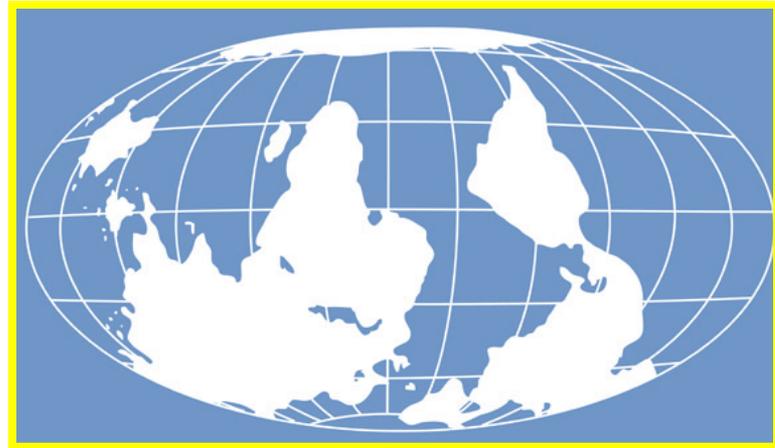


LatCrit

- theory
- community
- praxis



An Introduction to LatCrit

Tayyab Mahmud

LatCrit: the Big Tent

talking the talk AND walking the walk

- Who is at the Conference? What is the modus operandi ? Democratic or imperial?
 - Activists, artists, community leaders, scholars, students, teachers, and unions working with:
 - Asian-American Critical Legal Theory
 - ClassCrits
 - ConCrits
 - Critical Ethnic Studies
 - CLS (Critical Legal Studies)
 - CRT (Critical Race Theory)
 - Cultural Studies
 - Feminist Legal Theory
 - Law and Society
 - Queer Legal Theory
 - Postcolonial Theory
 - SALT (Society of American Law Teachers)
 - TWAIL (Third World Approaches to Int'l Law)
 - Did I miss somebody?

The story of LatCrit

- crafting and practicing theory
- developing community
- building coalitions for anti-subordination
- integrating generations and contexts
- signaling departures and directions
- demonstrating sustainability of praxis

LatCrit:

A Story of Continuities and Departures

- **Standing of others' shoulders**

- Evolution and growth

- Critiques and departures

- Hegelian cycles of thesis, antithesis, and synthesis

- - Ethic of acknowledgement

LatCrit:

Jurisprudential Roots and Precursors

- 1980s and new strands of outsider perspectives:
 - took legal realism seriously
 - used critical perspectives emerging in other disciplines
 - sought to inject missing voices in legal scholarship
 - asserted identity-based critiques of the law
 - were motivated by a desire for social change
 - confronted marginalization in the legal academy

REALISM:

Displacing internal with external critique of law

- *Context of emergence:*
- Economic, political, philosophical, and legal crisis
 - The Depression – Keynesian Regulation – New Deal
 - Pragmatism: William James and John Dewey
 - Empirical trend in science and philosophy
 - Abandonment of the search for metaphysical truth
 - Truth to be grounded in experience and social relations
 - *Lockner et. al.* , Court-Packing Plan & After.

“A thing is what it does.”

- Rejection of formalism (Langdellian focus on appellate opinions in search of internal coherence and consistency by the yard-stick of doctrine and principles of logic).
- Focus on the practical dimensions and purposes of the law.
- Law brought back to earth
- *“Before rules, were facts...Beyond rules, ... lie effects.”*
 - Llewellyn
- *“The actual life of the law has not been logic: it has been experience.”*
 - Holmes

Teachings of Realism

- Law is a social instrument
- Law is a means to ends
- Law is not separate from politics
- Judges are situated individuals
- Law is reliant for its existence, interpretation, and direction on social institutions
- Law is not and cannot be stable or static

Realism: Critique & Cooptation

- Naïve empiricism: Assumption that “real” only that which is uniformly available to the senses of the sovereign subject
- Law is political but designation of reality is not???
- Basic structure and direction of society is fine, problems only of a managerial nature ????
- Triumphalist, unidirectional, Eurocentric History????
- Modes of Cooptation: From realism as critique to realism as science
- - Law & Econ / Process Theories/ Law as Interpretation, etc.
- **We are all realists now !!!!**

Critical Legal Studies (CLS)

- Context of emergence:
1970s. ...anti-war, 1968, revolt of the youth, Watergate, Vietnam,
European social theory
- Foundational critique of capitalism and liberalism
- Comprehensive critique of the law often using non-legal methodologies and insights
- Claimed neutrality of the law masks its role in preserving structures and practices of domination and privilege
- Critique of legal education as reproduction of social hierarchy
- Law as ideology: how legal analysis and legal culture mystifies and legitimates its results
- Adopted the notion of praxis by attempting to bridge intellectual and political aspirations of its members

CLS - limitations

- Almost exclusively a white male affair
- Almost exclusively an elite school affair
- No attempt at coalition-building
- Star system
- Lack of sustainability
- Stars went into their own orbits or simply burned out

Feminist Legal Theory:

- From law is politics to law is gendered politics
- Masculine jurisprudence fails to acknowledge, let alone respond to, the values, fears, and harms experienced by women
- The personal is political- Experiential discourse to validate experiences of women
- Methods of story-telling and consciousness raising
- Unmasking masculine/ patriarchal jurisprudence
- Variations: Equal treatment ... difference... different voice ... dominance
- Internal critique: “Am I not a woman?” Race, class, and gender intersectionality

Critical Race Theory (CRT)

- Focus on the relationship between law and racial subordination in American society

- **Context 1980s:**
 - Politics of retrenchment and rollback.
 - Limitation of civil rights movement and legislations.
 - Schooling, housing, employment, integration

- **CRT critique of CLS:**
 - Race question marginalized.
 - Trashing rights and rule of law detrimental to racial minorities.
 - Non-acknowledgement of contributions of scholars of color.

CRT: productive departures

- Centrality of the race question. Critique of white supremacy /white privilege
- Racism is systemic /ordinary not exceptional/ aberrational
- Social construction: race product of contingent specificities; Constitutive function of law
- Intersectionality
- Microaggressions and subjectivities
- Limits of formal equality and color blindness
- Critical historical method
- Unique voice of color / story telling / consciousness raising

First generation CRT and new challenges:

- The race question – beyond the Black / White Binary
- The national question - national /international binary, national origin, and the permanent foreigner
- The culture question - languages / religions/ histories
- The sexuality question - sexual self-determination, and sexual orientation
- The community question – beyond hierarchy and star-system

Enter LatCrit:

Incipient big-tent for all out-crit legal studies and praxis

- Point of departure: anti-essentialism and multidimensionality
- Problem: How do you build a big-tent and coalition?
- Answer: Rotate center of attention to a dimension – and locate the bottom of the subordination ladder

■ Rotating Centers Shifting Bottoms

- **First Rotation:** Different positionality of Latina/o vis a vis white privilege in the law, work, culture, and the nation.
- **LatCrit theory** emerges from the need to center Latina/o identities, interests, and communities, and from the analytical and conceptual paths imprinted by CLS, Feminism, and CRT

CRT methodologies, stances, and emphases that remain integral to LatCrit

- Social construction of race - particularity and contingency
- Inter-sectionality
- Recognition of legal scholarship's inescapable relationship with power and politics
- Project of social justice and transformation
- The embrace of subjectivity

LatCrit:

Building CRT to meet New Challenges:

- Multi-dimensionality + inter-sectionality
- Rotating centers / shifting bottoms
- Institution building for sustained struggle
- Democratic process and modalities of inclusion
- Non-hierarchical ... no star-systems
- Community building and coalition building
- Performing theory
- Self-reflective: to critically theorize the purpose and mode of our theorizing
- Taking Queer Theory and Post-colonial Theory Seriously

LatCrit Meta-theory:

Left intervention into race discourse/ race intervention into left discourse



Four interrelated functions of theory:

1. Production of knowledge
2. Advancement of social transformation
3. Expansion and connections of anti-subordination struggles
4. Cultivation of community and coalition both within and beyond legal academia and the U.S.

LatCrit:

Guideposts

1. Recognizing and Accepting the Political Nature of Scholarship
2. Praxis.
3. Building Intra Latina/o and Inter-Group Coalitions
4. Finding Commonalities While Respecting Differences
5. Appreciating, Incorporating and Applying the Jurisprudential Past
6. Continual Engagement in Self-Critique
7. Specificity and Diversity

LatCrit: the bedrock positions

- Anti-essentialism
- Multi-dimensionality
- Inter-sectionality
- Anti-subordination
- Democratic production of knowledge
- Praxis and coalition-building
- Global justice

LatCrit:

mode of community building

- Openness and transparency
- Sustainable safe-space
- Democratic decision-making
- Rejection of hierarchy and star system
- Inclusive process of project building
- Practices targeted at sustainability
- Coalitions are always a work-in-progress
- “If everyone is comfortable, it is not a coalition”

Portfolio of Projects



LatCrit:

Big tent for OutCrit legal studies & praxis

□ Challenges Ahead:

- Demographic changes and immigration
- The “Great Recession” and the future of capitalism
- Ever-changing race, class, and gender intersections
- New modes of governmentality
- Continuing culture and religion wars
- Sexual self-determination and queer theory
- Empire out of the closet – imperialism and blowback
- Post-Fisher affirmative action
- Recalibration of coalition-building
- Globalization and its discontents
- The Global South – within and without
- Multi-disciplinarity / counter-disciplinarity
- Sustainability

LatCrit: the Big Tent

talking the talk AND walking the walk

- A look at the conference program; who is on the table
 - Asian Critical Legal Theory
 - ClassCrits
 - ConCrits
 - CLS
 - CRT
 - Feminist Legal Theory
 - Law and Society
 - Queer Legal Theory
 - Postcolonial Theory
 - SALT
 - TWAIL

Who's Nation, Who's Dream?

- *“We are witnessing how nations perish. We are entering upon the final act of our civilization. The last wave/war in the destruction of the nation. The penultimate scene, now well underway, is the invasion unrestricted.”*

Pat Buchanan , The State of Emergency: The Third World Conquest of America (2006)

- *“There is no Americano Dream. There is only an American dream created by Anglo Protestant society. Mexican American will share that dream and that society only if they dream in English.”*

Samuel Huntington , The Americano Dream, NYT, Feb. 24, 2004

The LatCrit dream:

anti-subordination for global justice

We will continue to dream in Arabic and Chinese and Tagalog and Spanish, and ..., even sign-language and will continue the struggle to rescue the American dream from the nightmare it often becomes for many

Join hands, and let's keep moving the project forward

Welcome to the LatCrit community

Welcome to the LatCrit family

LatCrit:

Towards global justice

in a world down-side up!

