

Foreword

*749 COUNTERING KULTURKAMPF POLITICS THROUGH CRITIQUE AND JUSTICE
PEDAGOGY

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I. Introduction

THE Ninth Annual Latina and Latino Critical Theory Conference (LatCrit IX) was held in Malvern, Pennsylvania between April 29 and May 1, 2004. This year's conference theme, Countering Kulturkampf Politics Through Critique and Justice Pedagogy, brought together a wide array of scholars, academics and activists from diverse backgrounds and disciplines to reflect on the current state of affairs. Like previous LatCrit gatherings, [\[FN1\]](#) this year's conference sought to create an interdisciplinary and multidimensional environment where the participants could critically address the effects of the traditional conservative and current neo-conservative legal and policy oriented initiatives that have focused on the "rollback" of the New Deal and Civil Rights legacies. This "rollback" has been especially evident in the Supreme Court's increasing restrictions and narrowing [\[FN2\]](#) of *750 individual rights in polemical areas such as abortion, [\[FN3\]](#) affirmative action, [\[FN4\]](#) the free exercise of religion, [\[FN5\]](#) the rights of criminal defendants, [\[FN6\]](#) work-place protections for immigrants [\[FN7\]](#) and bilingual education. [\[FN8\]](#) Participants were encouraged to offer reflections and engage in a dialogue regarding the effects of the use of Kulturkampf narratives on various aspects of both United States domestic and international law and policy.

The German notion of Kulturkampf or "culture wars" was originally adopted by Bismarck to describe his coercive policies against the Catholic clergy's efforts to control various domestic institutions during the 1870s. [\[FN9\]](#) At the time, local Catholic clerics, presumably under the control of the Vatican, a foreign force, sought ideological hegemony over government institutions such as public education. As Francisco Valdes expounds in this symposium's Afterword, while the notion of "cultural wars" has been present in the U.S. legal and political landscape for more than three decades, it would not be until the 1992 Republican National Convention when Patrick J. Buchanan coined the notion of "cultural war" to describe his bid for the "Soul of America." [\[FN10\]](#) It would not be until 1996, however, that Justice Antonin Scalia formally used the term Kulturkampf to describe his dissenting opinion in *Romer v. Evans*. [\[FN11\]](#) Ironically, while the original notion of Kulturkampf was adopted by Bismarck to describe his challenge to the efforts by non-state actors such as the Catholic Church to take control of governmental institutions, conservatives and neo-conservatives in the United States have invoked this term in an effort to undermine and "rollback" progressive and civil rights oriented law and policy. These conservatives *751 seek to carry on an agenda that employs a narrative of culture aimed at transforming the core democratic and egalitarian principles of the United States. More importantly, liberal efforts during the 1990s to accommodate conservative challenges by adopting a language of diversity, multiculturalism and tolerance enabled the creation of an ideological framework that not only validated competing conservative ideologies, but also empowered them.

This year's conference brought scholars and activists from diverse disciplines and interests to discuss ways in which scholars, educators, students and activists could share competing critiques of the ideological state apparatus [\[FN12\]](#) and further offer alternative perspectives on how to counter the impact of the Kulturkampf narrative. As noted above, the efforts by conservative and neo-conservative ideologues to redefine social, economic and political institutions threatens to undermine and ultimately dismantle the institutional gains achieved during various historical, social and political struggles by a wide array of progressive forces. For LatCrit scholars and activists, these initiatives represent a return to conditions under which various forms of subordination flourished without restraints, and the perpetuation of other forms of subordination and exploitation. The struggle over the foundations of the state apparatus is tantamount to a struggle for justice, democracy and equality for traditionally subordinated groups in both the United States and within the sphere of influence of this empire.

In recent years the debates over Kulturkampf were brought to the forefront in Supreme Court Justice Antonin Scalia's vicious dissents in *Romer v. Evans* and *Lawrence v. Texas*. [\[FN13\]](#) In both instances, Justice Scalia sought to frame challenges to state initiatives that had the effect of not only discriminating against gays, but in the case of Texas also criminalizing "homosexual conduct" as cultural wars. In Justice Scalia's cultural battlefield, the discrimination and criminalization of gay identity was reduced and represented as the discrimination and criminalization of historically and traditionally reprehensible conduct, which in turn should be fought in the political realm through "normal democratic means." [\[FN14\]](#) It is not hard to see how the notion of Kulturkampf has become a sort of code word invoked to dismiss some Fourteenth Amendment challenges to conservative laws and rulings that seek to erode some of the more important principles gained by progressive social struggles. What is ironic, however, is that while conservatives have traditionally invoked the need for the Courts to be neutral arbiters of disputes as a last resort and not to interfere with the democratic process, when it comes to addressing issues that challenge their ideologies, they are the first to become activists and to use the Courts to intercede on behalf of conservative interests. One way to explain this *752 double standard is by suggesting that conservative jurists and policy-makers are first and foremost conservatives, and then legal actors. This has become more complicated with the emergence of a neo-conservative administration that embraces market oriented policies, and the increasing political acquiescence of liberals.

My main contention is that conservative and neo-conservative ideologies are premised on anti-democratic and anti-egalitarian principles that, by definition, undermine the democratizing and egalitarian objectives of progressive and civil rights struggles. Moreover, while it is possible to trace continuities between conservative and neo-conservative currents, there are also some clear distinctions between both that need to be recognized. [\[FN15\]](#) These distinctions are important because they explain some of the nuances in the ways in which power has been exercised in order to enable increasing rollbacks on law and policy. Of course, the distinctions can also help us expose the "wolf in sheep's clothing" that lurks in the midst of conservative and neo-conservative concessions to the challenges posed by subordinated, oppressed and exploited subjects. These distinctions can also shed light on some of the inequalities of power, class and status harbored by liberalism and its agents. [\[FN16\]](#)

The conservative animus toward democracy can be readily traced to the aftermath of the French Revolution and more specifically to the anti-Jacobin writings of Edmund Burke, who denounced the French Revolution for, among other things, allowing a mob of subjects guided by their irrational passions to acquire political power. [\[FN17\]](#) Anglo-American conservatives like Russell Kirk who identify as the heirs of the Burkean tradition, have argued that democracy has a tendency for resolving social, economic and cultural questions by political means while subordinating religious and moral solutions.

[FN18] Kirk, the acknowledged godfather of U.S. conservatism, argued that democracy allows liberals and radicals to promote "the illimitable progress of society," while threatening to efface the natural distinctions among men from different classes and orders in society. [FN19] This argument has also been defended by so-called paleo-conservatives like Barry Goldwater. [FN20] Likewise, the intellectual father of neo-conservatives, *753 Leo Strauss, was deeply suspicious of democracy because it permitted "less wise" individuals to act on their tyrannical passions in the polity. [FN21]

Conservative narratives also tend to defend anti-egalitarian positions premised on a wide array of arguments. While most agree that equality can only occur in the eyes of God, and some may accept a minimalist or narrow conception of equality in the legal realm, the conservative narrative is generally premised on the reaffirmation of natural classes and castes. [FN22] Kirk was clear that cultural battles are dangerous and need to be fought by conservatives because:

In nature, obviously, men are unequal: unequal in mind, in body, in energies, in every material circumstance. The less civilized a society, and the more generally will and appetites prevail unchecked, the less equal is the position of individuals. Equality is the product of art, not of nature; and if social leveling is carried so far as to obliterate order and class, reducing a man to "glory in belonging to the Chequer No. 71," art will have been employed to deface God's design for man's real nature. [FN23]

Yet, while conservatives like Kirk were willing to accept some sort of equality in the courts of law, [FN24] others like Goldwater were honest enough to state that "[w]e are all equal in the eyes of God but we are equal in no other respect." [FN25] Furthermore, efforts to appeal to the law as an egalitarian institution in the face of various forms of social, economic, political oppression, subordination and marginalization were seen by Goldwater as "artificial devices for enforcing equality among unequal men (and) must be rejected if we would restore that charter and honor those laws." [FN26]

The ultimate premise of a conservative argument was a call for government non-intervention, at least when dealing with civil rights challenges. This anti-egalitarian ideology has translated into a rejection of the Fourteenth Amendment's Equal Protection Clause, and a host of other interpretations of the Constitution that seek to address the pervasive inequalities afflicting our polity, at least when convenient and when it does not entail selecting a neo-conservative president. [FN27] The clear implications of these ideologies are the efforts to return to a status quo where the polity *754 is guided and governed by the wisdom of white, Christian, heterosexual and property owning men.

In contrast, the neo-conservative term is much more complicated and escapes easy categorization. To be sure, while it is readily evident that neo-conservative ideologies have no qualms defending anti-democratic positions, despite the current administration's rhetoric, egalitarian principles are sometimes tolerated despite the underlying currents of a conservative natural rights ideology. In my opinion, what distinguishes the dominant neo-conservative narrative is a willingness to subordinate conservative principles, and for that matter all principles, to a market oriented ideology. Yet, this market oriented ideology, which has bathed in the currents of the neo-liberal economic wave, also departs from a more traditional New Deal/liberal willingness to use surplus resources gained in the markets for social programs, and makes these additional resources available for war and other imperialist pursuits. [FN28] In a sense, the neo-conservative narrative has been both navigating the currents of a tempestuous ocean, while also trying to channel its currents in ways that maximize profits. To this extent, it is possible to argue that the neo-conservative narrative has endorsed narrowly tailored notions of equal opportunity, often betraying conservative principles, so long as those notions are

profitable. The continuities and tensions between the conservative and neo-conservative ideologies can be readily discerned in at least two areas: namely, the relationship of natural rights to democratic participation and the relationship between narrowly tailored identities and the market.

Leo Strauss, like most conservative thinkers, affirmed the natural superiority of some men over others throughout his work. [\[FN29\]](#) While not all natural rights arguments are premised on the affirmation that natural distinctions among men will have an impact on their ability to participate in the polity, hence Abraham Lincoln's argument in speeches like "A House Divided," [\[FN30\]](#) Strauss' argument did affirm that most men were less capable of understanding political issues and could likely perpetuate various forms of tyranny, including democratic tyranny. [\[FN31\]](#) In the context of law, Justice Scalia's use of the notion of natural distinctions is readily evident in the language of his dissenting opinion in *Romer*, where he writes that:

The Colorado homosexuals; they can be favored for many reasons--for example, because they are senior citizens or members *755 of racial minorities. But it prohibits giving them favored status because of their homosexual conduct--that is, it prohibits favored status for homosexuality. [\[FN32\]](#)

As I will suggest throughout this Foreword, part of what is at stake in the use of a natural rights argument is the affirmation of an artificial duality that can counterpose an essentialist/biological conception of identity against an alternative form of identity that is tantamount to a narrow conception of culture, or more precisely conduct. The effect of the use of natural distinctions is to create a one-dimensional conception of subjectivity that excludes the multiple dimensions and intersectionality aspects of the subject's identity.

What is at stake in this argument is the preservation of the status quo, or rather, as Justice Scalia puts it, the "current social order." [\[FN33\]](#) Moreover, the Court should not interfere on behalf of subordinated subjects whose identity can be understood to be a form of conduct. It follows, that the de-criminalization of a homosexual identity should be pursued in the private realm where "every group has the right to persuade its fellow citizens that its view of such matters is best." [\[FN34\]](#) The problem with this argument is that conservatives and neo-conservatives alike are also quite clear that the majority of people are not able to reason and are generally guided by their passions. In other words, while conservative and neo-conservative arguments are clear that there are natural distinctions among citizens, and hence the masses should be prevented from demanding more democracy, they are also clear that various forms of discrimination against historically and traditionally subordinated subjects and groups should be resolved in an imagined public and democratic realm. Of course, reality is a bit more complex. My aim, however, is to clarify the tensions of this argument in order to expose the double standards inherent in conservative and neo-conservative sophistry. Conservative and neo-conservative narratives are also misleading and seek to reframe the terms of debate in ways that discourage democratic and egalitarian challenges emanating from historically and traditionally subordinated subjects and groups, hence the narrative of *Kulturkampf*, a narrative that recasts the debates in terms of a war between competing expressions of conduct.

Neo-conservatives also part company with traditional conservatives with regards to the role of the market, and more precisely the influence of profit in legal and policy decisions. Notions such as equality and justice are ultimately subordinated to what is best for the markets. What is right and what is just is determined by what is good for business. To be sure, in *Grutter v. Bolliger*, [\[FN35\]](#) Justice O'Connor had no qualms in defending certain forms of narrowly tailored race based affirmative action if these were

good *756 for the markets. In her words, "[t]hese benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints." [\[FN36\]](#) Ironically, this argument has the potential to undermine traditionally conservative positions because the markets, when they are not being manipulated by a corporation, tend to respond to consumption, not to morality. In addition, this argument readily forgoes the democratic process in the interest of encouraging profits and successful businesses in a competitive marketplace. Perhaps this is the space where neo-conservative and neo-liberal ideologies partner up.

The Kulturkampf narrative enables conservatives and neo-conservatives to recast issues of inequality, exploitation, marginalization and other forms of subordination as narrow cultural wars, or more precisely fits of spite. This Foreword suggests that this is accomplished by employing at least two narrative strategies, namely the use of mutually contested dualities, and the representation of identity as a narrow and/or one-dimensional contested site. The dualities in question rely on the creation of artificial distinctions between binary constructions such as essential/behavioral identities, the private/public, the social/economic, etcetera. Additionally, those identities deemed to be "cultural" become contested sites which are subject to narrowly tailored external definitions that seek to deny the multidimensional and intersectional complexities of a broader notion of identity.

The LatCrit initiative is part of a critical tradition of scholars who have been committed to exposing these and other double standards and contradictions, which in turn reproduce various modalities of multidimensional subordination, oppression and exploitation. LatCrit has been providing a critical and democratic institutional space to question, reflect and challenge these and other forms of subordination, while simultaneously creating an intellectual space/institution where legal scholars can explore alternative forms of resistance. This commitment has taken material form in conferences, workshops, courses, publications and a host of other projects that seek to influence the way in which legal actors and other activists contribute to the transformation of the society in the pursuit of more democratic and egalitarian principles of justice. This particular symposium explores how the "cultural wars" can offer an alternative space for critique and for transformation.

The internal contours of this year's conference have also been shaped by the loss of Professor Jerome McCristal Culp, Jr. Professor Culp taught at Duke University School of Law and was a founding member of LatCrit. He died due to complications associated with kidney failure on February 5, 2004. Professor Culp was not only a mentor, colleague and friend, but also an inspiration to LatCrit. He was not only a founding pillar to the *757 institution, but a guiding light for many Critical Race Theorists and LatCrit scholars and activists. This year's conference and symposium memorialize the influence and loss of Professor Culp.

Since its inception almost a decade ago, LatCrit has published its symposium in the sponsoring institutions' law journals. [\[FN37\]](#) The publication not only provides a historical record of the papers and articles presented in the annual meetings, but also contributes to LatCrit's building process. More importantly, the publication of the symposium contributes to the *758 widespread dialogue among scholars and activists alike. To be sure, the reader often is likely to find innovative, thought provoking articles and commentary in the long list of LatCrit publications. This year, LatCrit's articles will be published in two parts, and in two journals, the Villanova Law Review and the Seton Hall Law Review. [\[FN38\]](#) Each publication will contain an array of articles that are representative of the substantive discussions that took place during the annual conference.

II. LatCrit IX: A Call for Critique and Action

The five clusters in this symposium issue address various dimensions of the LatCrit movement. The first cluster celebrates and memorializes Jerome McCristal Culp, Jr. through a series of personal reflections about his influence in the formation of LatCrit and his influence on Critical Race Theory scholars and friends. These reflections demonstrate some of the ways in which LatCrit has provided a space where scholars' personal lives have become more political in public ways. The second cluster of articles represents a continuing dialogue between LatCrit, understood as a space for critical reflection and community activism. The third cluster of articles provides examples of pedagogical approaches that embody LatCrit principles. A fourth and related section addresses competing debates and critiques of methodological questions that LatCrit scholars and activists consider. The symposium concludes with a discussion about multiple dimensions of nationalism and internationalism. This latter cluster provides the reader with various discussions of relevance of LatCrit theory to national and international issues.

A. Tribute to Jerome McCristal Culp, Jr.

A testimonio is a process by which an individual who experiences an act of state sponsored oppression in his or her private life is driven to denounce it in the public sphere. [\[FN39\]](#) In many ways, the reflections on Jerome McCristal Culp, Jr.'s influence are testimonios of LatCrit scholars who were challenged in various ways to denounce various forms of oppression and subordination. All of the tributes to Professor Culp emphasize the strength of his convictions and the power of his influence. These are all captured by Angela P. Harris's introduction, which highlights the centrality **759* and love for Jerome M. Culp and those he loved. [\[FN40\]](#) All of these accounts contribute to the celebration of a central pillar in the institutional development of LatCrit. Among other things, Jerome McCristal Culp should be remembered as a guiding light in the continuous construction of a LatCrit movement.

Robert S. Chang's memorial provides a generational recognition of Professor Culp's presence and influence during his early years as a student at Duke Law School. [\[FN41\]](#) Professor Chang's essay documents Professor Culp's scholarship and contributions to Critical Race Theory and LatCrit. In addition, Adrienne D. Davis offers a picture of three dimensions of Professor Culp. [\[FN42\]](#) She describes his intellectual contributions and critiques in disciplines other than law. As Professor Davis notes, Professor Culp not only held a Ph.D. in economics, but he took on well-known law and economics pundits such as Judge Richard Posner. [\[FN43\]](#) Professor Davis also emphasizes Professor Culp's consistent contributions in the area of Critical Race Theory and the centrality of race to thoughts about politics and society. A third and final snapshot captures the humility and strength of Professor Culp that should serve as a beacon to future LatCrit scholars. [\[FN44\]](#) Scott Lee concludes this by emphasizing Professor Culp's strength, convictions and place in the development of Critical Race Theory and the LatCrit movement more generally. [\[FN45\]](#)

B. Community Organizing and Direct Activism

Historically, LatCrit meetings have provided an intellectual space where scholars and activists have been able to exchange ideas and strategies and discuss thoughts on community activism. LatCrit has provided a forum that welcomes and embraces community activists and scholars alike. More importantly, LatCrit forums have provided a safe space where activists and scholars can offer substantive critique, support, solidarity and reflection on community activism. This dialogical space has also led to the institutionalization of efforts to develop a transnational dialogue among scholars and activists and to create institutions that promote these relationships among members of

the legal profession and the community. Examples abound, but one could readily look at the curriculum of the Critical Global Classroom ("CGC"), the efforts to support the Community *760 Development Externship ("CDE") or the program schedule of most annual meetings. The dominant focus, however, has been on coalition building and praxis. To be sure, LatCrit participants have been continuously encouraged to reflect on ways in which they can contribute to community activism. [FN46]

As I suggested above, one of the key effects of the Kulturkampf narrative is to create an often artificial and exclusionary duality that reframes identities in either essentialist/biological or cultural/conduct terms. This conceptualization not only seeks to deny the multidimensional and intersectional complexities of subjects, [FN47] but also creates artificial distinctions between traditionally subordinated populations that contribute to the erosion of various forms of social, economic, legal and political solidarity. The ideological subordination of identity to these narrowly tailored classifications is especially problematic because it obscures the distinction between contingent forms of identity and homogeneous subjectivities. To be sure, the representation of identity as a one-dimensional homogeneous subjectivity further obscures ideological differences between subjects who may share membership in traditionally subordinated groups. Yet, more importantly, as the essays in this cluster and the symposium more generally point out, the internalization of these forms of subjectivity by traditionally subordinated subjects and groups can often lead to the reproduction of various forms exclusion, marginalization and oppression. [FN48] The essays in this cluster not only discuss some of the ways in which these forms of subjectivity reproduce various forms of subordination, but also offer us some suggestions to counter this narrative.

LatCrit scholars historically have addressed some of the challenges posed by a liberal approach to identity politics and have offered alternative perspectives that recognize the centrality of ideologies. [FN49] The debates *761 surrounding the nomination of the Bush administration's White House Counsel, Alberto Gonzalez, to the post of Attorney General for the United States Department of Justice (USDOJ) were representative of the challenges posed by the political positions that privilege narrowly constructed narratives of identity over ideology. Judge Gonzalez would be the first Latino to hold the position of Attorney General in the United States, and given the historical relationship between law and Latina/os, this appointment holds great symbolic value. Of course, Gonzalez, a confidant of a right-wing U.S. President who has publicly advocated for the creation of detention facilities and intelligence gathering practices that are in clear violation of international and United States constitutional principles of due process, justice and fairness, also embraces a right-wing ideology. Ironically, traditional Latina/o grassroots groups like the National Council on La Raza (NCLR), and other mainstream groups such as the League of United Latin American Citizens (LULAC), publicly endorsed Judge Gonzalez's nomination and were advocates for his appointment despite the fact that at the time, Judge Gonzalez's ideological positions endorsed arguments that created the conditions for the creation of civil rights groups in the first place.

One would think that the story of Judge Clarence Thomas and the effects of his legacy in the Supreme Court would provide sufficient evidence of the perils of privileging a narrowly constructed identity over ideology. More importantly, it is not readily evident that the benefits that Chicanas/os may accrue from gaining the ear of the President, may not in the long run undermine the collective gains of a social struggle for civil rights, which in turn may further undermine the status of Chicanas/os in other ways. Certainly groups like the National Latina/o Law Students Association (NLLSA) and the National Lawyer's Guild (NLG) have been clear in their opposition to Mr. Gonzalez's nomination. The polemic surrounding the endorsement by community organizations of Mr. Gonzalez and the challenges posed by professional associations is representative of the types of challenges in which LatCrit scholars have been engaging. LatCrit has provided an

intellectual space that allows critical dialogue between activists and scholars to explore the complexities of these identity ^{*762} debates. This year's conference, like others in the past, provided a "safe" environment where these tensions could be addressed. [\[FN50\]](#)

Victor Romero's essay addresses the question of collective responsibility and minority coalition building head on, and offers an alternative paradigm that privileges self-sacrifice and stewardship as guiding values for coalition building in anti-subordination struggles. [\[FN51\]](#) Drawing on Elizabeth M. Iglesia's work, he challenges the notion of class-based and racial forms of essentialism as guiding points in community activism. [\[FN52\]](#) Romero challenges the dominant model that privileges "self-interest," "partner accountability" and equal access to power by demonstrating some of the ways that these strategies have failed to produce the desired result, and in fact have led to opposite outcomes. [\[FN53\]](#) He writes that "this coalition paradigm would hold as its paramount objective the promotion of anti-subordination through self-sacrifice and stewardship." [\[FN54\]](#) Romero's goal is to encourage coalition building approaches that alleviate oppression in all forms and reduce the reproduction of multidimensional and intersectional forms of subordination.

By extension, drawing on Romero's argument, it is possible to suggest that LatCrit scholars and community activists interested in anti-subordination struggles should be willing to sacrifice their desires to see a Latina/o in the Attorney General's office, in order to promote a greater conception of the public good. To be sure, Romero's argument privileges the importance of alleviating the reproduction of oppression, even at the expense of identity politics. Stated differently, it is preferable to sacrifice some gains in the interest of reducing oppression for all.

In contrast, the essay by Anita Tijerina Revilla [\[FN55\]](#) offers a micro-history of the Raza Womyn student organization at the University of California, Los Angeles (UCLA), which emerged in response to sexism and homophobia experienced by various members of Movimiento Estudiantil Chicana y Chicano de Aztlán (MEChA). [\[FN56\]](#) This fascinating account traces the development of Raza Womyn within the context of a hostile environment that ^{*763} reproduced various forms of subordination. I am reminded of Margaret E. Montoya's reflections on similar dynamics occurring within the National Association of Chicano Studies (NACS) and the sexism that women members faced within this professional association. [\[FN57\]](#) This essay explores various ways in which a homogenizing conception of identity obscures various forms of subordination within a Latina/o narrative of identity. Tijerina Revilla's argument is especially important because, unlike essentialist/biological forms of subjectivity, ethnic identities are more contingent on kinship and other forms of contingent membership. Moreover, a Kulturkampf conception of conduct would clearly require that an ethnic conduct that is inconsistent with the norm should be subordinated in favor of assimilation to the dominant narrative, a historical and traditional form of Anglo-American national identity.

C. What Is an Ethic of Teaching?

LatCrit has been, by definition, an effort to create a critical and intellectual environment that can contribute to the education of faculty, students and non-academic participants. Virtually every annual conference and the resulting symposia have dedicated a space for the exchange of critical pedagogies and innovative teaching strategies. [\[FN58\]](#) This concern with a critical approach to the teaching of law in the social realm has been informed by a concern with equality, difference, justice and a host of other critical commitments embraced by participating members.

In recent years, the Kulturkampf narrative has been invoked to challenge ethical approaches to teaching in at least two ways: namely, in a call for more neutral academic institutions and as a rhetorical device to police the academy. In Romer, [\[FN59\]](#) and later in Lawrence, [\[FN60\]](#) Justice Scalia invoked the "cultural wars" narrative to criticize the

Association of American Law Schools' (AALS) Bylaws, which denounced homophobic practices. Ironically, Justice Scalia's dissent made a call for more neutrality in the legal academy as way to counter the influence of these institutions on the legal *764 profession. [FN61] As the ongoing litigation over the impact of the Solomon Amendment [FN62] readily reveals, the a call for neutrality in the face of discriminatory policies adopted by the U.S. military is tantamount to a betrayal of non-discriminatory educational objectives of the legal academy. [FN63] More importantly this call for neutrality has the clear effect of restricting the academic freedom of educational institutions and further encouraging the domestication of ethical consciousness among students. This is yet another example of the types of double-standards defended by conservatives. On the one hand, conservatives like Scalia demand that educational and legal institutions take a neutral stance with regard to state sponsored forms of discrimination and to seek to resolve these issues in the democratic arena, yet the very same state institutions are the ones being challenged by subordinated minorities.

The Kulturkampf narrative also has been invoked in efforts by right-wing ideologues to police the academy in ways that restrict the ability of scholars to engage in the critical reflection of social and political issues. Conservatives have employed two approaches to achieve this end. The first and most insidious is an outright effort to impose a nationalist conception of identity on college campuses through the public persecution of perceived un-American scholars [FN64] and research agendas. [FN65] This approach has been reinforced by a call for a new McCarthyism on liberals and educational institutions that contribute to the intellectual formation of liberals. [FN66] Like other conservative narratives these approaches are premised on the subordination, exclusion and marginalization of anti-American scholarship. This ideological approach ultimately constructs a Kulturation or narrow conception of a "cultural nation" that readily excludes any form of difference that challenges the status quo. An ethic of teaching demands that educators provide students with a wide array of intellectual resources that can enable students to understand social, political, legal--and in general the complexities of--relationships of power in any given discipline or subject of study.

*765 A second approach has employed the language of "intellectual diversity" as a justification for the creation of academic curricula that embraces conservative ideologies as legitimate narratives. [FN67] Ironically, while Horowitz claims to depart from traditional conservatism on a wide array of issues, including the condemnation of homosexuality, he appropriates liberal arguments to create a space where conservative ideologies can acquire equal standing regardless of the intellectual merits of these ideologies. [FN68] In other words, while "conservatives," or rather contrarians, like Horowitz--who can make intelligent critiques and challenge the dogmatism of ideological positions--would probably contribute to the creation of interesting polemical environments, the unfortunate reality is that the conservatives Horowitz is readily inviting to the table are not interested in intellectual debates. They are interested in the subordination of progressive and critical voices that challenge the status quo and invite the transformation of social, legal, economic and political institutions in more egalitarian ways. The essays in this cluster challenge these and other efforts to restrict intellectual freedom by embracing an ethic of teaching that privileges critical commitments to the polity, a more holistic approach to teaching that accommodates various strategies for learning and an ethic of caring.

Professor Antonia Darder provided the keynote speech for the LatCrit IX Annual Conference. The speech challenged those present to link the civil rights movement to "anti-imperialist struggles around the globe--that is, struggles to challenge capitalism through embracing a politics of class struggle and anti-racism." [FN69] Professor Darder's speech challenged LatCrit scholars and activists, or "citizens of the Empire," to challenge liberal educational policies and voice their dissent whenever possible. [FN70] More importantly, Darder's argument brings structural concerns over international capitalism to

the forefront. Although not stated directly, the language and content of her speech echoes Michael Hardt and Antonio Negri's arguments as articulated in their book entitled *Empire*. [\[FN71\]](#) Despite the often incisive and interesting critiques of imperialism and empire offered by Hardt and Negri, I think Alex Callinico's fundamental challenge ^{*766} to the amorphous notion of the "multitude" is critical to understanding how LatCrit scholars and activists can draw upon the insights of *Empire* to challenge current global forms of subordination. [\[FN72\]](#)

To be sure, LatCrit has consistently provided a forum where critical scholars and activists can organize and gather resources to counter various forms of local and global subordination. More importantly, LatCrit has consistently provided an institutional space that has enabled scholars and activists to secure resources to develop projects with commitments to progressive social change. Of course, as Nelson E. Soto contends, teachers still need to care about making critical interventions. [\[FN73\]](#)

While web-based pedagogy is not new, and by now some of the virtues and perils of this approach are well known, the process of organizing virtual classrooms can be daunting and difficult. Fran Ansley and Cathy Cochran provide a clear and concise guide for the development and management of a web based resource for law students. [\[FN74\]](#) Moreover, the article discusses various ways in which the site hosts/designers/managers can become empowered and create an innovative educational environment.

D. Methodology

Traditional conservative thought is, by definition, anti-intellectual. [\[FN75\]](#) The conservative argument has, by definition, focused on uncovering the sometimes hidden secrets in history, tradition, custom, religious texts and a host of other sources. While there may be various ways to uncover original and universal conservative truths, there is a common contempt for speculative and creative efforts to offer new sources of knowledge. More importantly, conservative narratives are for the most part guided by clear moral standards, and the method of discerning these is generally contingent on the outcome. More importantly, the conservative and neo-conservative narratives have been dominated by concern with nationalist narratives that subordinate intellectual pursuits to competing narratives of national security, interest and identity. In a sense, the Kulturkampf narrative has been premised on a Kulturturnung, or a national culture narrative that is self-referential in its definitions. The Kulturkampf narrative relies on creating artificial dualities that enable conservative ideologues to reframe the terms of debates in narrowly tailored categories that obscure the complexities ^{*767} of issues, identities and perhaps our ability to conceptualize society, and the polity more generally.

This appeal to patriotism, national interest and a national conception of culture has been used as a gauge to measure what constitutes legitimate research and a legitimate source of knowledge. Drawing on her training in the British School of cultural studies (the "Birmingham School"), Professor Imani Perry challenges this argument by suggesting that an unfamiliar perspective can help us gain new insights in the study of the relationship between race and law in the United States. [\[FN76\]](#) Professor Perry also asserts that the European/Birmingham tradition of cultural studies can "also provide useful means of interrogating norms that provide bases for the structure of power." [\[FN77\]](#) This appeal to a conception of popular culture as a legitimate source of knowledge validates critical perspectives from traditionally subordinated groups and enables connection to critical approaches to the study of power in a transnational realm. More importantly, this intellectual tradition has the potential to offer alternative perspectives that denounce the effects of historical and traditional conservative ideologies.

In contrast, Professor Mary Romero offers a powerful critique that draws upon C. Wright Mills's conception of the sociological imagination. [\[FN78\]](#) Professor Romero states that

she will "critique the propensity among LatCrits, and Outcrits, to be overly psychological in their analysis and use of various forms of story-telling." [\[FN79\]](#) The effect of this practice too often leads to psychological reductionism and an individual focus on issues that obscures and displaces structural change. This tendency, Professor Romero contends, can often lead to the reproduction of the conditions that create the need for progressive scholars. She concludes by offering three areas in which a sociological imagination can assist the LatCrit project, namely:

1. We need to draw less from our own stories and more from the inclusion of ethnographic research, which retains a structural analysis into the everyday lives of Latinas and Latinos[;]
2. We need to do what only the scholar can do--establish the connections between the micro level of personal narratives, the institutional structures and historical circumstances. We must identify patterns of subordination within which the individual story makes sense.
3. Similarly, we need to ground discourse analysis and popular culture studies in institutional structure, discussing ideology and hegemony. We must maintain focus on the connection between ideas and material existence. [\[FN80\]](#)

Professor Romero's critique provides an important reminder of how master narratives, including cultural narratives, can also reproduce various forms of subordination by neglect. To be sure, one of the dangers of the Kulturkampf narrative is the tendency of creating artificial dualities that seek to subordinate multidimensional identities to one-dimensional subjectivities, and simultaneously recast problems as cultural, or rather behavioral. The end result is that economic aspects of a problem are separated from social and political aspects of identity. Professor Romero's argument challenges "Outcrits" to avoid reproducing this Kulturkampf narrative and to refocus on the concrete material effects of subordination. [\[FN81\]](#)

E. Nationalism

The articles in this cluster engage three different dimensions of the relationship between the Kulturkampf narrative and the national imagery. They also expose three tensions and/or double standards inherent in the efforts to impose a new Pax Americana on the world within the context of the current war on terrorism. At the heart of this tension is a clash between the conservative rhetoric in favor of isolationism and a neo-conservative call for imperialism. [\[FN82\]](#) Some of the double standards inherent in this, and other tensions, can be discerned from the clash between a U.S. rhetoric of favoring the spread of democracy, while simultaneously rejecting national affirmations of sovereignty; the U.S. claim to favor "human dignity," [\[FN83\]](#) while simultaneously creating inhumane detention camps; [\[FN84\]](#) and the selective rejection of international law as a legitimate source of law in the United States despite the clear language of Article Six of the United States Constitution. [\[FN85\]](#) Unfortunately, the "culture wars" narrative*⁷⁶⁹ has been employed to obscure the material effects of these legal and policy initiatives.

The current neo-conservative foreign policy has been guided by efforts to promote cultural or regime change [\[FN86\]](#) throughout the U.S. sphere of influence in accordance with national interests. [\[FN87\]](#) Neo-conservatives have employed the Kulturkampf narrative to recast the complexities of global and international forces in narrow dualities that can be used to arbitrarily differentiate between friends and enemies, good and evil countries, the civilized and the uncivilized and a host of other one-dimensional dualities. [\[FN88\]](#) This narrowly tailored conception of the world not only obscures the complexities of international actors, but also undermines the possibility for democratic and egalitarian participation in multilateral arenas by privileging unilateral and bilateral relationships.

One of the key effects of this ideological representation of the world has been the rejection of independent affirmations of national identity by nations that may reject U.S. public policy. In a sense, the Kulturkampf narrative informing U.S. foreign policy has been premised on a standard of national identity or Kulturnation that is contingent on U.S. interests. Both Professors Maria Clara Dias and Angel Oquendo offer arguments for "progressive" forms of nationalism that counter the current neo-conservative narrative.

Dias argues that nationalists can embrace a human rights practice and develop national rights narratives that are consistent with human rights norms. [\[FN89\]](#) In addition, she argues that self-determination can provide co-nationals with the opportunity to develop progressive local norms that are just and consistent with international norms of justice. [\[FN90\]](#) She concludes by alluding to the experiences of Puerto Ricans, Palestinians, Kurds and others. Dias's article, however, defends the right of nations to assert a claim to define their own sovereignty independent of the national interests of other nations.

In contrast, Professor Angel Oquendo argues for a "pluralist model that declares that the state apparatus should value and actively promote the existence and co-existence of various national subgroups, without favoring any one of them." [\[FN91\]](#) Oquendo's article offers a post-national critique of the liberal and communitarian debates as a way to abandon the more subordinating forms of nationalism that dominate contemporary debates. [*770](#) Oquendo's argument also contributes to a longstanding debate within the LatCrit community. To be sure, longtime members of LatCrit Pedro A. Malavet [\[FN92\]](#) and Ediberto Román [\[FN93\]](#) have been engaging this issue since the inception of LatCrit almost a decade ago.

While Oquendo's argument is primarily concerned with the philosophical underpinnings of the relevant debates, and his examples in the United States tend to focus on the possibilities for ethnic and racial groups, it is possible to argue that the case of Puerto Rico provides practical strength to his proposal. Despite the imperial/colonial relationship between the United States and Puerto Rico, [\[FN94\]](#) it is possible to argue that the United States has tolerated various forms of Puerto Rican cultural and institutional nationalism without incident. For example, Puerto Rican Olympic teams regularly challenge the United States in the international arena as sovereign opponents. Oquendo's argument suggests that nations that have occupied and conquered smaller nations and groups can develop political arrangements that incorporate a plurality of nationalist interests from within. The problem, however, is that contemporary forms of nationalism are premised on the subordination of racial and ethnic minorities.

Despite the neo-conservative rhetoric regarding the commitment of the Bush administration to respecting the civil and human rights of U.S. citizens and persons detained during the course of the war on terrorism, this administration has not only adopted the use of "enemy" or "unlawful combatant" categorizations to indefinitely detain suspected individuals in military camps. [\[FN95\]](#) Yet despite the Bush administration's rhetoric about the importance of the rule of law and human dignity, it has consistently sought to deny basic due process rights to those detained in these insidious camps. From a historical perspective, detention camps like those created by the United States to fight the war on terrorism have relied on a narrative of emergency to justify the state's creation of spaces where the rule of law is absent and the subjects detained are left at the mercy of their [*771](#) guards. More precisely, legal philosophers like Carl Schmitt, and more recently intellectuals like Giorgio Agamben have used the notion of the "state of exception" to describe detention camps where the rule of law is absent and the detainees are left in a state of bare life, subject to the whims of their guards. [\[FN96\]](#) The Bush administration has invoked a historical Kulturkampf narrative that is premised on the notion that the constitution need not follow the flag to uncivilized places where the inhabitants are culturally inferior. In the context of the war on terrorism, this means that the Constitution need not protect uncivilized terrorists. Additionally, while it is readily

evident that the Bush administration has used a racial double standard against so-called enemy combatants that are U.S. citizens, evident in the disparate treatment of John Walker Lind, José Padilla and Yaser Hamdi, [\[FN97\]](#) not enough attention has been paid to the relationship between race and the juridical status of the detention camps in Guantánamo Bay, Cuba.

Gil Gott's article addresses the link between racial subordination, national security laws and the creation of detention camps after September 11, 2001 in the United States. [\[FN98\]](#) Drawing on current debates regarding the "state of exception," and a LatCrit approach to the study of nationalism, Professor Gott suggests that the Japanese internment precedent provides a common underpinning for the post-September 11 state security powers. Rather than appealing to a Nazi precedent, Professor Gott's argument suggests that the insidious U.S. practice of internment provides a more accurate picture of the current logic informing the U.S. national security ideology. Of course, once we accept that racial subordination is part of the equation, it is not difficult to continue to find other exceptions in the United States. More importantly, this argument challenges the claim that this war on terrorism is so different from other wars, that it requires exceptional policies, including policies that undermine basic due process principles.

Professor Gott's critique also raises important questions about the ideological foundations of the neo-conservative voices within the Bush administration. As Anne Norton and Nicholas Xenos have demonstrated, the *772 neo-conservative cadre of advisors to the Bush administration identify with a particular school of thought and tradition that identifies with the historical persecution of Jews. [\[FN99\]](#) As Hannah Arendt noted, some of the worse atrocities committed against Jews were legitimated on the grounds of racial supremacy and national security. [\[FN100\]](#) It is ironic, to say the least, that neo-conservatives of a Straussian orientation would permit this administration to endorse policies that reproduce racist and racialist national security ideologies.

Conservative and neo-conservative ideologues have invoked the Kulturkampf narrative to reject the influence of international law or norms on constitutional interpretation by arguing for the superiority of U.S. law over that of other countries. More importantly, this narrative represents international law as a collection of sovereign laws, while ignoring the hybrid and distinct character of international agreements. An example of these misrepresentations can be readily discerned from Justice Scalia's recent dissenting opinion in *Roper v. Simmons* [\[FN101\]](#) where he states:

More fundamentally, however, the basic premise of the Court's argument-- that American law should conform to the laws of the rest of the world--ought to be rejected out of hand. In fact the Court itself does not believe it. In many significant respects the laws of most other countries differ from our law--including not only such explicit provisions of our Constitution as the right to jury trial and grand jury indictment, but even many interpretations of the Constitution prescribed by this Court itself. [\[FN102\]](#)

Ironically, Justice Scalia, like many conservative ideologues, neglects to recognize the language of the Supremacy Clause in Article VI of the Constitution and its effect on interpretation. More importantly, this ideological narrative misrepresents international law as a conflict between the laws of the United States and that of other countries, while ignoring the distinctive character of international treaties and agreements. Stated differently, an international treaty, a convention or an agreement generally represents the influence of competing national laws and their constitutive influences. To this extent the international law has the potential to offer innovative, refreshing and creative laws, norms and interpretations that could enhance competing domestic or national legal systems.

***773** Berta Esperanza Hernández-Truyol offers an important and innovative argument for a global citizenship that is not held hostage to the will of the most powerful sovereign and that simultaneously challenges conservative efforts to reduce international law to a mere collection of national laws. [\[FN103\]](#) The main objective of her argument is to offer an alternative conception of citizenship "grounded on a human rights model [that] will strengthen personhood, [while] denationalizing states' claims on individuals' rights." [\[FN104\]](#) This argument also challenges the idea of dual nationalities [\[FN105\]](#) in that it provides for a more expansive, cosmopolitan and nuanced interpretation that challenges national conceptions of citizenship that may be contingent on the status of the sovereignty of the nations in question.

Hernández-Truyol's argument builds on some of her earlier LatCrit work, [\[FN106\]](#) and engages the abusive policies adopted by the United States under the excuse of the war on terrorism. Her argument is especially interesting because it posits a possible form of citizenship that could not only provide a more humane source of rights and protections, but could also contribute to erode the repressive state apparatus that continues to provide obstacles for the realization of a more humane global society. [\[FN107\]](#) Of course, the assumption is that this narrative of human rights and citizenship will also be self-critical and endeavor to address the ideological foundations of empire which are at the core of a human rights narrative. [\[FN108\]](#)

F. Law, Politics and Culture in an Age of Double Standards

Jerome McCristal Culp, Jr. had a reputation for leading an ethical life and committing himself to a life long struggle for social justice. The essays included in this symposium share an ethical conviction for social and political ***774** justice. More importantly, they affirm a continued conviction for democracy and equality in the face of a political environment that undermines these principles in the name of Kulturkampf and the war on terrorism. The LatCrit project aims to create an intellectual environment that not only nurtures critical and progressive exchanges, but also strives to create the conditions that will enable scholars and activists to engage in social, political, legal and economic change.

Kulturkampf narratives invoked by conservatives in the legal, as well as the political, realms have sought to narrow the categorization of traditionally subordinated identities in ways that enable the continuation of various forms of subordination, marginalization and outright oppression. As the essays in this symposium have consistently demonstrated, conservatives have capitalized on and exploited the liberal fragmentation of the subject, an ideology that creates artificial demarcations between the private and the public self, the social and the economic, race and culture and in general, the multiple dimensions of subjectivity. Conservatives' use of the notion of Kulturkampf enables them to strategically construct artificial dualities in order to recast the issues within a context that permits them to perpetuate their agenda. Stated differently, the Kulturkampf narrative creates the conditions that enable conservative ideologues to perpetuate desired hierarchies and inequalities.

One of the underlying threads among the essays in this symposium has been a cautionary warning to subordinated groups to become aware of the ways in which their collective self-defining narratives reproduce and perpetuate conservative ideologies. Most of the contributions to this symposium have explored the ways in which subordinating practices within communities with traditionally marginalized members ultimately prevents coalition building. More importantly, the reproduction of conservative narratives within subordinated populations forestalls the possibilities of organizing effective challenges to the anti-democratic and un-egalitarian forces shaping the contours of the ideological state apparatus. In response, most of the contributions included in this symposium argue for more encompassing and expansive conceptions of culture and identity. To be sure, the essays call for more complex legal and political conceptions of culture and identity

that consider multidimensional and intersectional aspects of subjectivity. In a sense, the articles are making a call for broader conceptions of culture, namely ones that accommodate the multidimensional character of subjects and groups, and that can accommodate contingent identities in ways that undermine conservative narratives of subjectivity and further challenge the rollbacks of conservative ideologues.

Footnotes:

[FNa1]. Assistant Professor, Politics Department, Ithaca College. Ph.D., University of Massachusetts at Amherst. This year's conference was made possible by the generous support of the Villanova University School of Law, the Villanova Law Review, Seton Hall University School of Law, University of Denver College of Law, University of Miami School of Law and the Center for Hispanic & Caribbean Legal Studies. The LatCrit IX Conference coordinators were Beth Lyon, Frank Rudy Cooper. I want to thank Audrey Sorokach, Beth Lyon and Frank Valdes for their patience and thoughts.

[FN1]. For a general introduction and overview of LatCrit projects and the organization's history, please refer to the LatCrit webpage at <http://personal.law.miami.edu/~fvaldes/latcrit/overview.html> (last visited May 10, 2005) or the LatCrit Informational CD.

[FN2]. For an alternative empirical assessment of the Burger Court, see Harold J. Spaeth, Burger Court Review of State Court Civil Liberties Decisions, in Elliot E. Slotnick, *Judicial Politics: Readings from Judicature* 599-605 (1992). For an alternative empirical assessment of the Rehnquist Court, see Christopher E. Smith & Thomas R. Hensley, *Assessing the Conservatism of the Rehnquist Court*, in Elliot E. Slotnick, *Judicial Politics: Readings from Judicature* 411-18 (2d ed. 1999).

[FN3]. See [Planned Parenthood v. Casey, 505 U.S. 833 \(1992\)](#) (allowing individual states to regulate but not ban abortion services); [Webster v. Reprod. Health Servs., 492 U.S. 490 \(1989\)](#).

[FN4]. See [Grutter v. Bollinger, 539 U.S. 306 \(2002\)](#) (holding that colleges may consider race as factor as part of narrowly tailored admissions process); [Gratz v. Bollinger, 539 U.S. 244 \(2002\)](#) (holding that Fourteenth Amendment is limited to protection of individuals and not groups prohibiting classifications based on race in most circumstances).

[FN5]. See [Employment Div. of Or. v. Smith, 494 U.S. 872 \(1990\)](#) (holding that valid government regulations take precedent over individual's religious practices).

[FN6]. See *Duckworth v. Eagan*, 495 U.S. 195 (1989) (police not required to give complete or precise Miranda warnings to suspects).

[FN7]. See [Hoffman Plastic Compounds v. NLRB, 535 U.S. 137 \(2002\)](#) (holding that undocumented workers are not entitled to back pay despite employer's engagement in unfair labor practices). For an expanded discussion of this immigration right, see María Pabón López, *Reflections Regarding the Education of Latino/a Undocumented Children: Plyler v. Doe and Beyond*, 35 Seton Hall L. Rev. (forthcoming 2005).

[FN8]. See generally Kevin R. Johnson & George Martínez, [Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education](#), 33 U.C. Davis L. Rev. 1227 (2000) (describing Supreme Court's role in investigating bilingual education).

[FN9]. See Eric Hobsbawm, *The Age of Empire, 1875-1914* 99 (1989).

[FN10]. Francisco Valdes, [Culture by Law: Backlash as Jurisprudence](#), 50 *Vill. L. Rev.* 1135 (2005).

[FN11]. [517 U.S. 620, 636 \(1996\)](#) (Scalia, J., dissenting).

[FN12]. See generally Louis Althusser, *Lenin & Philosophy & Other Essays* (2001).

[FN13]. [539 U.S. 558 \(2003\)](#). For a more thorough discussion, see Valdes, *supra* note 10.

[FN14]. [Romer, 517 U.S. at 636](#) (Scalia, J., dissenting).

[FN15]. For a discussion of these differences, see Patrick J. Buchanan, *Where the Right Went Wrong* (2004); Kenneth L. Deutsch & John A. Murley, *The Straussians and the American Regime* (1999); Shadia B. Drury, *Leo Strauss and the American Right* (1999); Anne Norton, *Leo Strauss and the Politics of American Empire* (2004).

[FN16]. See Antonio Y. Vázquez-Arroyo, *Agonized Liberalism: The Liberal Theory of William E. Connolly*, 127 *Radical Phil.* 8, 16 (2004).

[FN17]. See Edmund Burke, *Selected Works of Edmund Burke, Volume 2: Reflections on the Revolution in France* 223-231 (1999).

[FN18]. See Russell Kirk, *The Conservative Mind, From Burke to Elliot* 8 (7th rev. ed., 2001).

[FN19]. See *id.* at 8-9.

[FN20]. See Barry Goldwater, *The Conscience of a Conservative* 18-19 (1961).

[FN21]. See generally Leo Strauss, *What is Political Philosophy? And Other Essays* (1959). The reader may be required to engage in an esoteric reading between the lines of Strauss' argument in order to better grasp some otherwise obscure passages meant for the masses, or more correctly written in an exoteric style. For the best discussion of the Straussian suspicion of democracy, see Nicholas Xenos, *Leo Strauss and the Rhetoric of the War on Terror*, 3 *Logos* 2 (2004).

[FN22]. See Kirk, *supra* note 18, at 8.

[FN23]. *Id.* at 58-59.

[FN24]. See *id.* at 9.

[FN25]. Goldwater, *supra* note 20, at 64 (emphasis added).

[FN26]. *Id.*

[FN27]. See [Bush v. Gore, 531 U.S. 98 \(2000\)](#).

[FN28]. See generally David Harvey, *The New Imperialism* (2003) (discussing U.S. imperialism).

[FN29]. See generally Leo Strauss, *Natural Right and History* (1965).

[FN30]. See Roy P. Basler, *Abraham Lincoln: His Speeches and His Writings* 372-81 (2001). Ironically, while many Straussians and neo-conservative pay lip service to

Lincoln's conception of natural equality, they also affirm ideologies that perpetuate a wide variety of inequalities, such as the discrimination against gays, immigrants and the poor. See, e.g., Newt Gingrich, *Winning the Future, A 21st Century Contract with America* XV (2005).

[FN31]. See Leo Strauss, *On Tyranny* 42 (2000).

[FN32]. [Romer v. Evans, 517 U.S. 620, 644 \(1996\)](#) (Scalia, J., dissenting).

[FN33]. [Lawrence v. Texas, 539 U.S. 558, 591 \(2003\)](#) (Scalia, J., dissenting).

[FN34]. [Id. at 603](#) (Scalia, J., dissenting).

[FN35]. [539 U.S. 306 \(2003\)](#).

[FN36]. [Id. at 330](#) (O'Connor, J., concurring).

[FN37]. See [Symposium, City & the Citizen: Operations of Power, Strategies of Resistance, 52 Clev. St. L. Rev. 1 \(2005\)](#) (providing articles for LatCrit VIII focusing on importance of community building); Symposium, [Class in LatCrit: Theory and Praxis in a World of Economic Inequality, 78 Denv. U. L. Rev. 467 \(2001\)](#) (providing articles for LatCrit V focusing on issues of class, economic inequality and moving LatCrit theory and praxis into Latina/o communities); Symposium, Coalitional Theory and Praxis: Social Justice Movements and LatCrit Community, [13 La Raza L.J. 113 \(2002\)](#), [81 Or. L. Rev. 587 \(2002\)](#) (providing articles for LatCrit VII covering broad area of topics including social movements, political representation, communities of color and civil rights in aftermath of September 11, Puerto Rico, labor markets, transformation in Chile and experience of Latinas/os and other communities of color in legal academia); Symposium, Comparative Latinas/os: [Identity, Law and Policy in LatCrit Theory, 53 U. Miami L. Rev. 575 \(1999\)](#) (providing articles for LatCrit III discussing evolution of LatCrit substantive agendas, interactions on LatCrit community-building objectives and development of issues and fields of substantive inquiry not yet addressed in LatCrit theory); Symposium, Culture, Language, Sexuality and Law: [LatCrit Theory and the Construction of the Nation, 5 Mich. J. Race & L. 787 \(2000\)](#), [33 U. Mich. J.L. Reform 203 \(2000\)](#) (providing articles reflecting on nation and culture advancing goals of LatCrit); Symposium, Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory, [19 Chicano-Latino L. Rev. 1 \(1998\)](#) (providing articles for LatCrit II, examining issues at core of Latina/o identity including immigration, language rights, religion, sexuality and coalition efforts within Latina/o communities); Colloquium, [International Law, Human Rights and LatCrit Theory, 28 U. Miami Inter-Am. L. Rev. 177 \(1997\)](#) (providing articles from third gathering of LatCrit scholars and exploring major issues in international law and international human rights from critical race perspective linking those issues to LatCrit movement); Symposium, LatCrit: Latinas/os and the [Law, 85 Cal. L. Rev. 1087 \(1997\)](#), [10 La Raza L.J. 1 \(1998\)](#) (providing articles from first joint symposium on LatCrit theory concentrating on race, ethnicity and nationhood, policy, politics and praxis); Symposium, LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship, *2 Harv. Latino L. Rev. 1* (1997) (providing articles from LatCrit I that serve as introduction to purposes and goals of LatCrit); Symposium, Latinas/os and the Americas: Centering North-South Frameworks in [LatCrit Theory, 54 Rutgers L. Rev. 803 \(2002\)](#), [55 Fla. L. Rev. 1 \(2003\)](#) (providing articles for LatCrit VI encouraging critical analysis into North-South character of Latina/o transnationality); Colloquium, Representing [Latina/o Communities: Critical Race Theory and Practice, 9 La Raza L.J. 1 \(1996\)](#) (providing compilation of seven leading scholars in field of Latino and Latina Critical Race Theory and practice); Symposium, Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections, [33 U.C. Davis L. Rev. 751 \(2000\)](#) (providing articles for LatCrit IV seeking to reflect on differences of opinion and to make efforts to grapple with

complexities of issues facing Latina/os and other subordinate people in United States); Colloquium, Spain, The Americas and Latino/as: International and Comparative Law in Triangular Perspective, [9 U. Miami Int'l & Comp. L. Rev. 1 \(2000\)](#) (providing articles from First Annual LatCrit summer colloquium furthering goals of transatlantic dialogue and exploring implications of LatCrit theory from Spanish perspective).

[FN38]. The articles in the Seton Hall Law Review focus on three related areas. The first cluster of essays contains a series of papers that look at contemporary racial realities from multiple perspectives. These essays explore racial ideologies from different positions and with refreshing lenses. The second cluster engages the question of culture wars directly and collects various poignant critiques addressing the central theme of this year's conference. A final section collects various articles that engage traditional questions of immigration from a contemporary standpoint and in light of the recent debates over immigration law and policy in the United States.

[FN39]. See generally Rigoberta Menchú, I, Rigoberta Menchú, *An Indian Woman in Guatemala* (1984) (speaking out against gross injustice and exploitation that many Indian communities face in Latin America).

[FN40]. See generally Angela P. Harris, [Under Construction](#), *50 Vill. L. Rev.* 775 (2005).

[FN41]. See Robert S. Chang, [A Call from Jerome](#), *50 Vill. L. Rev.* 785 (2005) (discussing Culp's work in Critical Race Theory).

[FN42]. See generally Adrienne D. Davis, [Three Jeromes: A Tribute to Professor Jerome McCristal Culp, Jr.](#), *50 Vill. L. Rev.* 777 (2005) (describing Culp's contributions in law and other fields).

[FN43]. See id. at 777.

[FN44]. See id. at 778-79.

[FN45]. See generally Scott Lee, [Jerome's Wisdom](#), *50 Vill. L. Rev.* 791 (2005) (examining Culp's impact on Critical Race Theory and law).

[FN46]. See Francisco Valdes, [Under Construction: LatCrit Consciousness, Community, and Theory](#), *85 Cal. L. Rev.* 1087, 1090 (1997), *10 La Raza L. Rev.* 1, 4 (1998) (urging scholars to "continue to investigate the indefinite contours of Latino communities and LatCrit theory in the years to come"); see also Kevin R. Johnson & George A. Martínez, [Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship](#), *53 U. Miami L. Rev.* 1143, 1160 (1999) (urging consideration of "foundational scholarship analyzing issues of importance to the Chicana/o community").

[FN47]. See generally [Francisco Valdes, Introduction: Piercing Webs of Power: Identity, Resistance and Hope in LatCrit Theory and Praxis](#), *33 U.C. Davis L. Rev.* 897 (2000).

[FN48]. See Jacquelyn L. Bridgeman, *Defining Ourselves for Ourselves* 35 *Seton Hall L. Rev.* (forthcoming 2005); Aya Gruber, *Navigating Diverse Identities: Building Coalitions Through Redistribution of Academic Capital, an Exercise in Praxis*, 35 *Seton Hall L. Rev.* (forthcoming 2005); Carla D. Pratt, *Tribal Kulturkampf: The Role of Race Ideology in Constructing Native American Identity*, 35 *Seton Hall L. Rev.* (forthcoming 2005); Tayyab Mahmud, *Fractured Histories, Contingent Identities, and Political Engagement: South Asian Muslims in the United States*, 35 *Seton Hall L. Rev.* (forthcoming 2005).

[FN49]. See Roberto L. Corrada, [Familiar Connections: A Personal Re/View of Latino/a Identity, Gender, and Class Issues in the Context of the Labor Dispute Between Sprint](#)

[and La Conexión Familiar](#), 53 U. Miami L. Rev. 1065, 1068-88 (1999) (discussing identity conflict of Latina/os through dialogue between author and his student, both of whom are Latina/o); Adrienne D. Davis, Identity Notes Part II: Redeeming the Body Politic, 2 Harv. Latino L. Rev. 267, 275 (1997) ("If LatCrit Theory seeks to be a distinct body of legal scholarship, it must delimit its boundaries, and to expand the metaphor, in birthing itself, it must establish its genealogical tree."); Mary Romero, [Historicizing and Symbolizing a Racial Ethnic Identity: Lessons for Coalition Building with a Social Justice Agenda](#), 33 U.C. Davis L. Rev. 1599, 1605-06 (2000) ("Constructing the ground between negotiated commonalities and respected differences is key to building the extremely delicate path toward coalition and antisubordination praxis."); Francisco Valdes, Foreword-- [Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities](#), 9 La Raza L.J. 1, 24-37 (1996) (offering three possibilities to challenges of liberal approach to identity politics).

[FN50]. See generally Eric K. Yamamoto, Conflict and Complicity: Justice Among Communities of Color, 2 Harv. Latino L. Rev. 495 (1997) (examining tense mix of intergroup distrust).

[FN51]. See Victor Romero, [Rethinking Minority Coalition Building: Valuing Self-Sacrifice, Stewardship and Anti-Subordination](#), 50 Vill. L. Rev. 823-26 (2005) (supporting alternative methodology in anti-subordination challenges).

[FN52]. See Elizabeth M. Iglesias, Foreword: [International Law, Human Rights, and LatCrit Theory](#), 28 U. Miami Inter-Am. L. Rev. 177, 180 (1996-97) (asking whether or not particular experiences of oppression will inspire broader more inclusive community); Romero, supra note 51, at 823-24. (criticizing predominant method of activism as ineffective).

[FN53]. See Romero, supra note 51, at 824.

[FN54]. Id. at 826.

[FN55]. See generally Anita Tijerina Revilla, [Raza Womyn Mujerstoria](#), 50 Vill. L. Rev. 799 (2005).

[FN56]. See [id. at 800-01](#) (examining subordination effects in context of Raza Womyn student organization).

[FN57]. See Margaret E. Montoya, [Introduction: LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions](#), 53 U. Miami L. Rev. 1119 (1999) (using discussions of two Chicana scholars in order to consider dynamics of NACS).

[FN58]. See Robert S. Chang, "[Forget The Alamo](#)": Race Courses as a Struggle over History and Collective Memory, 13 La Raza L.J. 113, 115-17 (2002) (discussing lack of diversity among law school professors who teach critical race theory); John Hayakawa Török, The [Story of "Towards Asian American Jurisprudence" and Its Implications for Latinas/os in American Law Schools](#), 13 La Raza L.J. 271, 290-302 (2002) (presenting discussion of critical race theory, scholarly paradigms and movement organization structures); Francisco Valdes, [Barely at the Margins: Race and Ethnicity in Legal Education--A Curricular Study with LatCritical Commentary](#), 13 La Raza L.J. 119, 131-67 (2002) (analyzing status of LatCrit related courses throughout law schools of United States).

[FN59]. [Romer v. Evans](#), 517 U.S. 620, 652 (1996).

[FN60]. [Lawrence v. Texas, 539 U.S. 558, 602 \(2003\)](#).

[FN61]. See [id. at 602](#).

[FN62]. 140 Cong. Rec. H3861 (daily ed. May 23, 1994) (restricting federal funding to law schools that deny access to military recruiters to their campuses).

[FN63]. See Position Statement by Society of American Law Teachers, at <http://www.saltlaw.org/solomon.htm> (last visited May 10, 2005).

[FN64]. See, e.g., Campus Watch, Monitoring Middle East Students On Campus, Survey: Institutions, at <http://www.campus-watch.org/surveys.php/cat/Institutions> (listing numerous institutions that are members of "policing club") (last visited Feb. 1, 2005).

[FN65]. See International Studies in Education Act, H.R. 3077, 108th Cong. (2003) (restricting area studies funding to research that focuses on U.S. national security and interests).

[FN66]. See Ann Coulter, *Treason: Liberal Treachery from the Cold War to the War on Terrorism* (2003) (defending Senator Joseph McCarthy's persecution of communists and defending this practice today); Kate Sheppard, *Coulter's Hypocrisy Threatens Free Thought*, at <http://www.ithaca.edu/ithacan/articles/0502/24/opinion/2coulters.htm> (last visited May 10, 2005).

[FN67]. See, e.g., David Horowitz, *The Professors' Orwellian Case*, available at <http://www.studentsforacademicfreedom.org/archive/december/HorowitzAAUPResponse120503.htm> (claiming that American Association of University Professors are responsible for curtailing academic freedom) (last visited Feb. 1, 2005).

[FN68]. See David Horowitz, *Left Illusions, An Intellectual Odyssey* 231 (2003) (defining his own brand of conservatism as contrary to American left).

[FN69]. Antonia Darder, [Schooling and the Empire of Capital: Unleashing the Contradictions](#), 50 *Vill. L. Rev.* 847, 847 (2005).

[FN70]. See [id. at 857](#) (commenting on traditional civil rights study).

[FN71]. See generally Michael Hardt & Antonio Negri, *Empire* (2000) (discussing imposition of "empire" through globalization of capitalist production and exchange); Michael Hardt & Antonio Negri, *Multitude: War and Democracy in the Age of Empire* (2004) (discussing imposition of "empire" through globalization or capitalist production and exchange).

[FN72]. See Alex Callinicos, *Toni Negri in Perspective*, 92 *Int'l Socialism J.* P 69 (2001), available at <http://pubs.socialistreviewindex.org.uk/isj92/callinicos.htm> (suggesting that "nearly all of humanity is to some degree absorbed within or subordinated to the networks of capitalist exploitation").

[FN73]. See Nelson E. Soto, [Caring and Relationships: Developing a Pedagogy of Caring](#), 50 *Vill. L. Rev.* 859 (2005) (discussing how teachers can lessen stress of immigrant students when they first come to United States by caring for students).

[FN74]. See Fran Ansley & Cathy Cochran, [Going On-Line with Justice Pedagogy: Four Ways of Looking at a Web Site](#), 50 *Vill. L. Rev.* 875 (2005) (describing ways of creating and viewing web based resources for law students).

[FN75]. See Kirk, *supra* note 18, at 8-9.

[FN76]. See Imani Perry, [Cultural Studies, LatCrit and Methodological Harmony](#), 50 *Vill. L. Rev.* 915, 915 (2005) (discussing interrelationship between cultural studies and study of race and law).

[FN77]. *Id.* at 918.

[FN78]. See Mary Romero, [Revisiting Outcrits with a Sociological Imagination](#), 50 *Vill. L. Rev.* 925, 925-26 (2005) (describing Mills philosophy and applying it to LatCrit and Outcrit theory, criticizing other authors for relying too much on personal stories).

[FN79]. *Id.* at 925.

[FN80]. *Id.* at 937-38.

[FN81]. For an alternative perspective, see Martha T. McCluskey, *The Politics of Class in the "Nanny Wars": Where is Neoliberalism in the Kulturkampf?*, 35 *Seton Hall L. Rev.* (forthcoming 2005) (arguing that progressives can do more to reframe cultural debates so that economic equality no longer appears antithetical to cultural freedom).

[FN82]. It is clear that conservatives were not complaining about U.S. interventionism during the Cold War, including the destabilization of democratic regimes like those of Allende's Chile, and more recently Hugo Chavez' Venezuela.

[FN83]. See generally National Security Strategy of the United States, at 4, at <http://www.whitehouse.gov/nsc/nss.html> (last visited May 10, 2005).

[FN84]. See generally Mark Danner, *Torture and Truth, America Abu Gharib, and the War on Terror* (2004); Seymour M. Hersh, *Chain of Command, The Road from 9/11 to Abu Gharib* (2004).

[FN85]. [U.S. Const. art. VI, cl. 2](#) ("This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under authority of the United States, shall be the supreme law of the land") (emphasis added).

[FN86]. See Xenos, *supra* note 21, P 18.

[FN87]. See generally The Project for a New American Century, at <http://www.newamericancentury.org/> (last visited May 10, 2005).

[FN88]. See generally Buchanan, *supra* note 15 (explaining why world hates U.S. foreign policy).

[FN89]. See Maria Clara Dias, [Moral Dimensions of Nationalism](#), 50 *Vill. L. Rev.* 1063 (2005) (discussing nationalists adopting human rights policies that follow human rights norms).

[FN90]. See [id. at 1063-69](#) (self-determination is "craving, manifested by certain cultural communities, to establish their own form of political representation").

[FN91]. Angel R. Oquendo, [National Culture in Post-National Societies](#), 50 *Vill. L. Rev.* 963, 965 (2005).

[FN92]. See generally Pedro A. Malavet, *America's Colony: The Political and Cultural*

Conflict Between the United States and Puerto Rico 13, 100-16 (2004) (offering "a pluralistic communitarian proposal to reform the construction of citizenship in traditional liberalism in general and American constitutional liberal theory in particular").

[FN93]. See generally Ediberto Román, [Reparations and the Colonial Dilemma: The Insurmountable Hurdles and Yet Transformative Benefits](#), 13 *La Raza L.J.* 369 (2002) (discussing concept of reparations for Puerto Ricans).

[FN94]. See Manuel Rodriguez Orellana, [Vieques: The Past, Present, and Future of the Puerto Rico-U.S. Colonial Relationship](#), 13 *La Raza L.J.* 425, 426- 29 (2002) (describing history of United States' control over Puerto Rico).

[FN95]. See generally David Cole, *Enemy Aliens, Double Standards and Constitutional Freedoms in the War on Terrorism* (2003); Laura A. Dickinson, [Using Legal Process to Fight Terrorism: Detentions, Military Commissions, International Tribunals, and the Rule of Law](#), 75 *S. Cal. L. Rev.* 1407 (2002); Harold H. Kho, *Agora: Military Commissions: The Case Against Military Commissions*, 96 *Am. J. Int'l L.* 337 (2002).

[FN96]. See generally Giorgio Agamben, *State of Exception* (2005); Oren Gross, [The Normless and Exceptionless Exception: Carl Schmitt's Theory of Emergency Powers and the "Norm-Exception" Dichotomy](#), 21 *Cardozo L. Rev.* 1825 (2000) (discussing concept of "exception" through analysis of Carl Schmitt's works).

[FN97]. In the case of John Walker Lind, a white wealthy kid, the Bush administration quickly prosecuted him and sentenced him to twenty years in prison. In contrast, José Padilla, the so-called Puerto Rican Al Qaeda, continues to languish in a military facility without having been charged for more than two years, and Yaser Hamdi, also a U.S. citizen of Saudi heritage, was deported and stripped of his citizenship despite the fact that he was born in the United States. One only has to wonder when white U.S. citizens and convicted terrorists like Terry Nichols and John Walker Lind will be subject to the same standards.

[FN98]. See Gil Gott, [The Devil We Know: Racial Subordination and National Security Law](#), 50 *Vill. L. Rev.* 1073 (2005) (analyzing national security laws in wake of September 11, 2001 and its effect on racial subordination).

[FN99]. See Norton, *supra* note 15, at 181-200 (acknowledging presence and examples of neoconservatives in Bush administration); Xenos, *supra* note 21, PP 35-49 (discussing presence of "Straussians" and neoconservatives in Washington politics for many years, including in current administration).

[FN100]. See Hanna Arendt, *The Origins of Totalitarianism* 238-43 (1976) (discussing Schoenerer's and Hitler's philosophies that Jewish people were homogeneous group who presented threat to security and decisions to use propaganda to show inferiority).

[FN101]. [125 S. Ct. 1183 \(2005\)](#).

[FN102]. [Id. at 1226](#) (Scalia, J., dissenting).

[FN103]. See generally Berta Esperanza Hernández-Truyol, [Globalized Citizenship: Sovereignty, Security and Soul](#), 50 *Vill. L. Rev.* 1009 (2005).

[FN104]. [Id. at 1009](#).

[FN105]. See, e.g., Michael Jones-Correa, *Between Two Nations: The Political Predicament of Latinos in New York City* 151-68 (1998) (discussing reasons why some

countries grant dual citizenship to people who leave their native country to find work in United States).

[FN106]. See Berta E. Hernández-Truyol, Human Rights, Globalization, and Culture, in *Moral Imperialism: A Critical Anthology* 353, 358-60 (Berta E. Hernández-Truyol ed., 2002) (discussing current state of globalization and its impact on countries); Berta Esperanza Hernández-Truyol & Sharon Elizabeth Rush, [Culture, Nationhood, and the Human Rights Ideal](#), 5 *Mich. J. Race & L.* 817, 823-26 (2000) (discussing impact of globalization on critical theory).

[FN107]. See Iglesias, *supra* note 52, at 177 (providing background of barriers surrounding human rights); Celina Romany, [Claiming a Global Identity: Latino/a Critical Scholarship and International Human Rights](#), 28 *U. Miami Inter-Am. L. Rev.* 215, 216-21 (1997) (discussing importance and immediate need for human rights agenda).

[FN108]. See Anthony Padgen, Human Rights, Natural Rights, and Europe's Imperial Legacy, 31 *Pol. Theory* 171, 173-76 (2003) (describing modern notion of human rights as evolving from European countries struggle to justify their overseas empires).