Not a Metaphor*, 1 DECOLONIZATION: INDIGENEITY, EDUC. & SOC’Y 1, 5 (2012) (noting that “settlers come with the intention of making a new home on the land, a homemaking that insists on settler sovereignty over all things in their new domain”).

land itself.³⁴ Settler colonialism becomes especially significant in examining power over land, immigration, and education.³⁵ Indeed, critical race scholars have called attention to the role of land and property in education.³⁶ Furthermore, scholars have advocated for the use of CRT in immigration analyses as part of exposing White supremacy.³⁷

Immigration policies fall under White Supremacist, settler colonial policies that further marginalize and castigate Indigenous peoples by constraining their physical movement in their struggle to survive.³⁸ Asylum claims are a way for the State to regulate permissible narratives of Indigeneity.³⁹

III. EDUCATION OF RACIAL PERCEPTION

When the role of education enters national immigration debates, it is usually in terms of how disparate levels of education in the country of origin impact immigration.⁴⁰ CRT scholars in education, though, have also emphasized the role of immigration in the agency of students, their families, and their access to educational opportunities once in the

³⁴ See *id.* at 5–6.

³⁵ See SMITH, *supra* note 32, at 20–29, 35, 67 (describing how imperialism and colonialism frames the indigenous experience); Tuck & Yang, *supra* note 33, at 1–8 (outlining how settler colonialism has “shaped schooling and education research”); Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. GENOCIDE RES. 387, 387–88 (2006) (noting how “land is life” and settler colonialism “destroys to replace”).

³⁶ See Jessica T. DeCuir & Adrienne D. Dixson, “*So When It Comes Out, They Aren’t That Surprised That It Is There*”: Using Critical Race Theory As a Tool of Analysis of Race and Racism in Education, 33 EDUC. RES. 26, 28 (2004) (demonstrating that whiteness has been established as a “form of property,” which carries with it certain benefits, such as a better education); Gloria Ladson-Billings & William F. Tate IV, *Toward a Critical Race Theory of Education*, 97 TCHR. C. REC. 47, 53–54 (1995) (explaining how property and education are intertwined).

³⁷ See generally Mary Romero, *Crossing the Immigration and Race Border: A Critical Race Theory Approach to Immigration Studies*, 11 CONTEMP. JUST. REV. 23 (2008) (describing critical race theory and its interaction with immigration to “expose[] White privilege”).

³⁸ *Id.* at 33 (“Latinos experience discretionary stops, intimidation, and restriction of movement that place them at risk before the law and reinforce a racial hierarchy.”).

³⁹ *Id.* at 25–27 (discussing the “master narrative” which focuses on “accepting White, middle-class standards as the norm . . . [and] racialized groups . . . as deviant”).

⁴⁰ See WALTER A. EWING ET AL., THE CRIMINALIZATION OF IMMIGRATION IN THE UNITED STATES, AM. IMMIGR. COUNCIL 1, 3 (2015), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_criminalization_of_immigration_in_the_united_states.pdf (explaining that both legal and unauthorized immigrants are less likely to commit crimes than the native-born, “regardless of their country of origin or level of education”).

United States.⁴¹ However, education is broader than traditional schooling.⁴² Many have made the case that education is often a tool for socialization into the status quo.⁴³ Education is not an inherently liberating tool. What makes education a transformative tool are *transformative* educators.⁴⁴ Education as an extension of the State serve to promote state interests, namely the maintenance of the social order.⁴⁵ Other institutions, such as the criminal justice system, serve this same role and also provide a type of education through ideological lessons that promulgate the status quo.⁴⁶

Immigration policies serve as an institutional force that constructs both physical and psychological barriers to individual and collective agency, providing a detrimental education of racial perception.⁴⁷

⁴¹ See JASON G. IRIZARRY, *THE LATINIZATION OF U.S. SCHOOLS: SUCCESSFUL TEACHING AND LEARNING IN SHIFTING CULTURAL CONTEXTS* 22–23 (2015) (describing the multitude of challenges facing Latino students in the education process); Leslie Jo Shelton, “*Who Belongs*”: *A Critical Race Theory and Latino Critical Theory Analysis of the United States Immigration Climate for Undocumented Latinx College Students*, 7 J. CRITICAL THOUGHT & PRAXIS 123, 124 (2018) (discussing how the “current dehumanizing and exclusionary immigration climate sends messages that [the undocumented Latinx] student population does not belong in higher education”); Daniel G. Solorzano & Delores Delgado Bernal, *Examining Transformational Resistance Through a Critical Race and LatCrit Theory Framework: Chicana and Chicano Students in an Urban Context*, 26 URB. EDUC. 308, 313 (2001) (arguing that CRT and LatCrit theory “challenge the dominate discourse on race and racism as they relate to education by examining how educational theory and practices are used to subordinate and marginalize Chicana and Chicano students”).

⁴² See PAULO FREIRE, *PEDAGOGY OF FREEDOM: ETHICS, DEMOCRACY, AND CIVIL COURAGE* 90–91 (1998) (explaining that “education, as a specifically human experience, is a form of intervention in the world”); HENRY A. GIROUX, *FUGITIVE CULTURES: RACE, VIOLENCE, AND YOUTH* 166 (1996) (explaining that some argue schools have failed to “transmit the universal values of Western culture, shore up traditional family values, and reproduce the assimilative imperatives of a ‘common national culture’”).

⁴³ See FREIRE, *supra* note 42, at 91 (“Education never was, is not, and never can be neutral or indifferent in regard to the reproduction of the dominant ideology or the interrogation of it.”).

⁴⁴ See *id.* at 92 (explaining that it takes progressive-minded educators to further progressive ideas).

⁴⁵ See *id.* at 100, 110 (explaining that one “cannot make education . . . into an instrument for the perpetuation of the status quo just because the powers that be so decree”); Thomas E. Spencer, *Education and the Social Order*, 51 PEABODY J. EDUC. 132, 133 (1974) (noting the “obvious effects” formal education has on a social system).

⁴⁶ See generally Mary E. Earick, *Ideology, Race, and Education*, 3 INT’L CRITICAL CHILDHOOD POL’Y STUD. 74 (2010) (noting that ideology can be defined as a composition of “ideas and beliefs which help to legitimate the interests of a ruling group or class specifically by distortion or dissimulation”).

⁴⁷ See Douglas S. Massey & Karen A. Pren, *Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America*, 38 POPULATION DEV. REV. 1, 2 (2012) (explaining how over time U.S. policies on immigration are “more strongly shaped by prevailing economic circumstances and political ideologies”).

Michael Monahan calls attention to the education of racial perception.⁴⁸ Understanding that learning occurs in spaces beyond the classroom, Monahan emphasizes how these different—and occasionally competing—educational experiences impact how we perceive race.⁴⁹ He suggests that people can actively engage in learning to support the education of their racial perception, emphasizing three dimensions to this education: historical, geographical, and methodological.⁵⁰ The historical analysis focuses on the way race and racism have changed over time to exclude or include different racial groups from power.⁵¹ The geographical analysis centers space and how racial perception differs depending upon the location and context.⁵² Lastly, the methodological dimension calls attention to which markers are racialized, how they are racialized, and how these methods of racialization have changed over time.⁵³ For example, awareness of transitions from biological to cultural racism over time are part of our racial perception.⁵⁴

The education of racial perception is negatively affected by the structure of asylum claims. Conditions for asylum reflect a refusal on the part of the United States to account for a history of racial violence, U.S. interventions in the Western Hemisphere, and dehumanization of marginalized and Indigenous peoples. I argue that asylum law actually serves as a method of racialization that demands a particular narrative

⁴⁸ Monahan, *supra* note 8, at 215–21.

⁴⁹ *Id.* at 216–17. Monahan writes about the ways in which history, geography, and the ways and means of racialization form one’s racial perception. *Id.* He goes on to discuss the way one has to be taken in through learning new ideas but also by putting them in practice: “The education of racial perception cannot be accomplished by simply collecting propositional knowledge, however. Insofar as racial perception is an act, and not simply something that happens to us, it needs to be altered through practice. Just as educating one’s musical ear requires listening to music, and educating one’s palate requires eating, so educating one’s racial perception requires self–consciously practising racial perception in a way that focuses upon increasing the depth and breadth of that act of perception. This means that education requires a willingness to reflect upon racial perception in ways that lead us to reapproach and re-evaluate the how and why of that perception.” *Id.* at 217.

⁵⁰ *Id.*

⁵¹ *Id.* at 216.

⁵² *Id.* at 216–17.

⁵³ *Id.* at 217.

⁵⁴ See generally JULIET HOOKER, *THEORIZING RACE IN THE AMERICAS* (2017) (discussing the prevalence of scientific racism in the late nineteenth and early twentieth century); Teresa J. Guess, *The Social Construction of Whiteness: Racism by Intent, Racism by Consequence*, 32 *CRITICAL SOC.* 649, 645 (2006) (“Rather than emerging from a scientific perspective, the notion, ‘race,’ is informed by historical, social, cultural, and political values. Thus, we find that the concept ‘race’ is based on socially constructed, but socially, and certainly scientifically, outmoded beliefs about the inherent superiority and inferiority of groups based on racial distinctions.”).

of Indigeneity that neglects the historical and spatial dimensions of colonialism and settler colonialism. In order to unpack this claim, I advance TribalCrit and LatCrit as frameworks which consider colonialism and settler colonialism, migration, and a frustrating and violent relationship between Indigenous peoples, the State, and its policies.

A. *TribalCrit and LatCrit*

TribalCrit provides nine powerful tenets which center colonization, White supremacy, as well as imperialism and its tension with Indigenous autonomy, self-determination, and sovereignty.⁵⁵ Furthermore, the tenets emphasize alternative ways of knowing and being in the world, pointing specifically to the dangers of assimilationist policies both in government and education.⁵⁶ These tenets emphasize the importance of preserving Othered ways of understanding the world and ways we relate to each other within the world.⁵⁷ While some might perceive this as being anti-State, it is important that we do not challenge *all* regulation, but *dehumanizing regulation* which fails to take into account a history of violence and marginalization.⁵⁸ Immigration policies analyzed through TribalCrit require an interrogation of the policies through a colonial and settler colonial lens, revealing that not only have Indigenous peoples had their land violently stolen from them, but also face laws which restrict their movement on these very lands.⁵⁹

LatCrit, on the other hand, places an explicit focus on the role of immigration, ethnicity, nationality, culture, and language.⁶⁰ This framework is often utilized in order to highlight the racialized educational experiences of Latinx peoples in education.⁶¹ Investigations regarding

⁵⁵ Brayboy, *Toward a Tribal Critical Race Theory in Education*, *supra* note 11, at 429–30.

⁵⁶ *Id.* at 434–37.

⁵⁷ *Id.* at 436.

⁵⁸ *See id.* 430–32 (noting that “colonization is endemic to society” and “everyday experiences of American Indians . . . have essentially been removed from the awareness of dominant members of U.S. society” thus, colonization has a “debilitating influence[]” on policies and society as a whole); ROXANNE DUNBAR-ORTIZ, *AN INDIGENOUS PEOPLES’ HISTORY OF THE UNITED STATES* 10–12 (2014) (describing the history of violence and taking of land from indigenous communities and nations, without subsequently providing any alternative).

⁵⁹ *See* DUNBAR-ORTIZ, *supra* note 58, at 2, 8, 14 (“The history of the United States is a history of settler-colonialism – the founding of a state based on the ideology of white supremacy, the widespread practice of African slavery, and a policy of genocide and land theft.”).

⁶⁰ Delgado Bernal, *supra* note 12, at 108.

⁶¹ *Id.* at 109; *see* DELORES DELGADO BERNAL & ENRIQUE ALEMÁN, JR., *TRANSFORMING EDUCATIONAL PATHWAYS FOR CHICANA/O STUDENTS: A CRITICAL RACE FEMINISTA PRAXIS* 22–25 (James A. Banks ed., 2017) (discussing the use of critical race theories, including LatCrit, to

immigration often center the narratives of Latinxs, which have provided powerful counterstories that reflect the strength and determination of Latinx peoples.⁶² However, it is important to note that the term “Latinx” encompasses a variety of nationalities with diverse experiences within those groups.⁶³ Some scholars have noted that within Latin American countries, Indigeneity is often subsumed under the larger nationality so that, for example, “Mexican” absorbs and obscures Indigenous identity.⁶⁴ In the United States, Indigenous peoples from Latin America are often racialized as Latinx or perhaps by their country of origin, neither which recognize their Indigenous roots and their diverse experiences.⁶⁵

Researchers such as Bianet Castellanos have centered Indigenous narratives in the study of migration from Latin American countries in order to call attention to Indigeneity not only in the country of origin and in the United States, but in migration as well.⁶⁶ I assert that working with Indigenous students that migrate to the United States from Guatemala requires a combination of both TribalCrit and LatCrit in order to fully humanize their experiences at the intersection of immigration and the education of racial perception. Combining TribalCrit’s emphasis on settler colonialism with LatCrit’s attention to immigration policies serves as a stronger analytic framework to examine the impact of asylum conditions on permissible narratives of Indigeneity.

“account for the systematic ways that coloniality. . . shales the (mis)education of Chican@sLatin@s”).

⁶² See Genevieve Negrón-Gonzales, *Undocumented Youth Activism as Counter-Spectacle: Civil Disobedience and Testimonio in the Battle Around Immigration Reform*, 40 AZTLÁN: J. CHICANO STUD. 87 (2015) (discussing the impact narratives of Latinx youth have in “challeng[ing] dominant conceptions of (il)legality and undocumented workers” and “shift[ing] conceptions of citizenship”).

⁶³ See Martha E. Gimenez, *Latino/“Hispanic”- Who Needs a Name?: The Case Against a Standardized Terminology*, in *LATINOS AND EDUCATION: A CRITICAL READER* 225, 235 (Antonia Darder et al., eds. 1997) (“The ‘Hispanic’ label is eminently political: it identifies neither an ethnic group nor a minority group.”).

⁶⁴ See Luis Urrieta Jr., *Identity, Violence, and Authenticity: Challenging Static Conceptions of Indigeneity*, 15 LATINO STUD. 254, 260 (2017) (describing how Indigenous people identify with their self-determined identity, not with the state determined construct of their identity).

⁶⁵ Floridalma Boj Lopez, *Mobile Archives of Indigeneity: Building La Comunidad Ixim Through Organizing in the Maya Diaspora*, 15 LATINO STUD. 201, 216 (2017); see Alessandra Bazo Vienrich, *Indigenous Immigrants From Latin America (IILA): Racial/Ethnic Identity in the U.S.*, 13 SOC. COMPASS 1, 2 (2018) (noting the understanding of how “identity formation of a group . . . upon arriving in the U.S. is categorized as Latinx and [individuals] must negotiate their indigeneity as part of the all-encompassing Latinx panethnicity”).

⁶⁶ Castellanos, *supra* note 1, at 220–22.

IV. METHODS

A. *Setting and Data Collection*

This article draws from a larger critical ethnographic and transnational Participatory Action Research (PAR) project with Indigenous Guatemalan students. *Critical* ethnography serves to examine questions around human suffering and collective action, usually through a critical theory.⁶⁷ PAR serves as a research methodology that seeks to partner with and empower marginalized communities to participate in the research process and perceive themselves as agents of change.⁶⁸ PAR is characterized not so much by the type of methods used, but rather by the relationship constructed with the participants in evaluating social challenges and taking action to ameliorate these conditions.⁶⁹ Thus, critical ethnography and PAR go hand-in-hand for this type of investigation that seeks to both illuminate and transform.⁷⁰

I work with Indigenous students and families that have migrated to a community in the Northeast United States. Rana City (pseudonym) is a predominantly Latinx community where most of the population identifies as Puerto Rican or Mexican. Since the turn of the century, though, there has been a steady increase in Guatemalan immigrants, most of whom are Indigenous. The critical ethnographic and PAR project is not exclusive to the United States. I travel between Rana City and the sending communities of the families in Guatemala, examining barriers to educational access and opportunities for Indigenous students in Guatemala as well as in the United States after migration.

B. *Case Presented*

For this article, I focus on the case of Angel (pseudonym), a student that migrated without documentation to the United States at thirteen years old. He was apprehended by Immigrations and Customs Enforcement when he was crossing the U.S.-Mexico border, held at a detention center for minors, and released to the custody of his brother and sister who were also in the United States. He came seeking more

⁶⁷ CAROL GRBICH, *QUALITATIVE DATA ANALYSIS: AN INTRODUCTION* 39–40 (2013).

⁶⁸ Pamela A. Moss & Edward H. Haertel, *Engaging Methodological Pluralism*, in *HANDBOOK OF RESEARCH ON TEACHING* 127, 182–83 (Drew H. Gitomer & Courtney A. Bell eds., 5th ed. 2016).

⁶⁹ *Id.* at 182–84.

⁷⁰ *Id.*; see GRBICH, *supra* note 67, at 51–53 (detailing critical ethnographic approaches).

economic opportunities and work, but the court expected him to attend school while going through his court proceedings. He applied for asylum and his application was rejected as lacking sufficient evidence. He is currently nineteen years old, in his final year of high school, and still navigating the court system six years after his arrival. Drawing from a series of semi-structured interviews regarding his experience in seeking asylum, I present his own stories as an Indigenous person in order to challenge asylum standards through a settler colonial framework.

C. Data Analysis

This article applies Critical Discourse Analysis (CDA) for unpacking and examining data. CDA, unlike more traditional forms of discourse analysis, emphasizes the political nature of language.⁷¹ Researchers that utilize CDA want to “speak to and, perhaps, intervene in, institutional, social, and political issues, problems, and controversies in the world.”⁷² Furthermore, James Gee emphasizes the fact that discourse is grounded in the historical and sociopolitical factors that have influenced the performance of identities so that they are recognized by others.⁷³ Thus, this analysis incorporates a critical interrogation of US history and foreign relations, asylum claims, and Indigenous voices through a settler colonial lens.⁷⁴ By borrowing from CRT’s TribalCrit and LatCrit, I am able to emphasize the legacy of settler colonialism and its impact on immigration through critical discourse analysis.

I focus on the ways in which the legal conditions to be granted asylum are grounded in a denial of sociohistorical and contemporary violence that marks the evolution of the United States. This results in the State’s expectation that Indigenous peoples narrate their history through a framework of contemporary victimization by demonstrating a threat to their corporeal/biological life, rather than accounting for historical and contemporary violence that impact quality of living. The State provides a deficit-based lesson on the education of racial perception that denies oppression and, subsequently, responsibility for ameliorating these conditions.

⁷¹ GEE, AN INTRODUCTION TO DISCOURSE ANALYSIS: THEORY AND METHOD, *supra* note 17, at 9.

⁷² *Id.*

⁷³ *Id.* at 9–10.

⁷⁴ *See generally id.* (discussing how discourse analysis is used to examine complex controversies in the world).

V. DISCOURSE, CONVERSATION,
AND VIOLENCE AGAINST INDIGENOUS PEOPLES

There are two terms within James Gee's conception of CDA that I emphasize in this analysis: Discourse and Conversation.⁷⁵ Capital-D Discourse is defined not only as the language and linguistic features relevant to that vernacular, but also the performance of that identity.⁷⁶ Gee explains that Discourse in this sense encapsulates the "ways of combining and integrating language, actions, interactions, ways of thinking, believing, valuing, and using various symbols, tools, and objects to enact a particular sort of socially recognizable identity."⁷⁷ Discourse is, as Gee suggests, to "talk the talk" and to "walk the walk."⁷⁸ Capital-C Conversation, then, refers to large issues and the different sides on the debate known to a group.⁷⁹ Though Gee refers to Conversation as "one grand conversation," he also recognizes that "this big Conversation is composed of myriad of interactional events taking place among specific people at specific times and places within specific institutions."⁸⁰

Discourse and Conversation are, as one can presume, intimately related. For the purpose of this analysis, I propose that we conceive of Capital-D Discourse as being Indigenous and Capital-C Conversation as debates around immigration laws and policies, in particular asylum claims. Specifically, what I will claim and then defend is that the Conversation around asylum policies requires that the Discourse of Indigeneity be performed in a way that pleases the State, and the State reserves the right to reject asylum claims if Indigeneity is not performed according to their conception of this Discourse. This Discourse perpetuated by the State reflects a denial of the historical and contemporary violence of settler colonialism in the Western Hemisphere.

Violence against Indigenous peoples has gone largely ignored in US political-legal activity in regards to immigration.⁸¹ As Roxanne

⁷⁵ *Id.* at 222.

⁷⁶ *Id.*

⁷⁷ GEE, AN INTRODUCTION TO DISCOURSE ANALYSIS: THEORY AND METHOD, *supra* note 17, at 222.

⁷⁸ *Id.* at 45.

⁷⁹ *Id.* at 72.

⁸⁰ JAMES PAUL GEE, INTRODUCING DISCOURSE ANALYSIS: FROM GRAMMAR TO SOCIETY 164 (2018).

⁸¹ See DUNBAR-ORTIZ, *supra* note 58, 8–9 (exploring parallels between genocide and U.S.'s history of colonialism).

Dunbar-Ortiz aptly points out, genocide as understood by the UN Convention on the Prevention and Punishment of the Crime of Genocide in 1948 would certainly be applicable to US history and its treatment of Indigenous peoples.⁸² In her analysis, she points out the connection between genocide, land removal, and erasure of Indigenous identity through Indigenous boarding schools.⁸³ Dunbar-Ortiz outlines the five acts in the convention that if “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group” would constitute genocide:

- 1) Killing members of the group;
- 2) Causing serious bodily or mental harm to members of the group;
- 3) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- 4) imposing measures intended to prevent births within the group;
- 5) forcibly transferring children of the group to another group.⁸⁴

Since the Convention cannot be applied retroactively and the US ratified only in 1988, it provides no legal remedy for Indigenous peoples in terms of a history of genocide.⁸⁵ Furthermore, it does not provide any remedy to current immigration policies, which are clearly connected to land ownership, as an extension of a genocidal history.⁸⁶ Instead, we see immigration policies as the manifestation of power through settler colonial politics that constrain the movement of Indigenous bodies on stolen lands. U.S. history is a genocidal history. This is not meant to be a provocative statement, though some may interpret it as so. Rather, it is an account of U.S. history which critically interrogates the connection between power and land through settler colonialism that supports a critical analysis of Indigenous migration.

Immigration laws and policies of the State that have then since evolved, by a refusal to account for this history or a denial to recognize

⁸² *Id.*

⁸³ *Id.* at 9.

⁸⁴ *Id.* at 8.

⁸⁵ *Id.*

⁸⁶ *See id.* at 10–11.

it, perpetuate settler colonialism.⁸⁷ Dunbar-Ortiz frames the role of immigration in relation to the killing of Indigenous peoples.⁸⁸ She states that “[f]rom its beginning, the United States has welcomed—indeed, often solicited, even bribed—immigrants to repopulate conquered territories ‘cleansed’ of their Indigenous inhabitants” in Westward expansion and control of the Western hemisphere.⁸⁹ The United States—and other nation-states in the Western hemisphere—divided up land that was never theirs.⁹⁰ This distorted Indigenous conceptions of land by dividing up territories without regard for the different nations of Indigenous peoples which occupied it, and the European invaders also forced Indigenous peoples to cultivate lands for maximum productivity, trade, and profit in the capitalist market.⁹¹ It is more common in postcolonial analyses to refer to the division of Africa and exploitation of its lands and peoples by European powers, with no regards to the different ethnic groups that occupied the land, as a violent act of coloniality.⁹² The division of the entire Western hemisphere requires this same colonial/settler colonial analysis. Indigenous resistance to U.S. imperialism involves not only a battle for land, but also a struggle against the homogenization of Indigenous peoples and, taking seriously the fight for self-determination, the recognition of different nations.⁹³

⁸⁷ See DUNBAR-ORTIZ, *supra* note 58, at 229 (arguing that in a “settler society that has not come to terms with its past, whatever historical trauma was entailed in settling the land affects the assumptions and behaviors of living generations at any given time, including immigrants and the children of recent immigrants”).

⁸⁸ *Id.* at 228–29 (discussing the “historical seeds of genocide” which lends to the U.S.’s “continued colonization . . . [in order to] cast its imperialist gaze globally”).

⁸⁹ *Id.* at 50–51.

⁹⁰ *Id.* at 1–2, 14 (noting that the United States “crushed and subjugated the original civilizations in the territories it now rules”).

⁹¹ See *id.* at 7–9; David McCreery, *Land, Labor, and Community*, in *THE GUATEMALA READER: HISTORY, CULTURE, POLITICS* 117, 117 (Greg Grandin et al. eds., 2011) (discussing the Guatemalan government’s aim to break the “autonomy of indigenous communities” and force labor to expand coffee cultivation).

⁹² See, e.g., FRANTZ FANON, *THE WRETCHED OF THE EARTH* (Richard Philcox trans., Grove Press 2004) (1963) (examining violence and colonial settler relationships in Africa); FRANTZ FANON, *BLACK SKIN, WHITE MASKS* (Richard Philcox trans., Grove Press 2008) (1952) (discussing the relationship between racism and colonialism).

⁹³ See DUNBAR-ORTIZ, *supra* note 58, at 7 (discussing how modern indigenous nations and communities have formed out of their resistance to colonialism).

VI. U.S. IMPERIALISM, INDIGENEITY, AND IMMIGRATION POLICIES

The previous section suggested that Indigenous peoples should not be perceived as a monolithic group, and that the diversity among Indigenous peoples constitutes a critical aspect of recognition, self-determination, and nationhood. Some may question, then, how my analysis can incorporate Indigenous peoples from Guatemala in an analysis of U.S. history? More specifically, what do Indigenous peoples from Guatemala have to do with U.S. immigration policies? Would not a more appropriate analysis of U.S. immigration policies involve an analysis of Indigenous peoples residing within the geo-political borders of the United States?

In one word, the answer is “no.” I will unpack two reasons for this: 1) U.S. imperialism and its concomitant violence against Indigenous peoples is transnational in nature, and 2) the seizure of control in the Western Hemisphere by the United States resulted in significant violence against Indigenous peoples specifically in Guatemala. If we recognize the “United States” as an entity originating from the thirteen colonies – which means beginning by neglecting the violence that led to possessing those 13 colonies—then one must recognize that the United States did not immediately occupy land from sea to shining sea.⁹⁴ I interpret Manifest Destiny as a declaration of war against all nations who oppose the United States reaching the Pacific Ocean.⁹⁵ Westward expansion and possession of land we currently identify as belonging to the United States is marked by international wars against Spain for control of Florida and Puerto Rico, Mexico for the Southwest and West, and Indigenous nations throughout North America.⁹⁶ It would have been impossible for the United States to establish and defend its borders today without engaging in brutal international warfare. A settler colonial analysis of immigration policies cannot ignore this violent history.

As for the second reason, the United States did not limit violence to the continental United States as is evident in the various territories

⁹⁴ See *id.* at 2–3 (noting the continental territory which is the present United States was “not fully appropriated until a century after independence”).

⁹⁵ See JUAN GONZALEZ, *HARVEST OF EMPIRE: A HISTORY OF LATINOS IN AMERICA* 28, 42–44 (Penguin Books 2011) (discussing “Manifest Destiny” as a “code phrase for racial supremacy” because it was driven by the idea that Latin Americans were “inferior in cultural makeup and bereft of democratic institutions”).

⁹⁶ See *id.* 27–57 (discussing the “discordant and unequal relationship” between the United States and Latin America over territories).

trapped in perpetual colonial status.⁹⁷ U.S. foreign policy, as evidenced by the Monroe Doctrine and the Roosevelt Corollary, established the United States as protector and owner of its interests and resources in the Western Hemisphere.⁹⁸ Twentieth century interventions in Latin America provide this evidence, particularly the Cold War.⁹⁹ To justify violence, the United States often framed it in terms of Cold War efforts against communism.¹⁰⁰ This highly downplayed the influence of economic interests, like that of the United Fruit Company,¹⁰¹ in these interventions.¹⁰²

Guatemala provides a prime example. The October Revolution of Guatemala in 1944 led to two popularly elected leaders, Juan José Arévalo and Jacobo Árbenz.¹⁰³ They both advocated for various social services, the most provocative being Árbenz' Congressional Decree 900, an agrarian land reform measure which threatened the economic interests of major landholders in Guatemala like the United Fruit

⁹⁷ See DUNBAR-ORTIZ, *supra* note 58, at 162–77 (discussing the United States' imperialism abroad).

⁹⁸ See *id.* at 3, 166 (noting that the Roosevelt Corollary to the Monroe Doctrine “mandated that any nation engaged in “‘chronic wrong doing . . .’ would be disciplined militarily by the United States, which was to serve as an ‘international police power’”).

⁹⁹ See GREG GRANDIN, *THE LAST COLONIAL MASSACRE: LATIN AMERICA IN THE COLD WAR 1–17* (2011) (introducing the history behind the spread of the Cold War to Latin America).

¹⁰⁰ John H. Coatsworth, *Introduction* to STEPHEN SCHLESINGER & STEPHEN KINZER, *BITTER FRUIT: THE STORY OF THE AMERICAN COUP IN GUATEMALA* ix, xii, xiv (Harvard Univ. Press 2005) (1982). “What was at stake in Guatemala in the 1950s was less the imagined threat to the security of the United States than the historic U.S. threat to the sovereignty of Guatemala.” *Id.* at xiv. “This view is amply confirmed, in a sense, by every serious work on Guatemala in the 1950s, all of which conclude that while the Arbenz government was reformist or progressive the probability of a communist regime coming to power was virtually nil.” *Id.* at xii.

¹⁰¹ Frederick U. Adams, *Conquest of the Tropics*, in *THE GUATEMALA READER: HISTORY, CULTURE, POLITICS* 144, 144–47 (Greg Grandin et al. eds., 2011). The United Fruit Company was founded at the end of the nineteenth century and grew to be the “prototype of the modern transnational corporation, vertically integrated and both a financial enterprise and a political force.” *Id.* at 144.

¹⁰² See Coatsworth, *supra* note 100, at xiii. The United States administration and the United Fruit Company had such “close ties,” that the “irrational intervention” in Guatemala seemed “much more reasonable” to the key policymakers – as many had family or business ties to the company and it was the “principal victim of the Arbenz government’s agrarian reform and other policies.” *Id.*; Greg Grandin et al., *Ten Years of Spring and Beyond*, in *THE GUATEMALA READER: HISTORY, CULTURE, POLITICS* 197, 197 (Greg Grandin et al. eds., 2011) (noting that in explaining why the United States overthrew Arbenz, the focus on the “threat the land reform posed to US economic interests, particularly to the United Food Company”) [hereinafter *Ten Years of Spring and Beyond*]; STEPHEN SCHLESINGER & STEPHEN KINZER, *BITTER FRUIT: THE STORY OF THE AMERICAN COUP IN GUATEMALA* 203 (Harvard Univ. Press 2005) (1982) (indicating that American journalists concluded that the United States was motivated to “protect the corporate interests of the United Fruit Company,” just as Arbenz had claimed).

¹⁰³ See *Ten Years of Spring and Beyond*, *supra* note 102, at 197.

Company.¹⁰⁴ Despite Árbenz having popular support, the United States worked to isolate Árbenz' government, funded the preparation of an invasion force, and engaged in psychological warfare and sabotage internally to destabilize the country.¹⁰⁵ The Eisenhower administration successfully completed its first coup of the Cold War in Latin America, though this was only the beginning of U.S.-sponsored violence.¹⁰⁶ There was little to no peace before Guatemala entered a Civil War in 1960 that would not end until 1996.¹⁰⁷ The peak of the violence was in the 1980s under General Ríos Montt's regime, who was celebrated by the Reagan Administration as a defender of democracy.¹⁰⁸ Ríos Montt's regime systematically targeted Indigenous peoples in the highlands for murder.¹⁰⁹ Coatsworth posits that the Guatemalan army displaced over 150,000 people, placed 20,000 in camps, and killed "between 50,000 to 75,000 mostly unarmed indigenous farmers and their families."¹¹⁰ Outmatched by the Guatemalan forces that had the support, technological edge, and military training provided by the United States, the probability of success by the guerillas dwindled.¹¹¹ When the Peace Accords were signed in 1996, the trauma to the countryside disproportionately impacting Indigenous peoples had already been done.¹¹²

¹⁰⁴ *Id.* at 198; *see also* Government of Guatemala, *Most Precious Fruit of the Revolution*, in THE GUATEMALA READER: HISTORY, CULTURE, POLITICS 217, 217–18 (Greg Grandin et al. eds., 2011) (explaining the objectives of the agrarian reform law).

¹⁰⁵ Nick Cullather, *Operation PBSUCCESS*, in THE GUATEMALA READER: HISTORY, CULTURE, POLITICS 230, 230–37 (Greg Grandin et al. eds., 2011).

¹⁰⁶ *See* SCHLESINGER & KINZER, *supra* note 103 (detailing the United States violent coup of Guatemala's government in 1954).

¹⁰⁷ *See generally* Grandin, *supra* note 24 (analyzing violence in the formation of state and nation in Guatemala since the 18th century).

¹⁰⁸ Stephen Kinzer, *Efraín Ríos Montt, Guatemalan Dictator Convicted of Genocide, Dies at 91*, N.Y. TIMES (Apr. 1, 2018), <https://www.nytimes.com/2018/04/01/obituaries/efrain-rios-montt-guatemala-dead.html>. "In the panoply of commanders who turned much of Central America into a killing field in the 1980s, General Ríos Montt was one of the most murderous." *Id.* Despite this, "President Ronald Reagan was General Ríos Montt's most prominent admirer." *Id.*

¹⁰⁹ *Id.* (discussing Ríos Montt's 2013 conviction, which was later overturned, for "trying to exterminate the Ixil ethnic group, a Mayan community whose villages were wiped out by his forces"); *see* VIRGINIA GARRARD-BURNETT, *TERROR IN THE LAND OF THE HOLY SPIRIT: GUATEMALA UNDER GENERAL EFRAÍN RÍOS MONTT, 1982–1983* (2010) (detailing the violence that occurred under the reign of president-by-coup, Ríos Montt).

¹¹⁰ Coatsworth, *supra* note 100, at x.

¹¹¹ *See* Central Intelligence Agency, *Denied in Full*, in THE GUATEMALA READER: HISTORY, CULTURE, POLITICS 256, 259–61 (Greg Grandin et al. eds., 2011) (presenting documents from the CIA revealing their knowledge of brutal, repressive violence in Guatemala, and their support of it).

¹¹² *See* GRANDIN, *supra* note 24, at 234–36 (discussing the life and death of Sergio Aguilar, an individual fought as part of the indigenous resistance efforts and was buried in an unmarked grave until the war was over); VÍCTOR MONTEJO, *TESTIMONY: DEATH OF A GUATEMALAN VILLAGE* (Victor Perera trans., 1987) (providing an account of the violence and displacement

U.S. imperialism has not respected the geo-political borders it currently seeks to protect. A settler colonial lens demonstrates that it is not only the history of the continental United States, but also that of Guatemala which has capitalized on Indigenous blood to advance its national interests. While the United States claims to defend its borders with immigration policies and determine legitimate cases for asylum, it has no trouble occupying Guatemala and exploiting its vulnerable economic position through factory work that exports 100% of its goods to places like the United States.¹¹³ Countries like Guatemala are reduced to suppliers of cheap goods, and the Guatemalan government becomes a defender of the global economic order from more radical Indigenous demands.¹¹⁴ Immigration policies reflect the historical denial of intervention in foreign lands and contemporary exploitative economic practices. The United States is willing to cross borders for a profit but unwilling to open borders to account for their settler colonial practices.

VII. ASYLUM: LIFE AND LIVING

Asylum disregards the sociohistorical legacy of violence against Indigenous peoples in the Western hemisphere, consistent with the denial of genocide, land theft, and perpetual violence against Indigenous peoples and occupation of their lands. In order to qualify for asylum, the asylum-seeker must show that they meet the criteria to be considered a refugee. The conditions for asylum make explicit that “the burden of proof is on the applicant to establish that the applicant is a refugee.”¹¹⁵ A refugee is:

Any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last

during the Civil War); *see also* Gustavo Palma Murga, *Promised the Earth*, in *THE GUATEMALA READER: HISTORY, CULTURE, POLITICS* 454–60 (Greg Grandin et al. eds., 2011) (discussing the 1996 peace accords’ failure to “include provisions for redistributing land,” thus “overlook[ing] the multifaceted problems and aspirations of the majority of rural Guatemalans”).

¹¹³ *See* Corey Mattson & Marie Ayer, *The New Face of Labor and Capital*, in *THE GUATEMALA READER: HISTORY, CULTURE, POLITICS* 561, 561–65 (Greg Grandin et al. eds., 2011) (discussing the “maquilas” in Guatemala which are “factor[ies] contracted by corporations to perform the last stages of a production process,” resulting in the “export of 100% of the products back to the transnational corporations”).

¹¹⁴ *See* Charles R. Hale, *Rethinking Indigenous Politics in the Era of the “Indio Permitido”*, *NACLA* (Sept. 25, 2007), <https://nacla.org/article/rethinking-indigenous-politics-era-indio-permitido>.

¹¹⁵ 8 U.S.C. § 1158(b)(1)(B)(i) (2009).

habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.¹¹⁶

I argue that this definition of refugee to fulfill asylum claims is demonstrative of the selective reading of U.S. history which denies the accumulated impact of colonialism and settler colonialism. Asylum applicants must demonstrate that they have either experienced violence to their body or present a credible fear of violence to their body based on “race, religion, nationality, membership in a particular group, or political opinion.”¹¹⁷ The challenging economic conditions in Guatemala, for which the United States bears some significant responsibility, are not considered legitimate grounds for asylum.¹¹⁸ In other words, the Discourse of “foreign” Indigeneity must be performed before the State according to these standards in order to be recognized as deserving of access to the United States. Thus, Indigenous peoples must narrate themselves to the State as suffering from a standard of violence that does not always account for the accumulated impact of generations of traumas. Poverty as a quality of living is not considered in and of itself violence.¹¹⁹ Indigenous peoples must narrate their lived experience before the U.S. government in a way that centers contemporary physical victimization and ignores the legacy of violence perpetrated by the United States and its social, economic, and political impact contemporarily.

¹¹⁶ 8 U.S.C. § 1101(a)(42)(A) (2014).

¹¹⁷ *Id.*

¹¹⁸ See GUATEMALA: POLITICAL AND SOCIOECONOMIC CONDITIONS AND U.S. RELATIONS, CONG. RES. SERV. 1, 15–18 (Mar. 20, 2019), <https://fas.org/sgp/crs/row/R42580.pdf> (examining Guatemala’s poverty rate of 59% compared to 79% for the indigenous population).

¹¹⁹ See *Huo Qiang Chen v. Holder*, 733 F.3d 369, 405 (2d Cir. 2014) (suggesting that certain economic conditions “might manifest persecution” but, it is a difficult case to make as there is no “fixed threshold”). See also Bruce Wallace, *Yuhui Chen’s 13-Year Fight to Prove Poverty is Persecution*, AL JAZEERA AM. (Feb. 24, 2015), <http://america.aljazeera.com/articles/2015/2/24/who-gets-in-economic-asylum.html>. Furthermore, through personal conversations with immigration lawyers representing the Indigenous students presented in this article, there is a clear understanding that they will not win an asylum case if they move forward solely with a claim of economic hardship. The argument for economic hardship is always made through one of the five elements of persecution (race, religion, nationality, membership in a group, or political opinion). For example, they would seek to demonstrate that part of the reason why Indigenous students and their families face such economic hardship is because of the racism between Ladinos (those with Spanish ancestry) and Indigenous peoples.

Lisa Stevenson's work with the Inuit community in Canada is fitting to an analysis of asylum qualifications.¹²⁰ Departing from a Foucauldian analysis of biopower, where the State has evolved from regulating life or death to regulating what it means to be living, Stevenson examines what it means to *care* for others.¹²¹ She suggests that Canadian policies of care are more concerned with the maintenance of life itself, ignoring the Inuit community's more fluid ideas around what it means to be *living*.¹²² She suggests that these notions of care, "while working to maintain the physical life of Inuit qua Canadian citizens, may also reveal a kind of indifference on the part of the Canadian State."¹²³ I propose that there is a similar sense of care espoused by asylum qualifications. U.S. asylum standards reflect a concern with corporeal, biological notions of life versus attending to more humanistic notions of what it means to be living. Conditions for asylum demonstrate that the U.S. government is willing to entertain only a very narrow narrative of what it means to be Indigenous and live with the ramifications of settler colonialism.

There is no doubt that asylum policies reflect a concern for life in terms of the preservation of the body. However, the same cannot be said regarding *living*. The standard of biological life over living is how an asylum plea framed in terms of economic opportunity and the desire to receive a better education can be dismissed. This emphasis on corporeal life over living overlaps so well with the denial of settler colonial violence that it appears almost sinister and intentional. Perhaps it is intentional. Indeed, the framework of power, law, and immigration appears dark and sinister from an Indigenous perspective. The United States possesses the power to constrain life and living to its own definition, and Indigenous peoples must narrate themselves in accordance with that definition to receive asylum protections.

If this limitation placed on the Discourse of Indigeneity was not enough, there is also an element of subjectivity in screening asylum cases.¹²⁴ The case officer and immigration judges, serving as the face of

¹²⁰ See Lisa Stevenson, *The Psychic Life of Biopolitics: Survival, Cooperation, and the Inuit Community*, 39 AM. ETHNOLOGIST 592 (2012) (exploring the complicated relationship between the indigenous Inuit and the Canadian government).

¹²¹ *Id.* at 598–99. See LISA STEVENSON, LIFE BESIDE ITSELF: IMAGINING CARE IN THE CANADIAN ARTIC 7 (2014).

¹²² Stevenson, *supra* note 120, at 593.

¹²³ *Id.*

¹²⁴ See *Asylum in the United States*, AM. IMMIGRATION COUNCIL (May 14, 2018), <https://www.americanimmigrationcouncil.org/research/asylum-united-states>. The American Immigration Council explains: "Individuals who are placed in expedited removal proceedings

settler colonial politics in this case, makes the determination as to whether the Indigenous applicant has provided enough evidence according to the legal standard.¹²⁵ James Gee paraphrases his definition of Discourse as needing to talk the right talk, walk the right walk, behave as if they value the right things, and wear the right things at the right time and right place.¹²⁶ In asylum cases, the State determines how Indigenous peoples need to talk, walk, behave, dress, and when, where, and how they need to appear to be “credible.”¹²⁷ It is up to the Indigenous applicant to perform correctly.¹²⁸ It is up to the Indigenous applicant to present the standard of *life* that the case officer expects, and to hide their interests in *living*.¹²⁹

VIII. VOICES NATIVE TO THE DISCOURSE: ANGEL

The claim that I defend here regarding asylum and its impact on the Discourse of Indigeneity originates as an attempt to make sense of what the legal system does to the Indigenous students in the K-12 classroom and the community. As an educator, researcher, and community member, I can begin by identifying the unjust and dehumanizing aspects behind asylum to establish the foundations of critique. Critique is paired with action to transform the world, resulting in a critical praxis that works towards collective liberation.¹³⁰ Critical Discourse Analysis (CDA) lends itself to this sort of analysis as it understands that research

and who tell a Customs and Border Protection (CBP) official that they fear persecution, torture, or returning to their country or that they wish to apply for asylum should be referred for a credible fear screening interview conducted by an asylum officer. If the asylum officer determines that the asylum seeker has a credible fear of persecution or torture, it means that the person has proven that he or she has a “significant possibility” of establishing eligibility for asylum or other protection under the Convention Against Torture. The individual will then be referred to immigration court to proceed with the defensive asylum application process. If the asylum officer determines the person does **not** have a credible fear, the individual is ordered removed. Before deportation, the individual may appeal the negative credible fear decision by pursuing a truncated review process before an immigration judge. If the immigration judge overturns a negative credible fear finding, the individual is placed in further removal proceedings through which the individual can seek protection from removal. If the immigration judge upholds the negative finding by the asylum officer, the individual will be removed from the United States.” *Id.* (emphasis in original).

¹²⁵ *Id.*

¹²⁶ GEE, AN INTRODUCTION TO DISCOURSE ANALYSIS: THEORY AND METHOD, *supra* note 17, at 24.

¹²⁷ See 8 U.S.C. § 1101(a)(42)(A) (2014) (requiring a “well-founded fear of persecution” to exist).

¹²⁸ See *id.*

¹²⁹ See *id.*

¹³⁰ PAULO FREIRE, PEDAGOGY OF THE OPPRESSED 51 (Myra Bergman Ramos trans., 30th anniversary ed., Bloomsbury Acad. 2013) (1970).

is not just to analyze the function of language and provide a deep critique.¹³¹ Gee notes that critical researchers want to speak of the world, but also act upon it.¹³² The origin of this research is in the critical ethnographic and Participatory Action Research (PAR) with Indigenous students and families. I position students and community members as agents capable of transforming their world and seek to empower them in the research process. Gee also recognizes that part of the validity in CDA comes from the convergence of multiple data points, one of which is whether members of that Discourse agree with the analysis.¹³³ Consistent with the principles of PAR and with the analytic tool of CDA, I share the counterstory¹³⁴ of an Indigenous student from Guatemala that was denied asylum.¹³⁵ His narrative demonstrates the tension between his perception of his own situation and the lesson the US government provides on what it means to be Indigenous, underscoring the State's detrimental lesson in the education of racial perception.¹³⁶

Angel (pseudonym), currently a high school student, came to the United States during middle school.¹³⁷ He crossed the U.S.-Mexico border without documentation and was detained by Immigrations and Customs Enforcement after entry.¹³⁸ He has navigated the court since then, seeking lawful residency in the United States and the opportunity to travel freely and visit his family back in Guatemala.¹³⁹ His application for asylum was rejected and he reflects on the expectation to present a narrative of Indigeneity that only reflects an immediate threat to your physical body rather than a threat to living well through poverty.¹⁴⁰ The tension between his lived experience and the narration compelled by the State is evident in his words:

¹³¹ See GEE, AN INTRODUCTION TO DISCOURSE ANALYSIS THEORY AND METHOD, *supra* note 17, at 2–3. Though his focus is on language, he recognizes that language is connected to our capacity to act in the world. *Id.* at 2. A point he returns to throughout his text is the actional component of language. *Id.* at 2. He explains that the “book is concerned with a theory of how we use language to say things, do things, and be things.” *Id.* at 3.

¹³² *Id.* at 9.

¹³³ GEE, HOW TO DO DISCOURSE ANALYSIS: A TOOLKIT, *supra* note 17, at 185–86.

¹³⁴ See YARA J. YOSSO, CRITICAL RACE COUNTERSTORIES ALONG THE CHICANA/CHIANO EDUCATIONAL PIPELINE 10–11 (2006) (defining and explaining critical race counterstorytelling).

¹³⁵ Interview with “Angel” (Jan. 22–23, 2018).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

It's that . . . well, you can't lie. You can't lie. You can't lie. [But] if they don't give you the opportunity to say, for example, that you came because of necessity, then what other option is left? To lie. Because if they don't let me tell the truth, then [I have to] lie. But that isn't right, either.¹⁴¹

Angel recognizes that lying would not be the right thing to do and expresses his desire to tell the full, honest story of his experiences in Guatemala.¹⁴² These experiences include necessity as a result of poverty.¹⁴³ However, he has to negotiate between his own standards of ethical behavior and the expected behavior by the State.¹⁴⁴ His narrative is underserving of asylum because of the narrative the State seeks to hear.¹⁴⁵

The State's desire for a particular narrative is further problematized when they begin to use the language of *evidence* to determine whether one's Discourse of Indigeneity is deserving of asylum.¹⁴⁶ Angel perceives the emphasis of danger to the physical body over standards of living as unjust.¹⁴⁷ However, he understands the need to incorporate both into asylum claims:

For me, I think that it is important what they are asking, but the other part is also important. Because why are they saying to not say anything about your poverty? . . . It's that after, after they ask you if you have experienced danger and you say 'yes, I have been discriminated against.' [Then they say] 'Okay, where did it happen? And who did it?' They ask you so many things.

And, like I am saying, maybe those things have happened to you, but they say you don't have enough of a claim, like not enough evidence. They are our stories. Everyone has a story, but it also depends on the kind of

¹⁴¹ Interview with "Angel" (Jan. 22–23, 2018).

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ See generally *Findings of Credible Fear Plummet Amid Widely Disparate Outcomes by Location and Judge*, TRAC IMMIGR. (July 30, 2018), <https://trac.syr.edu/immigration/reports/523/> (discussing the disparities in findings of credible fear based on judge and location).

¹⁴⁷ Interview with "Angel" (Jan. 22–23, 2018).

story we have in life. Maybe some do not have enough evidence. Then, if there is no more evidence, it's obvious that you are going to invent things. Then, they tell you 'this is not enough' like they told me. They sent me a letter saying that I did not have enough of a claim and they needed more evidence. But what more evidence do they want? The only thing left is poverty, but they don't want that. So, what else do they want?¹⁴⁸

Angel's words reflect the recognition that threats to your physical body can and do happen, and he also acknowledges that they have a place in asylum claims.¹⁴⁹ Nevertheless, he recognizes that the asylum claim is a sort of game or performance,¹⁵⁰ consistent with Gee's interpretation of Discourse.¹⁵¹ The Indigenous person must say the keywords of physical danger while avoiding the taboo words of poverty to have a stronger claim.¹⁵² Angel's frustration is also evident in his words as he explains the way the State can question someone and reject their words as lacking sufficient evidence.¹⁵³ He calls attention to the conflict between Indigenous stories and the standards for recognition by the State.¹⁵⁴ In Angel's eyes, the lack of an immediate threat to one's life should not constitute the dismissal of asylum claims, but rather a critical interrogation for other information as to understand why Indigenous peoples are seeking asylum.¹⁵⁵ Still, the State's hesitation to view economic hardship as persecution means that discussing one's impoverished conditions in the country of origin may not improve the possibility of winning an asylum claim.¹⁵⁶ What constitutes "winning" evidence is, I argue, pre-determined by a refusal to acknowledge a legacy of settler colonialism.

Though he understands the need to interrogate whether there is an immediate threat of violence to the body, Angel also insists on *listening* to the full narrative.¹⁵⁷ He calls for a critical examination of a full

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ GEE, HOW TO DO DISCOURSE ANALYSIS: A TOOLKIT, *supra* note 17, at 181–84.

¹⁵² See 8 U.S.C. § 1101(a)(42)(A) (2014).

¹⁵³ Interview with "Angel" (Jan. 22–23, 2018).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ See *Huo Qiang Chen v. Holder*, 733 F.3d 369, 405 (2d Cir. 2014) (suggesting it is difficult to prove certain economic conditions are grounds for persecution).

¹⁵⁷ Interview with "Angel" (Jan. 22–23, 2018).

truth that incorporates not just concerns with life, but concerns with living:

They need to know the whole truth. They only want to know, like, if you came because of danger or something like that. But they don't want to hear about necessity and other things. So for me that is not alright.

Maybe before something has happened to you, [maybe] before you have been robbed or discriminated against or something. But I think there is more than that. I think there is more than that. For example, there is poverty. They very well know that it is because of poverty [that we migrate], but for what reason do they ask something like "have you been in danger?" I mean, it's fine for them to ask that, but they need to ask both things . . . I think they should focus on the two things, the two grave [challenges] in life, which are poverty and danger.¹⁵⁸

His emphasis on their need to "know all the truth" is similar to the ideas of responsibility that addressing settler colonialism entails. One cannot separate the intergenerational traumas of perpetual violence against Indigenous peoples from the quality of living that manifests itself in poverty.¹⁵⁹ If violence has been used as a tool to control the human body for exploitation, then it follows that poverty is the aftermath of violence.¹⁶⁰ Poverty is, then, a violent state of living imposed upon one's being as a result of violence to the corporeal/physical body. For asylum claims to account for settler colonialism, the State cannot divorce poverty from violence done to the body. The State cannot distinguish living from life as they do in asylum claims since life-living have a hyper intimate relationship. Angel's words note that asylum claims incorrectly value survival of violence and

¹⁵⁸ *Id.*

¹⁵⁹ See generally John-Andrew McNeish & Robyn Eversole, *Introduction: Indigenous Peoples and Poverty*, in *INDIGENOUS PEOPLES & POVERTY: AN INTERNATIONAL PERSPECTIVE* 1, 4 (Robyn Eversole et al., eds., 2005) (exploring the "clear pattern link[ing] indigenous peoples and poverty").

¹⁶⁰ See Robyn Eversole, *Overview – Patterns of Indigenous Disadvantage*, in *INDIGENOUS PEOPLES & POVERTY: AN INTERNATIONAL PERSPECTIVE*, *supra* note 159, at 29, 29–30, 35 (noting that "indigenous people demonstrate surprisingly similar experiences of poverty in the form of land loss, income inadequacy . . . [and] violence . . .").

discrimination in relation to struggles related to settler colonialism.¹⁶¹ It is imperative that we both address poverty and danger, for life without higher standards of living does not fully address our responsibility towards collective liberation. Furthermore, Angel calls attention to the fact that the State knows that poverty is the reason for coming to the United States, yet they continue to insist on a Discourse of Indigeneity that negates this narrative.¹⁶² The United States must come to terms with its settler colonial history otherwise policies like asylum, while appearing to be an act of kindness, will continue to be an excuse to not confront a violent history against Indigenous peoples and its contemporary manifestations, namely through poverty.

IX. ASYLUM AND THE EDUCATION OF RACIAL PERCEPTION

The denial of violence and genocide against Indigenous peoples by the United States is made more complex when one accounts for immigration.¹⁶³ Asylum claims reflect a distorted education of racial perception that denies this brutal history and erects borders and immigration policies that do further violence on Indigenous concepts of space and geography.¹⁶⁴ To be a “foreign” Indigenous person and have a legal claim through asylum to the “American Dream” means presenting the Indigenous body as victimized, as brutalized, as flesh and blood that fits a narrative of violence chosen by the State.¹⁶⁵ To narrate the self as pursuing liberation or as fighting for freedom to move one’s body that takes into account historical, political, and spatial injustices is to accept that one will not receive asylum.¹⁶⁶ One must either engage in a Discourse of Indigeneity fitting to State standards or face rejection.¹⁶⁷ Asylum policies provide a lesson in the education of racial perception reflective of the selective ignorance of the United States.¹⁶⁸

Asylum policies for “foreign” Indigenous peoples are a method of racialization that deny the settler colonial history of the United States. The birth of the country was through Indigenous bloodshed, its development and sustenance as an empire was through Indigenous bloodshed,

¹⁶¹ Interview with “Angel” (Jan. 22–23, 2018).

¹⁶² *Id.*

¹⁶³ *See supra* Parts V, VI.

¹⁶⁴ *See supra* Part VII.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

and its control over the Discourse of Indigeneity for asylum reflects the power of the United States to wash its hands of Indigenous blood so quickly.¹⁶⁹ The capacity to regulate access to space and deny a history of violence simultaneously makes this lesson in the education of racial perception so severe. Asylum claims perpetuate an Indigenous Discourse of victimization at State-acceptable levels. The United States reinforces its ideology of White Supremacy and the erasure of violence against Indigenous peoples through asylum claims.

X. IMPLICATIONS

A. *Theoretical: Expanding CRT*

Immigration to the United States by Indigenous peoples calls attention to the intersection of settler colonialism and immigration. While settler colonialism launches a critique of the history and politics behind immigration and the creation of borders, there is still a need to interrogate these immigration policies as they constitute a real and significant limitation on the movement of Indigenous peoples. Combining LatCrit and TribalCrit was helpful in this analysis, but I suggest that there is a need for an additional branch of Critical Race Theory (CRT) that takes into account the position of Indigenous peoples outside of the United States and critically explores immigration policies and practices.¹⁷⁰ There is room for an exploration of the ways in which these transnational Indigenous communities build networks across countries despite settler colonial politics.¹⁷¹ The intersection of culture, language, and ethnicity in both their country of origin and in the United States also opens room for exploration of the community cultural wealth of such groups.¹⁷²

I also suggest that CRT as a framework is underexplored in Latin America and can provide a strong analytical framework to unpack the racialized experiences of marginalized groups, namely Indigenous peoples. It is important to note that scholars have utilized CRT beyond the

¹⁶⁹ See *supra* Parts V–VII.

¹⁷⁰ Daniel G. Solorzano & Tara J. Yosso, *Critical Race and LatCrit Theory and Method: Counter-Storytelling*, 14 *QUALITATIVE STUD EDUC.* 471, 489 (2001).

¹⁷¹ Boj Lopez, *supra* note 65, at 215.

¹⁷² See Tara J. Yosso, *Whose Culture Has Capital?: A Critical Race Theory Discussion of Community Cultural Wealth*, 8 *RACE, ETHNICITY & EDUC.* 69 (2006) (introducing the community cultural wealth concept).

United States.¹⁷³ CRT in Latin America has examined judging in relation to civil rights as well as in re-examining caste poetry of the 17th century.¹⁷⁴ However, there is no CRT scholarship in regards to Indigeneity and education. Recognizing the dangers of cultural imperialism in exporting theoretical frameworks generated in the United States to other parts of the world, I believe that CRT is applicable in Latin American countries.¹⁷⁵ Despite its origins in the struggle of African American peoples in the United States, CRT as a framework examines aspects of racism that transcend US borders.¹⁷⁶ I recommend CRT analyses which examine the permanence of racism, critiques of liberalism, whiteness as property, and interest-convergence in Latin American countries. These analyses would strengthen an understanding of how Discourses of Indigeneity are constrained by Latin American nation-states prior to US migration, providing for a more robust analysis of transnational racism through a settler colonial lens.

B. Revisiting Law and Responsibility through Settler Colonialism

An exploration of history through a settler colonial lens reveals genocidal behavior that Indigenous peoples have endured and survived for over six centuries.¹⁷⁷ An exploration of US immigration policies through this settler colonial lens, particularly in relation to Indigenous peoples migrating from Guatemala, demonstrates that standards for asylum serve as a settler colonial tool for maintaining the dominance of the United States.¹⁷⁸ Conditions for asylum constrain acceptable Discourses of Indigeneity and reflect a denial of US history and refusal to account for historical and contemporary violence on the part of the US

¹⁷³ See generally David Gillborn, *Education Policy as an Act of White Supremacy: Whiteness, Critical Race Theory and Education Reform*, 20 J. EDUC. POL'Y 485 (2005) (analyzing the UK's education policy through CRT); Fulvia Staiano, *Bringing Critical Race Theory to Europe: The Case of Immigrant Women*, 8 EUR. J. LEGAL STUD. 73 (2015) (analyzing the circumstances of immigrant women in Europe through CRT).

¹⁷⁴ See Tanya Kateri Hernandez, *Comparative Judging of Civil Rights: A Transnational Critical Race Theory Approach*, 63 LA. L. REV. 875, 878–81 (2002) (utilizing CRT to examine activist insecurity in Latin America); see generally Ruth Hill, *Between Black and White: A Critical Race Theory Approach to Caste Poetry in the Spanish New World*, 59 COMP. LITERATURE 269 (2007) (using CRT to discuss literature's effect on the Hispanic social hierarchy).

¹⁷⁵ Ben Pitcher, *Developing Transnational Race Theory: A Place for CRT?*, in ATLANTIC CROSSINGS: INTERNATIONAL DIALOGUES ON CRITICAL RACE THEORY 197, 203–04 (Kevin Hylton et al., eds., 2011).

¹⁷⁶ See DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992) (examining the history of racism in the United States through critical race theory).

¹⁷⁷ See *supra* Parts II, VI.

¹⁷⁸ *Id.*

government.¹⁷⁹ If we take seriously struggles for self-determination and nationhood by Indigenous nations, then immigration laws and policies need revision.

However, this means answering questions as to *how* this can be done. This leads to questions such as: If the United States redistributes land as a form of reparations and seeks to provide more Indigenous autonomy as well, should Indigenous nations constitute a foreign state? A domestic state? A territory? Though returning land to Indigenous peoples would be a form of justice given settler colonialism, what does this mean for immigration policies as a result? Should Indigenous peoples from Latin America continue to need a visa in order to migrate to the United States? How would the United States recognize Indigenous nations trapped within other settler colonial nation-states, such as Kí-chè or Kaqchikel peoples in Guatemala? How do Indigenous movements for self-determination and land reparations intersect with the global economic order and quotidian human suffering as a result of being born in a particular space or in being marginalized as Indigenous peoples? Does this involve expanding standards for asylum? Does this involve free movement across borders?

The analysis I have provided here of conditions for asylum reveal a denial of US settler colonial history and the tension in what it means to be a “foreign” Indigenous person before the eyes of the State.¹⁸⁰ However, there is a need to continue exploring the political and legal options available to Indigenous peoples that involve land reparations as well as a shift to the structure of global neoliberal capitalism so that reparations does not entail just a focus on permitting physical life but assuring a collective effort towards a higher quality of living.

XI. DECOLONIAL EFFORTS IN HYPERCOLONIAL INSTITUTIONS

As legal experts and educators engage in critical work, it is critical to understand our own positionality and our orientation towards the profession. In other words, we have to dedicate time to reflecting upon our theoretical orientation towards decolonial efforts within hypercolonial institutions such as Law and Education, and assure that our actions are guided by these decolonial theories. Whether one explicitly recognizes it or not, we all have a theory of our profession which guides our

¹⁷⁹ See *supra* Parts V, VI.

¹⁸⁰ See *supra* Parts VII–IX.

action.¹⁸¹ It is in our benefit and in the benefit of those we partner with that we dedicate time towards consistently defining and redefining what it means to engage in decolonial efforts within our professions.

I believe that many who work with immigrant communities do so because they want to make the world a better place. If we truly seek to partner with marginalized communities, then what does it look like to do this work? Is our service constrained to providing them the tools to access State resources through fighting for lawful status and providing a more equitable education? Does a component of our work involve more direct action towards changing dehumanizing standards the State establishes (such as asylum standards)? Does doing decolonial work mean that we cannot work in these hypercolonial institutions- like Law and Education- which have traditionally served as gatekeepers and tools of socialization for the State? Is there a way to reimagine our professions and engage in transforming them towards decolonial goals?

The questions are quite difficult to answer, which is understandable given that US history is incredibly dehumanizing and difficult to process. Ignoring the questions posed above and others like it do not make them go away, but instead make them more urgent so we do not passively consent to dehumanization. So, how does one engage in decolonial work upon violently occupied lands? I suggest making this a critical topic for self as well as group reflections on improving our own practices and our decolonial visions.

CONCLUSION

I have provided an analysis of immigration to the United States by Indigenous peoples from Guatemala. Borrowing from TribalCrit and LatCrit, I emphasized the role of settler colonialism and its impact on conditions for asylum. “Foreign” Indigenous peoples are expected to perform Indigeneity according to the State-permitted narratives that exculpate the US government from its responsibility to address violence against Indigenous peoples across the Western hemisphere. The Discourse of Indigeneity that the State expects conflicts with the lived experience of Indigenous peoples. The “foreign” Indigenous person is faced with the choice to tell their full experience s or to lie, and the State reserves the right to reject both the narrative of their experience and the lie as lacking in evidence. The State provides a lesson in the education

¹⁸¹ PAULO FREIRE, *THE POLITICS OF EDUCATION: CULTURE, POWER, AND LIBERATION* 3 (Donaldo Macedo trans., 1985).

of racial perception that neglects historical and contemporary violence and injustice against Indigenous peoples.

I propose three implications from the research. The first is using CRT frameworks in analyzing the experiences of marginalized peoples in Latin American nation-states. With regard to Indigenous peoples in Latin America, there is a need for a framework that accounts for their racialized experience in their country of origin as well as their experiences when migrating to the United States. The second implication is a call for the legal-political exploration of alternatives to US standards of asylum in relation to settler colonial history. The larger movement by Indigenous peoples for nationhood, self-determination, and land reparations needs to be juxtaposed against a flow of immigration often influenced by neoliberal economics. Addressing a settler colonial history as part of a struggle for collective liberation has to take into account global capitalism. The third and final implication was about reflecting deeply on what it means to engage in decolonial work within hypercolonial institutions. I propose constant reflection regarding what it means be in fields such as Law and Education in order to better inform our actions in relation to settler colonial practices of the past and present.

On the day that this manuscript is due for review, I will accompany one of my Indigenous students to one of their court cases. After writing this essay and making this critique of asylum claims, I know the student will pursue asylum as a means of staying in the United States. I know the State expects a particular Discourse of Indigeneity that may not be the one he can truthfully provide. I know that he may be faced with telling his full story or telling a partial lie. I know that the State can choose to accept his Discourse, or reject it as lacking in evidence. Knowing all of this, I am powerless to do anything about it myself. However, if we as a collective take seriously our responsibility to address settler colonialism, this could be different.