

LatCrit VII: Coalitional Theory and Praxis: Social Justice Movements and
LatCrit Community
The Past, Present and Future of the Puerto Rico-U.S. Colonial Relationship:
Vieques, Transculturation, and Reparations

***387** REPARATIONS THEORY AND POSTCOLONIAL PUERTO RICO: SOME PRELIMINARY
THOUGHTS

Pedro A. Malavet [\[FNd1\]](#)

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Introduction: Why Are You Here?

"Home," for me, is Ponce, on the island of Puerto Rico, [\[FN1\]](#) a United States colony since 1898. [\[FN2\]](#) No matter how far away from it I may go, my personal, professional, and emotional travels always lead me back to Ponce. [\[FN3\]](#) Yet, I have made the ironic choice not to live in my country [\[FN4\]](#) while it suffers from colonial ***388** status. [\[FN5\]](#) I shun the concept of a United States citizenship that is legally second-class [\[FN6\]](#) and a Puerto Rican citizenship that lacks its own passport. [\[FN7\]](#) Therefore, I live in the "states" where I can better seek the benefits of my statutory United States citizenship. [\[FN8\]](#) But due in part to that statutory citizenship and the prevalent white racism in the United States, [\[FN9\]](#) I am "othered" [\[FN10\]](#) and thereby rendered socially second-class here.

***389** Unsympathetic and unapologetic imperialists might ask: "If the United States is a racist imperialist nation, why, then, are you here?" Generally speaking, an appropriate answer to the colonialist is: "Because you were there." [\[FN11\]](#) And, in the case of Puerto Rico it is more accurate to state: "Because you are there ." [\[FN12\]](#) I have chosen exile [\[FN13\]](#) partly because the estadounidenses (people of the United States) are in Puerto Rico, and their presence deprives the Puerto Ricans of independent legal citizenship and nationhood. Nevertheless, exile and my position as a member of the legal academy in the Estados Unidos de Norteamérica (United States of North America) offer me a unique opportunity to critique the legal and social constructs of Puerto Rican citizenship in the United States. [\[FN14\]](#)

The United States has continuously used Puerto Rico for various military and private economic purposes during the more than one hundred years of its second colonization. [\[FN15\]](#) Nevertheless, in spite of United States citizenship, and because of our social

construction as a single non-white race, [\[FN16\]](#) all Puerto Ricans (on the island *390 or in the United States "proper") are considered too inassimilable [\[FN17\]](#) to become fully "American." [\[FN18\]](#) Moreover, the Puerto Ricans in Puerto Rico, in spite of their United States citizenship, are deprived of full participation in the U.S. political process. The island Puerto Ricans lack a congressional delegation and are not allowed to vote in presidential elections. [\[FN19\]](#) This lack of political participation and power within the federal government--which I label a "democratic deficit"--leaves the residents of the island relegated to a political and economic underclass within the United States.

This article primarily focuses on the plight of the Puerto Ricans on the island because, in addition to their flawed social construction by the United States and lack of national political power, they are also legally constructed as second-class citizens. In defining the legal rights of Puerto Ricans, the U.S. Supreme Court has held that territorial citizens are entitled to fewer constitutional protections than U.S. citizens residing in any of the fifty states. [\[FN20\]](#) The racist and essentialist [\[FN21\]](#) social construction of the Puerto Ricans as inassimilable, the denial of legal rights by the *391 courts, along with the democratic deficit which deprives those Puerto Ricans presently living on the island of participation in national elections, constitute the obstacles to full participation within United States society or to the establishment of their own independent sovereignty.

This long history of marginalization has produced and continues to produce serious harms. The best solution is the development of a postcolonial political organization for the island. This article uses reparations theory to inform a transition to a postcolonial Puerto Rico.

There are three very different legitimate postcolonial alternatives for a relationship between Puerto Rico and the United States: (1) independence, (2) non-assimilationist statehood, and (3) a constitutional bilateral form of free association. [\[FN22\]](#) I choose to focus on all three decolonization alternatives rather than my own personal choice, independence. I do so because there is broad agreement among Puerto Ricans regarding the current status of Puerto Rico as colonial. [\[FN23\]](#) Yet the choice of a specific postcolonial solution from among the three listed above is a deeply divisive issue among Puerto Ricans. [\[FN24\]](#) I have accordingly chosen to study postcolonial organizations that fit within the three general postcolonial status alternatives advocated by political parties in Puerto Rico.

The economic implications of all three status alternatives involve expenditures by the colonial power, the United States, to compensate the colonized people, the Puerto Ricans. These payments are essential both for the construction of local political power for Puerto Ricans, and to create a viable Puerto Rican economy that supports real equal opportunity for puertorriqueñas y puertorriqueños, thus repairing the legacy of political, economic, and psychological colonization by the United States. These legal changes and payments can be characterized as reparations, as defined in contemporary critical jurisprudence. [\[FN25\]](#)

I was very happy to be invited to develop and present some preliminary thoughts about reparations scholarship as it relates to Puerto Ricans in the "Reparations Panel" at LatCrit VII. [\[FN26\]](#) This article memorializes my panel *392 presentation and develops some further thoughts on the subject, based on the discussion and research that followed the conference.

Part II of this article will explain how reparations discourse generally seeks to negate the effects of racism and essentialized racial construction by the normative (dominant) United States society. [\[FN27\]](#) The section engages the tensions between LatCrit and certain mostly African-American Critical Race Theory (CRT) scholars that led to the

creation of LatCrit and shaped it as an aggressively coalitional, welcoming form of outsider jurisprudence [\[FN28\]](#) in the critical tradition. [\[FN29\]](#) It will also discuss the purpose, importance, and qualifying factors of "centering" the Puerto Rican condition in reparations discourse. [\[FN30\]](#)

Part III of this article applies LatCrit theory [\[FN31\]](#) to construct the meaning and implications of reparations within recent Critical Race Theory [\[FN32\]](#) and more broadly in [*393](#) outsider jurisprudence. The article then uses the sophisticated analysis developed by the existing reparations scholarship, viewed through a LatCrit lens, to construct an initial inquiry into how reparations might inform the implementation of a postcolonial status that empowers the people of Puerto Rico. Part III concludes by explaining that the arguments developed in this article are expressly for the benefit of the Puerto Ricans presently living in Puerto Rico. For they are legally and socially marginalized to a higher extent than any other U.S. citizen, and even more than persons of Puerto Rican descent who reside in the "United States proper."

Finally, Part IV of this article, occasionally using the problems generated by the U.S. Navy's bombing of the Puerto Rican island of Vieques, applies LatCrit theory, informed by reparations scholarship, to begin developing a proper understanding of the Puerto Rico situation as it is relevant to the acquisition of independent legal and economic sovereignty, or national power within the United States, by the Puerto Ricans. [\[FN33\]](#)

I. Rotating Centers in the Reparations Discourse: The Sensitive Matter of Race

The normative culture in the United States socially constructs many different non-white races who are supposedly "naturally" inferior relative to [*394](#) whites. [\[FN34\]](#) In this context, the Puerto Ricans are just one of many groups who are the objects of racialization, [\[FN35\]](#) as are Latinas/os in general. [\[FN36\]](#)

Initially, one might argue that the construct of Latina/o as a racial category encompassing people of white, indigenous, and African heritage misses the point that Latinas and Latinos are not a race, but rather a cultural/ethnic group encompassing persons of many different races. [\[FN37\]](#) To put it more simply, phenotypically or anthropologically, some Latinas/os are white, black, indigenous, Asian, Arab, or of mixed heritage. On the other hand, many Latinas/os embrace the concept of a "sociedad o raza india, española y africana" (an Indian, Spanish, and African society or race). [\[FN38\]](#) But, of course, these shifting constructions of Latinidad (Latina/o-ness) only help to reinforce the LatCrit tenet that race is a social construct, [\[FN39\]](#) and as such varies according to who and how it is being defined. [\[FN40\]](#) Nevertheless, the racialization of Latinas/os as a single non-white race was constructed to justify and reinforce our marginalization within the United States.

It is important to note that the social construction of a Latina/o "race" is ultimately not primarily based on or motivated by ethnicity [\[FN41\]](#) and xenophobia, but [*395](#) rather by race and racism. This is not to suggest that ethnicity [\[FN42\]](#) and "foreignness" [\[FN43\]](#) are not a part of this construct, but rather to emphasize the phenomenon of the social construction of race(s). Latinas/os are racialized as a mixed, non-white race which, as in the case of African-Americans, results in our social marginalization. [\[FN44\]](#)

Developing consciousness about being the common victims of United States racism [\[FN45\]](#) has often produced more conflict than common ground internally among Latinas/os [\[FN46\]](#) and, as this section engages, between Latinas/os and other racialized groups, especially African-Americans. [\[FN47\]](#) Because reparations discourse has recently been strongly deployed by African-American scholars, the expansion of [*396](#) the

discourse to cover other racialized non-white groups must be undertaken with sensitivity to the claims articulated by other groups.

Accordingly, the Reparations Panel was described in the Substantive Program Outline for LatCrit VII as follows:

The term "reparations" has recently become synonymous with the struggle of African-Americans to obtain the payment of damages from governments that perpetrated the immoral crimes of slavery, especially from the government of the United States. While this panel will address this issue, it also seeks to expand the discourse to include the plight and efforts of all the victims of United States imperialism. . . . [T]he "Reparations Panel" will center a variety of progressive social movements within an expanded definition of reparations and within LatCrit theory and praxis. [\[FN48\]](#)

Like fellow LatCrit scholar Robert Westley--an expert on reparations for African-Americans [\[FN49\]](#)--I deploy a comparative study of reparations to set a moral, and sometimes legal, precedent for other claims of reparations. This is not intended to develop a "comparative victimology" which divides marginalized groups. [\[FN50\]](#) The movement in favor of the decolonization of Puerto Rico is simply one of many "progressive social movements" that seeks to undue the legacy of U.S. imperialism. However, looking at the problem of the Puerto Ricans in no way diminishes the claims to reparations articulated by other groups, [\[FN51\]](#) most especially those made by African-Americans. [\[FN52\]](#)

However, claiming the center in this charged discussion, [\[FN53\]](#) even if only temporarily, requires LatCritical sensibilities, particularly because defining **397* Blackness within LatCrit has occupied a great deal of our scholarly time. [\[FN54\]](#) After all, LatCrit was born, in part, out of a sense of exclusion(s) from the Critical Race Theory Workshop (the annual meeting of RaceCrits), which was at the time dominated by African-American scholars. [\[FN55\]](#) Additionally, the development of the Black/White Binary Paradigm of race critique by LatCrit scholars [\[FN56\]](#) was met with substantial discomfort, [\[FN57\]](#) and even some outright hostility, [\[FN58\]](#) among our African-**398* American fellow travelers. [\[FN59\]](#) Nevertheless, because of LatCrit's aggressive and often sensitive search for intersectionalities, and after strong debate, we have largely managed to reach common ground that allows us to rotate centers to focus on particular groups, without marginalizing other fellow outsiders. [\[FN60\]](#)

LatCrit is self-consciously coalitional (intersectional) and anti-essentialist. But LatCrit scholarship and its other interventions are also mature and sophisticated enough to manage to rotate centers, or, in the words of Athena Mutua, to "shift bottoms" to focus on different marginalized groups, [\[FN61\]](#) while avoiding essentialism. [\[FN62\]](#) The most important part of this process is to acknowledge diversity, and to avoid the dangerous homogenization of entire groups as well as the pitfalls of comparative victimology. [\[FN63\]](#)

**399* In this LatCrit coalitional spirit, the remainder of this article reviews existing reparations scholarship to inform a LatCrit solution to the lack of sovereignty and the general racialized marginalization of Puerto Ricans that has been imposed by U.S. imperialism, without prejudice to, and in the hope of affirmatively assisting any other legitimate claims therefor. [\[FN64\]](#)

II. Reparations Theory Through a LatCrit Lens

A. The Legislation-Litigation Paradox for Reparations

Reparations generally, and postcolonial reparations in particular as defined herein, will necessarily involve a legislative allocation of public resources. Additionally, reparations theory has gained momentum in recent years in large measure because of frustration with judicial decisions regarding racial discrimination and the affirmative action remedy. [\[FN65\]](#) But, as this section explains, judicial action might paradoxically be the only effective catalyst for postcolonial reparations in the Puerto Rico context.

The new reparations theory is mostly based on a pessimistic--albeit largely accurate--view of the willingness and ability of U.S. courts to fashion appropriate **400* remedies for enduring institutionalized racism. [\[FN66\]](#) People of color are seeing the legal requirements of civil rights protections, as defined and enforced by the courts, being continually eroded in this period of conservative backlash. [\[FN67\]](#) Accordingly, reparations theory seeks to advance, mostly through the legislative process which is not tightly bound by the requirements imposed on judicial remedies, and is therefore given greater leeway in action. [\[FN68\]](#)

Legislative reparations theory implies that the victims seeking compensation through reparations have the capacity to influence the political branches of government and that those institutions have the will to act on their behalf. [\[FN69\]](#) Colonial reparations are the responsibility of the federal government. Therefore, the pertinent branches of government are the elected legislators and the executive officials of the U.S. government. "Political" is used here rather narrowly to refer to the overtly political elections process of the members of the United States Congress, president, and vice president. In contrast, since federal judges are appointed, I do not include the judiciary among the "political" branches of government.

Voting for or against political candidates and lobbying elected officials can potentially produce positive results. But, unfortunately, these political venues and methods are largely closed to or ineffective for Puerto Ricans. History shows that the U.S. executive and legislative branches have consistently perpetrated the social and legal constructs of Puerto Rican subordination, with the courts giving them the power and discretion to do so. [\[FN70\]](#) More importantly, despite their U.S. citizenship, Puerto Ricans do not have a congressional delegation, just one non-voting representative in the U.S. Congress, [\[FN71\]](#) and are not allowed to vote in presidential elections. [\[FN72\]](#) This "democratic deficit" [\[FN73\]](#) in the U.S.-Puerto Rico relationship makes **401* any appeal to the political branches of government unlikely to succeed. [\[FN74\]](#) Therefore, a "political" solution to U.S. colonialism that involves either legislators or executive officials may not be possible in the context of the U.S.-Puerto Rico relationship without judicial intervention, at least as a catalyst.

In order to maintain its imperial authority, [\[FN75\]](#) the United States often purports that its territories possess the level of sovereignty that they desire. [\[FN76\]](#) Accordingly, the United States as colonial power shifts to the colonized people--the Puerto Ricans--all the legal and political burdens implicated in ending the colonial occupation. Corresponding legal burdens are imposed by judicial opinions that give the U.S. Congress almost unfettered authority to legislate in Puerto Rico, while discriminating against its citizens. This creates a presumption of legality for any status imposed by the United States on its territory (under U.S. law).

Political burdens imposed by the democratic deficit deprive Puerto Ricans of meaningful participation in the national political process. Puerto Ricans must bear the burden of pleading for a postcolonial status, the burden of production of arguments in favor of it, and the burden of proving that they are entitled to any remedy at all both in the courts and in the political arenas. The United States thus completely avoids the responsibility of justifying the imposition of continued colonialist occupation as legal or moral.

Because the political branches of the U.S. government insist upon the requirement that Puerto Ricans end their own colonial imprisonment, I remain convinced that--in the absence of an armed struggle [\[FN77\]](#)--only judicial action will in **402* fact force the political branches of the United States government to act to decolonize Puerto Rico. [\[FN78\]](#) Skepticism about this theory is natural. Frankly, the courts have so far not been helpful to Puerto Ricans in their search for sovereignty or equal rights under U.S. law. [\[FN79\]](#) In fact, some might argue that the courts are as political as any other branch of the U.S. government. But, because of the democratic deficit of the U.S.-Puerto Rico relationship which deprives the Puerto Ricans of direct participation in national legislative and presidential elections, the judiciary is the only branch of government where the Puerto Ricans might stand a small chance of obtaining a federal declaration that continued territorial status violates the U.S. Constitution.

The constitutional basis for the U.S. power over its territories, including Puerto Rico, is the "Territorial Clause" of the Constitution, which reads as follows:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any claims of the United States, or of any particular state. [\[FN80\]](#)

In the Insular Cases, resolved at the beginning of the twentieth century by the U.S. Supreme Court, the clause was interpreted to give to the federal government almost unfettered authority over the territories and territorial residents. [\[FN81\]](#)

My basic argument is simple: It is unconstitutional for the United States to remain a colonial power--a holder of territorial possessions under the U.S. Constitution--for a period of over one hundred years. In other words, there is a time limitation on the unfettered authority of the U.S. government pursuant to the territorial clause. [\[FN82\]](#) Even conceding that the government of the United States has the **403* power to acquire new lands by conquest, [\[FN83\]](#) the purpose of such land acquisition under the constitution must be to determine that territory's suitability for incorporation into the union, and "when the unfitness of particular territory for incorporation is demonstrated the occupation [must] terminate." [\[FN84\]](#) While the presumption of incorporation into the union, i.e., statehood, articulated in the Northwest Ordinance of 1787 [\[FN85\]](#) may no longer be in effect, [\[FN86\]](#) the requirement that territorial status be transitional should be.

Cuba and the Philippines are examples of territories occupied by the United States that eventually became independent. [\[FN87\]](#) Accordingly, there is precedent for territories becoming either states of the union or independent republics following the transitional territorial status. I argue that these precedents establish: (1) that statehood or independence are constitutional post-territorial status alternatives, and (2) that territorial status must be transitional and therefore temporary. Congress has the responsibility to make a determination about incorporating a territory into the union as a state or giving it sovereignty as an independent state (or a truly bilateral **404* free associated state). [\[FN88\]](#) Accordingly, because of Congress's failure to change Puerto Rico's colonial (territorial) status after a more than reasonable 100-year period following the occupation of the island and the first Insular Cases, it is now up to the U.S. courts to order the federal government to construct a non-territorial, constitutional status for the people of Puerto Rico.

Nevertheless, the actual implementation of a postcolonial future for mi isla (my island) will require legislative and executive actions that will be informed by the current scholarship regarding the problems of reparations. Reparations scholarship may assist in

designing a transition to sovereignty and empowerment for Puerto Ricans that gives them true political citizenship while allowing them to maintain a separate and distinct cultural citizenship. [\[FN89\]](#)

B. Constructing a LatCritical Meaning for Reparations

Reparations, as that term is used here, are a general remedy implemented through a judicial or legislative allocation of public resources (general tax and other government revenues) to create programs that will allow a previously marginalized group to acquire full economic, political, and social citizenship within the national polity, by repairing the harm(s) caused by the normative (dominant) legal/political culture. [\[FN90\]](#)

"The basis of the claim for reparations is not need, but entitlement. Need is not irrelevant, but it is by no means central to the claim. Reparations as a norm seek to redress government-sanctioned persecution and oppression of a group." [\[FN91\]](#) In the case of Puerto Ricans, the colonization of the island, and the legal definition of Puerto Rican citizenship as second-class, [\[FN92\]](#) mark the most obvious elements of **405* oppression. The social construction of the Puerto Ricans [\[FN93\]](#) as being inassimilable because they belong to a single, inferior, non-white race is both the basis for identifying the victimized group, and the harm caused to them by the United States.

It also is important to understand "reparations not as compensation, but as 'repair'--the restoration of broken relationships through justice." [\[FN94\]](#) Reparations allow marginalized groups to "position themselves as creditors seeking payment of an overdue debt, rather than as racial supplicants seeking an undeserved preference," thus countering the reactionary deconstruction of affirmative action through the myth of meritocracy. [\[FN95\]](#) Accordingly, modern reparations theory seeks to empower outsider groups

to coalesce as communities affirming real equality around development of a legal norm in the United States that mandates reparations to groups victimized by racism that is not group specific. Such a norm would apply to any group that could show the requisite degree of harm from racism, linked to an international standard of human rights, plus a reliable estimate of damages. [\[FN96\]](#)

Depending on the nature of the damages, reparations are not necessarily strictly monetary, as discussed below, [\[FN97\]](#) but they necessarily involve an allocation of governmental resources in one way or another. [\[FN98\]](#) As Westley indicates, reparations have to be a general remedy, paid by the government, as the principal perpetrator, using general taxpayer revenues, as spent by the legislature. In the case of Puerto Rico this may perhaps require a court order. To the extent that this entails monetary reparations, they should not take the form of individual payments, since that would be inconsistent with the group-vindication that is the basis of the claim. [\[FN99\]](#) Nevertheless, intra-group class differences must necessarily come into play when designing any economic remedy to resolve the problems of the marginalized. **406* Accordingly reparations should focus on "the poorest among us [who] should be compensated first and through meaningful (not symbolic) monetary transfers." [\[FN100\]](#)

C. Re/Creating Citizenship for Oppressed Groups Through Reparations

In framing its objectives and beneficiaries, reparations theory is conscious of the difference between legal and political citizenship, on the one hand, and cultural and social citizenship on the other. [\[FN101\]](#) By focusing on marginalized groups, reparations theory continues the group-centered communitarian [\[FN102\]](#) challenge to the traditional individual-focus of liberalism seen in the citizenship debates. [\[FN103\]](#)

In the citizenship debates, defenders of liberalism [\[FN104\]](#) favor the "toleration" model of the liberal state as a solution to the challenges of multiculturalism--diverse cultural identities and citizenships--within the modern state. [\[FN105\]](#) But communitarians ^{*407} counter by saying that since liberalism is not an inherently progressive political theory, [\[FN106\]](#) it requires a multicultural, critical lens to produce a form of citizenship that truly empowers cultural outsiders. [\[FN107\]](#) For example, Jürgen Habermas provides a coherent political theory that attempts to resolve the problems of outsider groups within the multicultural state. [\[FN108\]](#) Habermas argues that it is possible to respect multiculturalism in a modern democratic society. Individual and group cultural differences can exist, and the state can thrive, if the citizens exercise what he calls "constitutional patriotism," under which individuals are free to develop their own personal or group culture [\[FN109\]](#) as long as they share legal/political citizenship and a common political culture. [\[FN110\]](#)

In the context of Puerto Rico, and in most colonial situations, the concept of cultural nationhood or citizenship can be used to differentiate the colonized peoples from their colonial oppressors; [\[FN111\]](#) it can additionally be used as a source of empowerment, consciousness, and pride. [\[FN112\]](#) But, cultural exploration might also ^{*408} produce legitimate concerns over the dangers of nationalism [\[FN113\]](#) and cultural imperialism. [\[FN114\]](#) Accordingly, LatCrit theory must illuminate the proper balance between identifying cultural faultlines that require reform, and the imposition of cultural imperialism that seeks a homogenized normativity that only perpetuates the hegemony of the colonial power. This leads to a crucial question in the reparations debate: "Whether reparations are regressive in the sense that they entrench biological fictions of race." [\[FN115\]](#)

Westley cites Justice Bradley to illustrate the often unarticulated view of white Americans regarding African-Americans:

When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected. [\[FN116\]](#)

Paradoxically, eschewing its hetero-patriarchal components, this statement of the legal meaning of citizenship represents, in some ways, what Puerto Ricans aspire to, given that their citizenship is legally constructed as inferior to that of any citizen of the United States who does not reside in the territory of Puerto Rico. [\[FN117\]](#) Here, Westley is discussing the search for real citizenship for African-Americans within the United States. In so doing, he constructs a response to Justice Bradley that one can apply to the Puerto Rican's search for equal citizenship:

^{*409} As Justice Harlan expressed then in dissent, and we today may acknowledge, "[i]t is scarcely just to say that the colored race has been the special favorite of the laws[;]" and less than twenty years out from slavery, in event, did not mark the point in Black progress at which equality with whites no longer should have been a national concern. The maintenance of a system in which "any class of human beings" is kept "in practical subjection to another class, with power in the latter to dole out to the former just such privileges as they may choose to grant[,] marks Justice Bradley's statements as not only unreasonable, but also unjust. It is no less unreasonable and unjust today." [\[FN118\]](#)

Critical Race and LatCrit theorists have recognized that group or identity rights are often opposed by traditional liberals and modern reactionaries. [\[FN119\]](#) In the case of the Puerto Ricans, they are treated as a group for the purpose of constitutional deprivation of constitutional rights guaranteed to every U.S. citizen who resides in the "United States proper," [\[FN120\]](#) but not for purposes of an equal allocation of the public resources spent on "regular" U.S. citizens. [\[FN121\]](#)

As a result of the ongoing colonial experience, there are at least two substantial Puerto Rican communities [\[FN122\]](#) that interact with and are distinguished from estadounidenses (people of the United States): [\[FN123\]](#) Puerto Ricans in Puerto Rico, and Puerto Ricans in the "United States proper." In Puerto Rico, the terms that are used ^{*410} to distinguish the three groups of American citizens described above are gringa/o (used to refer to a non- Latina/o citizen of the United States), [\[FN124\]](#) niuyorican (although it specifically refers to New York City, it is used to refer to persons of Puerto Rican descent born anywhere in the United States), and isleña/o (used to refer to Puerto Ricans born on and presently living on the island). [\[FN125\]](#)

The group entitled to reparations in the U.S.-Puerto Rico postcolonial implementation should include all island-born Puerto Ricans who live on the island, the isleñas/os, as they constitute an identifiable cultural nation with a definable territory that is entitled to sovereignty. I am willing to allow mainland-born Puerto Ricans to migrate to Puerto Rico to become citizens, with probably a one-year residency requirement. Additionally, island-born Puerto Ricans who had left would likewise be allowed to return, if they so chose. I would also consider naturalization for any other U.S. citizen, native or naturalized, and for foreign citizens living in Puerto Rico. [\[FN126\]](#) But, absent a return to the island, I have purposely chosen to exclude those of us who reside in the "United States proper" because that migration from la isla to the "states" results in more legal and political rights, at least in theory, [\[FN127\]](#) than those enjoyed by the Puerto Ricans on the island. In any case, despite the realities of marginalization in the U.S. mainland, the truth is that the Puerto Ricans in Puerto Rico represent the "poorest among us" and are thus the group most entitled to reparations. [\[FN128\]](#) Moreover, their relationship to the land is legally determinative, since the sovereignty and political empowerment remedies advocated here apply to the territory of Puerto Rico.

III. Reparations, and the Politics of Colonial Citizenship

The traditional narrative about Puerto Rico in the United States posits that the Puerto Rican isleñas/os "have the best of both worlds" because "they" do not pay federal taxes and nonetheless get federal benefits. [\[FN129\]](#) But this narrative is initially misleading and ultimately completely false.

^{*411} On Sunday, September 13, 1999, the New York Times ran an article reporting on the release of Puerto Rican political prisoners that reflected the "best of both worlds" attitude. The last paragraph of that story read as follows:

As residents of a United States commonwealth, Puerto Ricans do not pay Federal taxes but receive \$11 billion annually in Federal aid. They are United States citizens but cannot vote for President. [\[FN130\]](#)

Initially, the statement, as drafted, is factually incorrect. Puerto Ricans do not pay federal income taxes, but they have to pay Social Security and FICA taxes on income earned in Puerto Rico. [\[FN131\]](#) Additionally, "[t]he local personal income tax in Puerto Rico is higher than in most states, including both federal and local contributions." [\[FN132\]](#) Finally, the narrative about taxation is quite misleading because, given the level of poverty in Puerto Rico, few of the island residents would be required to pay any

federal income tax at all and it would certainly not be a substantial source of income for the federal treasury. [\[FN133\]](#)

More importantly, the narrative is crafted to create a false impression that all Puerto Ricans live off the "generosity" of the United States. Puerto Rico is a United States territory, and Puerto Ricans are United States citizens. Therefore, the United States is simply fulfilling its obligations to citizens of the United States, not providing "aid." In fact, the U.S. citizens residing in Puerto Rico receive federal benefits at a rate lower than citizens residing in the continental United States and bear a disproportionately high level of local taxation. [\[FN134\]](#)

Moreover, I believe that in both private economic gain and the use of Puerto Rican land for military and other federally defined public purposes, [\[FN135\]](#) the island has produced substantial profit and economic service to the United States *412 during the more than 100 years of occupation. [\[FN136\]](#) For example, nine out of ten pharmaceuticals consumed in the United States are produced in Puerto Rico, by a U.S.-controlled \$27-billion industry. [\[FN137\]](#) In addition, the United States has substantial military bases in Puerto Rico, including its largest naval base and only remaining combined arms live-fire training site--Vieques island. [\[FN138\]](#) The government apparently wishes to continue to use them. [\[FN139\]](#)

Economic reparations would be designed to undo the damages caused by this colonial exploitation. But reparations are not simply economic, they can also be political and psychological. Puerto Rico is entitled to a construction of its sovereignty and the reconstruction of the citizenship of Puerto Ricans through constitutional legal reform. It is also entitled to a repair of the reputational damage done by the essentialized social construction of Puerto Ricans by the United States, and the emotional damage caused by the imperialist occupation of the island.

Accordingly, the types of reparations that would be relevant in the Puerto Rico-U.S. colonial context are, at least: (1) the construction of sovereignty; (2) the return of property and monetary compensation for the occupation; (3) information disclosure; and (4) apology. Each category will be briefly discussed below.

A. Citizenship Reparations: The Construction of Puerto Rican Sovereignty

Generally speaking, the politics of legal citizenship and status for Puerto Ricans can be divided into three categories, identified with the political parties on the island: (1) pro-statehood; (2) pro-commonwealth; and (3) pro-independence. [\[FN140\]](#) Those who favor statehood want Puerto Rico to become a state of the union, thereby giving its citizens full, permanent United States citizenship. [\[FN141\]](#) Those who favor the *413 current commonwealth likewise favor permanent United States legal citizenship, but under the free associated state/commonwealth relationship. [\[FN142\]](#) Finally, the pro-independence movement favors an end to U.S. citizenship and the creation of legal Puerto Rican citizenship that is recognized under international law. [\[FN143\]](#) Any of these categories requires basic institutional reform and has the potential to produce a legitimate postcolonial Puerto Rico. [\[FN144\]](#)

Eric Yamamoto provides an important warning about reparations and institutional reform:

[R]eparations by government or groups should be aimed at a restructuring of the institutions and relationships that gave rise to the underlying justice grievance. Otherwise, as a philosophical and practical matter, reparations cannot be

effective in addressing root problems of misuse of power, particularly in the maintenance of oppressive systemic structures, or integrated symbolically into a group's (or government's) moral foundation for responding to intergroup conflicts or for urging others to restructure oppressive relationships. This means that monetary reparations are important, but not simply as individual compensation. Money is important to facilitate the process of personal and community "repair" . . . [\[FN145\]](#)

Community repair for Puerto Ricans on the island means the construction of real political power for themselves and their territory. I have argued in other works that Puerto Ricans must be able to develop "shared identities" [\[FN146\]](#) within their own **414* community as political and cultural citizens of the Republic of Puerto Rico, or within the United States community, as political citizens of the United States who have their culture respected by the normative society. [\[FN147\]](#) To construct Puerto Ricans as cultural "citizens of the world," [\[FN148\]](#) or even of the United States, would constitute an imposed homogeneity. This argument implies that Puerto Rican nationalism may be deployed as a positive force, [\[FN149\]](#) as long as it is limited by a pluralistic communitarian consciousness. [\[FN150\]](#) In this context, Puerto Ricans should be able to choose to be Puerto Rican patriots. [\[FN151\]](#) Or, more generally, they should be able to choose a national affiliation to the independent Republic of Puerto Rico, to the Free Associated State of Puerto Rico, or to the U.S. State of Puerto Rico.

The keys to a future postcolonial legal relationship between Puerto Rico and the United States are the preservation of Puerto Rican cultural identity on the one hand, [\[FN152\]](#) and the grant of full political power to the Puerto Ricans on the other. Cultural preservation implies resistance to assimilation into an essentialized, normative U.S. culture. Political power implies that Puerto Ricans will have direct participation in the political processes of the relevant sovereign authority that **415* controls Puerto Rico. Under independence, that simply means a democratic Republic of Puerto Rico with universal suffrage. Under statehood it means the same level of participation given to any U.S. citizen living in a state: the power to elect a congressional delegation and to participate in presidential elections. Under commonwealth, the matter is not entirely clear, but I argue that it requires a type of sovereignty shared through free association that is equally binding on the United States and on Puerto Rico; in my view, this can only be accomplished through an amendment to the U.S. Constitution. [\[FN153\]](#) But the path to true empowerment for the Puerto Ricans must also include economic and land reform, as discussed in the next section.

B. Land and Monetary Reparations

History reveals that one of the estadounidense's interests in their defeat of the Spanish in the Spanish-American War was to acquire Puerto Rico's soil. [\[FN154\]](#) When President McKinley instructed the U.S. delegation that negotiated the Treaty of Paris, the only full territorial cession that the president ordered them to demand from the Spanish was that of the islands of Puerto Rico. [\[FN155\]](#) Since 1898, the United States has continuously used the island as a military outpost, [\[FN156\]](#) and appears **416* especially interested in continuing to do so now for military training and as a strategically crucial base of operations. [\[FN157\]](#)

Pentagon officials call the Puerto Rican island of Vieques the "only place its Atlantic fleet can hold simultaneous land, air and sea exercises using live fire." [\[FN158\]](#) The United States has 12,375 miles of coastline. [\[FN159\]](#) When President Clinton declared that United States coastlines had to be protected in 2000, [\[FN160\]](#) he apparently did not include all 311 [\[FN161\]](#) miles of coastline in Puerto Rico. [\[FN162\]](#) More importantly,

while Vieques is not geographically irreplaceable, it is most certainly politically irreplaceable. [\[FN163\]](#)

Notwithstanding the increased dependence on Puerto Rican soil for military bases and training, the United States has a long history of disregard for the health [\[FN164\]](#) and dignity of the Puerto Rican people. [\[FN165\]](#) Since the outset of United States colonization, it was evident that the United States' interest in conquering land [\[FN166\]](#) did not extend to accepting the colonized people as equals. The Treaty of Paris, through which Spain ceded Puerto Rico to the United States, unlike the Treaty of Guadalupe **417* Hidalgo, which ceded conquered Mexican territory, did not guarantee U.S. citizenship for the inhabitants of Puerto Rico. [\[FN167\]](#)

Reparations will have to include the return of the military lands to Puerto Ricans, as well as their environmental cleanup. [\[FN168\]](#) Moreover, the Puerto Rican economy will have to be made to work for Puerto Ricans, not just for U.S. taxpayers and investors. Currently, Puerto Ricans on the island have a mean per capita income of less than one-third of the national U.S. average. [\[FN169\]](#) Additionally, they have received only a fraction of the federal benefits to which any other U.S. citizens are entitled. [\[FN170\]](#) Reparations theory can well inform a resolution to these land and economic problems.

C. Psychological Reparations: The Cure of Information

Perhaps the biggest harm perpetrated by the United States against the people of Puerto Rico can be labeled "the crisis of self-confidence." This form of internalized oppression [\[FN171\]](#) that afflicts the people of Puerto Rico leads them to **418* conclude that they are incapable of self-government. Under this tragic construct, Puerto Ricans believe that they lack the economic power to succeed as an independent nation--that they lack the intellectual and moral capacity for government. [\[FN172\]](#) At the same time, Puerto Rico's cultural assertiveness was seen by the United States as political resistance that had to be stopped. In the process, independence was constructed as an unacceptable alternative to the United States, and a disaster for Puerto Ricans. [\[FN173\]](#) This resulted in a campaign of cultural [\[FN174\]](#) and political repression. [\[FN175\]](#)

The dominant narrative, as reinforced by the United States, carefully cultivates the view that the people of Puerto Rico, despite their U.S. citizenship, are too brown, too Latina/o, and too "foreign" [\[FN176\]](#)--too unassimilable--to be incorporated into the United States. [\[FN177\]](#) More recently, Puerto Ricans have been portrayed as "unpatriotic" and "ungrateful" in the public discourses over the release of Puerto Rican political prisoners, [\[FN178\]](#) and over the protests of the Navy's use of Vieques. [\[FN179\]](#) In addition to legally constructing Puerto Ricans as second-class citizens, the United States reinforces this devaluation of Puerto Rican dignity by using stereotyping narratives about Puerto Rican difference and "otherness" through a campaign of political repression.

From the Ponce Massacre in 1937, [\[FN180\]](#) where 17 civilians were killed by police while participating in a nationalist rally, to the murders of Santiago Mari-Pesquera, son of independence leader Juan Mari-Bras, [\[FN181\]](#) and two pro-independence **419* activists by police on the Cerro Maravilla [\[FN182\]](#) (and their official cover-up), [\[FN183\]](#) there has been a history of political violence directed at pro-independence forces in Puerto Rico. [\[FN184\]](#) The violence, the application of the Little Smith Act, [\[FN185\]](#) and the "subversive files" are the best examples of generalized anti-independence repression.

Persons were deemed to be "subversivos" (subversives) simply because they favored the independence of Puerto Rico. Accordingly, the term subversivo--in its correct meaning identifying legitimate political activists illegally targeted by government

misconduct--was thrust into the legal consciousness of all Puerto Ricans by the Puerto Rican Supreme Court decision in *Noriega-Rodriguez v. Hernandez-Colón*. [\[FN186\]](#) In that case, the Court held that the practice of opening police files to investigate persons solely on the basis of their political views and legal activities was unconstitutional. The Court ordered that the existing files be turned over to those persons on whom the files were kept. [\[FN187\]](#)

**420* The Puerto Rican Supreme Court's approach differed substantially from that of the U.S. Supreme Court, which did not find anything wrong with this kind of governmental political "data gathering." [\[FN188\]](#) Accordingly, U.S. intelligence agencies, some of which were not chartered for domestic investigations, were heavily involved in Puerto Rico. [\[FN189\]](#) The FBI, for example, dedicated most of its agents in Puerto Rico not to investigating bank robberies and other crimes, but to follow independentistas (independence supporters), and to attempt to sabotage the movement. [\[FN190\]](#)

Economic reparations are part of the solution to the crisis of self-confidence generated by the U.S. representation of the Puerto Ricans [\[FN191\]](#) and the acts of political repression briefly described above. But perhaps even more important than money is a full disclosure by the government of the United States of the benefits that it has derived from the century-old U.S.-Puerto Rico relationship, both in the private and public economies. This is essential in undoing the myth of Puerto Rico as a dependent U.S. welfare-state that only drains the U.S. economy.

Moreover, full disclosure of the political repression the United States has perpetrated and encouraged is also required, with specific mention of the anti-**421* independence violence and police-state tactics that target any political dissent that the United States chooses to label as "anti-American." The distinction between public enemy and political opponent is especially important in the post-September 11 United States. Once a full disclosure is made, the Puerto Ricans can be in a position to evaluate the adequateness of any other type of reparations, including apology. [\[FN192\]](#)

Conclusion

Puerto Rico's colonial relationship to the United States has lasted from the days of President William McKinley at the dawn of the twentieth century, to the post 9-11 days of the twenty-first-century administration of President George W. Bush. I find it utterly astonishing that this one-hundred-year-old colonial captivity endures. To the extent that the United States holds absolute legal/political power over the island and the people of Puerto Rico, the only explanation is that the colonialists are still invested in their colony; and post 9-11 conditions make them only more aggressive and intransigent in the exercise of that colonial power.

In contrast, the second century of the United States colony in Puerto Rico had started on a few hopeful notes. The year 2000, for me, was marked by the "Latin Music Craze," in which Latina/o artists (many of them Puerto Ricans), became the darlings of MTV and of U.S. mass media. [\[FN193\]](#) More importantly, during 2001, prior to the tragedies of September 11, the Puerto Ricans progressed from singing and dancing to exercising their legitimate right to political activism, in the collective U.S. mind. The protests over the use of Vieques as a training site for the U.S. Navy became the most common public image of the Puerto Ricans in U.S. mass media. This was a terrific example of using a new public visibility and consciousness to subvert existing power hegemonies.

But, unfortunately, the Vieques protests by the Puerto Ricans soon proved the limitations of having to work within a normative culture in which there are the legal and cultural "others" . As long as it remained entertaining, in a manner that estadounidense found

alluring, Puerto Rican visibility was acceptable. But as soon as the message became political, the backlash was quick to follow. Now, the finest moment in Puerto Rican patriotism [\[FN194\]](#) during the U.S. colony is being presented ^{*422} through the lens of U.S. politicians who feel free to misrepresent the status of the Puerto Ricans for their own political needs. [\[FN195\]](#)

Before September 11, 2001, I had allowed myself to become cautiously optimistic about the end of Puerto Rico's colonial status. After all, the interests appeared to be converging and U.S. uses of Puerto Rico seemed to be waning. [\[FN196\]](#) The army had announced the transfer of important military operations away from Puerto Rico, [\[FN197\]](#) and President George W. Bush had stated that he intended to close the Vieques training center in early 2003. [\[FN198\]](#)

But, thereafter, the Congress passed legislation prohibiting the closing of the training range, [\[FN199\]](#) and the Secretary of Defense has indicated that they intend to stay. [\[FN200\]](#) The public/military use of Puerto Rico will continue [\[FN201\]](#) and the private economic benefits derived by U.S. companies through their Puerto Rico operations still exist. Therefore, Puerto Rico continues to represent a net private profit and an essential site for public affairs for the U.S. imperialists. Puerto Rican independence is thus not acceptable to the United States. Moreover, the democratic deficit in the ^{*423} U.S.-Puerto Rico relationship leaves the Puerto Ricans politically powerless to protect their own interests. Despite U.S. citizenship and federal control of their island, Puerto Ricans are a racialized "other" unacceptable for full citizenship rights in the United States.

This sad state of affairs makes it even more important to develop coherent legal theories that might help to empower the marginalized, colonized Puerto Ricans. Reparations theory, as a guide for implementing a court-ordered decolonization of the island, may be one of the most powerful tools in the execution of LatCritical praxis [\[FN202\]](#) to end the occupation of mi Isla del Encanto, my Enchanted Isle of Puerto Rico.

Footnotes:

[\[FNd1\]](#). Associate Professor of Law, The University of Florida Fredric G. Levin College of Law; J.D., LL.M., Georgetown. I am grateful to my home institution for allowing me partially to use a Summer Research Grant and a sabbatical to work on this article. I would like to thank Professors Steven W. Bender and Keith Aoki for their work in LatCrit VII Symposium, Coalitional Theory and Praxis: Social Justice Movements and LatCrit Community and for encouraging me to participate in it.

[\[FN1\]](#). Puerto Rico is a group of islands. It is comprised of the main island, known as Puerto Rico, and a series of smaller islands, including, but not limited to, Vieques, Culebra, Mona, and Monito. See [48 U.S.C. § 731 \(1999\)](#). ("The provisions of this Act [\[48 USCS §§ 731 et seq.\]](#) shall apply to the island of Puerto Rico and to the adjacent islands belonging to the United States, and waters of those islands; and the name Puerto Rico as used in this Act shall be held to include not only the island of that name but all the adjacent islands as aforesaid."). Unless otherwise expressly indicated, references to the isla or island should be read as synonymous with all the Puerto Rican islands.

[\[FN2\]](#). Puerto Rico is ceded to the United States by article II of the "Treaty of Peace Between the United States of America and the Kingdom of Spain," which ended the Spanish-American War. See [1 P.R. Laws Ann. 16 \(1999\)](#); see also Race and Races: Cases and Resources for a Diverse America 327 (Juan Perea et al. eds., 2000) [hereinafter "Race and Races"], citing 11 Treaties and Other International Agreements of the United States of America 1776-1949, at 615-19 (Charles I. Bevans ed., 1974). The editors of the Puerto Rico collection changed the references to "Porto Rico" included in the original

English version to "Puerto Rico." See [1 P.R. Laws Ann. 17 \(1999\)](#).

[FN3]. I was in Ponce when I wrote the initial drafts of this article.

[FN4]. Puerto Rico, with a combination of a definable territory and an identifiable culture that is different from that of the colonial power (the United States), is a "cultural nation" that lacks sovereignty. See generally Pedro A. Malavet, [Puerto Rico: Cultural Nation, American Colony](#), 6 *Mich. J. Race & L.* 1 (2000). See also Mari Matsuda, [Voices of America: Accent, Antidiscrimination Law and Jurisprudence for the Last Reconstruction](#), 100 *Yale L.J.* 1329 (1991) (describing "Radical Pluralism," a constitutional right to cultural independence for U.S. citizens).

[FN5]. "Colony" is used in this article to refer to a polity with a definable territory that lacks legal/political sovereignty because that authority is being exercised by a peoples that are distinguishable from the inhabitants of the colony. See generally Malavet, *Cultural Nation*, supra note 4.

[FN6]. See [Balzac v. People of Porto Rico](#), 258 U.S. 298 (1922). The Supreme Court expressly indicates that as long as they choose to remain on the island, Puerto Ricans, who are United States citizens, will not enjoy the full rights of American citizenship. It thus distinguishes between Puerto Ricans as individual United States citizens, and as collective inhabitants of Puerto Rico. As individuals, they are free "to enjoy all political and other rights" granted U.S. citizens, if they "move into the United States proper." [Balzac](#), 258 U.S. at 311. But as long as they remain on the island, they cannot fully enjoy the rights of United States citizenship. See also Guadalupe T. Luna, [On the Complexities of Race: The Treaty of Guadalupe Hidalgo and Dred Scott v. Sandford](#), 53 *U. Miami L. Rev.* 691 (1999) (Dred Scott is arguably the first of the "Insular Cases" in that it creates the Imperial United States, with its inherent constructs of citizens and non-citizens within U.S. territorial control; Balzac then creates the categories of citizenship, based on larger or lesser entitlements to the enjoyment of constitutional rights.); Adrienne D. Davis, *Identity Notes Part II: Redeeming the Body Politic*, 2 *Harv. Latino L. Rev.* 267, 272-73 (1997) (detailing how Blacks were confined to second-class citizenship by U.S. Supreme Court opinions and "totalitarian violence").

[FN7]. Puerto Rican citizenship is not internationally recognized. Therefore Puerto Ricans, as U.S. citizens, travel abroad with United States passports. However, in an interesting, but sui generis case, the Puerto Rico Supreme Court held that Puerto Rican citizenship existed independently from United States citizenship, because of certain provisions of Puerto Rico law. [Ramírez de Ferrer v. Mari-Bras](#), 144 P.R. Dec. 141, 97 JTS 128 (1997). The opinion was issued on November 18, 1997, according to the published text. [Id.](#) at 141. However, the day before the opinion was issued, Puerto Rico law was amended to require both United States citizenship and Puerto Rico residency in order to be a citizen of the island. [1 P.R. Laws Ann. § 7](#) (as amended by sec. 1 of Law No. 132 of November 17, 1997); see also Pedro Malavet-Vega, *Introducción al Constitucionalismo Americano* 179 n.485 and accompanying text (1998) (unpublished manuscript, on file with author) (the footnote discusses the controversy that arose as a result of the rather curious timing of the amendment to the statute).

[FN8]. Article IX of the Treaty of Paris, which ended the Spanish-American War, provided, in pertinent part: "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." Treaty of Paris, Dec. 10, 1898, U.S.-Spain, art. IX, T.S. No. 343, in *Race and Races*, supra note 2, citing 11 *Treaties and Other International Agreements of the United States of America 1776-1949*, at 615-19 (Charles I. Bevans ed., 1974). In 1917, the Jones Act was approved by the U.S. Congress, and it designated Puerto Ricans as U.S. citizens. See *The Jones Act of 1917*, ch. 145, § 5, 39 Stat. 951, 953 (1917) (conferring U.S. citizenship

on all "citizens of Porto Rico [sic]"). The Jones Act adopted the definition of Puerto Rican citizenship included in the Foraker Act. See Foraker Act § 7, ch. 191, 31 Stat. 77, 79 (1900) ("That all inhabitants continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Puerto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Puerto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain on or before the eleventh day of April, nineteen hundred.").

[FN9]. See generally Joe R. Feagin & Hernán Vera, *White Racism* ix (1995) ("In the United States white racism is a centuries-old system intentionally designed to exclude Americans of color from full participation in the economy, polity and society.").

[FN10]. In general, as used herein, "Other" and being "othered" mean to be socially constructed as "not normative." See, e.g., Cathy J. Cohen, *Straight Gay Politics: The Limits of an Ethnic Model of Inclusion*, in *Ethnicity and Group Rights* 580 (Will Kymlicka & Ian Shapiro eds., 1997) ("Much of the material exclusion experienced by marginal groups is based on, or justified by, ideological processes that define these groups as 'other.' Thus, marginalization occurs, in part, when some observable characteristic or distinguishing behavior shared by a group of individuals is systematically used within the larger society to signal the inferior and subordinate status of the group.") citing Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (1963). However, I will also use the term "Other" as a relative term. See *infra* note 112 and accompanying text.

[FN11]. This response was articulated by Dinesh Khosla, a professor at CUNY Law School, during his intervention in the Reparations Panel at the Seventh Annual LatCrit Conference (LatCrit VII) in Portland, Oregon. See Program Schedule, LatCrit VII, available at <http://personal.law.miami.edu/~fvaldes/latcrit/lcviidocs/lcviiinvitation.htm> (last visited September 29, 2002) (identifying scheduled participants); see also Seventh Annual LatCrit Conference, Portland, Oregon, Plenary Panel II: Reparations, Redress and Remedies: Undoing the Legacy of Colonialism and Imperialism [hereinafter "Reparations Panel"], in Substantive Program Outline, available at <http://personal.law.miami.edu/~fvaldes/latcrit/lcviidocs/substantiveprogram.htm> (last visited September 23, 2002) (detailed program description).

[FN12]. The ongoing colonial relationship between Puerto Rico and the United States is discussed further below. See *infra* Parts IIIA and IIIB; see also Malavet, *Cultural Nation*, *supra* note 4 (a detailed analysis of the U.S.-Puerto Rico relationship).

[FN13]. I use the term "exile" advisedly. It is a political statement designed to underscore the colonial reality of the U.S.-Puerto Rico relationship and that will hopefully help to subvert it. It reflects the legal reality of the peoples of Puerto Rico who are deprived of sovereignty. See generally Malavet, *Cultural Nation*, *supra* note 4. It also refers to the cultural/social construction of foreignness for the Puerto Ricans in the United States, which I discuss further below. See *infra* note 176 and accompanying text; see also Pedro A. Malavet, *The Accidental Crit II: Culture and Looking Glass of Exile*, 78 *Denv. U. L. Rev.* 753 (2001) [hereinafter "Malavet, *Accidental Crit II*"] (describing the real and U.S.-manufactured social constructs of the Puerto Ricans).

[FN14]. See generally Malavet, *Accidental Crit II*, *supra* note 13, at 758- 63. While there is substantial scholarship in Puerto Rico regarding status issues and the social construction of Puerto Ricans by the United States, there is remarkably little of it in English-language legal scholarship. What little scholarship exists is listed here. See, e.g., Efrén Rivera-Ramos, *The Legal Construction of Identity: The Judicial and Social Legacy of American Colonialism in Puerto Rico* (2001); Ediberto Román, *The Alien-Citizen Paradox and Other Consequences of U.S.*

[Colonialism](#), 26 Fla. St. U. L. Rev. 1 n.146 (1998); José Trias-Monge, Puerto Rico: The Trials of the Oldest Colony in the World (1997); Puerto Rican Jam: Rethinking Colonialism and Nationalism (Frances Negrón-Muntaner & Ramón Grosfoguel eds., 1997); Ediberto Román, [Empire Forgotten: The United States's Colonization of Puerto Rico](#), 42 Vill. L. Rev. 1119, 1137-38 (1997) [hereinafter "Román, Empire Forgotten"]; Efrén Rivera-Ramos, The [Legal Construction of American Colonialism: The Insular Cases \(1901-1922\)](#), 65 Rev. Jur. U.P.R. 225 (1996); Juan R. Torruella, The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal (1988); Arturo Morales-Carrión, Puerto Rico: A Cultural and Political History (1983); José A. Cabranes, Citizenship and the American Empire (1979).

[FN15]. This is discussed in Part IIIB. The Spanish colony was the first colony and the U.S. colony is Puerto Rico's second colonial period or second colony. See generally Malavet, Cultural Nation, supra note 4, at 12-45 (a history of the first colony, the Spanish colony, and a description of the historical antecedents and legal consequences of the second colony).

[FN16]. This is discussed in Part IIC.

[FN17]. On the inassimilability of Puerto Ricans and Native Americans, see the discussion infra note 167 and accompanying text. See also the discussion of the racialization of Puerto Ricans infra Part I. On Latina/o assimilation in the United States generally, see Kevin R. Johnson, ["Melting Pot" or "Ring of Fire"?: Assimilation and the Mexican-American Experience](#), 85 Cal. L. Rev. 1259 (1997) (a poignant discussion of growing up Latina/o in California); George A. Martínez, Latinos, Assimilation and the Law: A Philosophical Perspective, Chicano-Latino L. Rev. 1 (1999) (drawing analogies between American demands of assimilation and insect biology and Star Trek's Borg characters).

[FN18]. See also the discussion of Balzac supra note 6 (the U.S. Supreme Court distinguishes between Puerto Rican U.S. citizens and "Americans"). Except on this one occasion, in this article, I will generally refer to the United States of America as such or as "United States" or simply "U.S." and to its citizens as United States/U.S. citizens or estadounidense, thus purposefully avoiding the imperialistic appropriation of the terms "America" and "American" to describe only one nation and its citizens. Berta Esperanza Hernández-Truyol explains the irony of using the term "American" to refer only to citizens of the United States of America:

I use the designation United States for the United States of America. Many, if not most or all of the other authors use the terms United States and America interchangeably. I decided not to alter the authors' choice of language in that regard. I do find it necessary to comment thereon, however, because I find it ironic that in a book on imperialism the imperialistic practice of denominating the United States as "America" remains normative. Indeed, America is much larger than the U.S. alone; there is also Canada [and Mexico] in North America, and all of Latin America and the Caribbean (some locations commonly referred to as Central America, some as South America).

Berta Esperanza Hernández-Truyol, Introduction, in Moral Imperialism: A Critical Anthology 15 n.5 (Berta Esperanza Hernández-Truyol ed., 2002).

[FN19]. This is discussed in Part IIA infra.

[FN20]. See supra note 6; see also the discussion in Part IIA.

[FN21]. "Essentialist" means motivated by essentialism. "Essentialism adopts the view that all members of a group are alike and share a common 'essence.'" Sumi K. Cho, Essential Politics, 2 Harv. Latino L. Rev. 433 n.1 and accompanying text (1997) [hereinafter "Cho, Essential Politics"] As it is used herein:
The concept of essentialism suggests that there is one legitimate, genuine universal voice

that speaks for all members of a group, thus assuming a monolithic experience for all within the particular group--be it women, blacks, latinas/os, Asians, etc. Feminists of color have been at the forefront of rejecting essentialist approaches because they effect erasures of the multidimensional nature of identities and, instead, collapse multiple differences into a singular homogenized experience.

Berta Esperanza Hernández Truyol, [Latindia II--Latinas/os, Natives, and Mestizajes--Latcrit Navigation of Nuevos Mundos, Nuevas Fronteras and Nuevas Teorías](#), 33 U.C. Davis L. Rev. 851, 862 n.27 (2000) (citations omitted). See also Feminist Legal Theory: Foundations 335 (D. Kelly Weisberg ed., 1993) (discussing gender essentialism); Angela P. Harris, [Race and Essentialism in Feminist Legal Theory](#), 42 Stan. L. Rev. 581, 588 (1990) (discussing gender and racial essentialism).

[FN22]. I have identified and discussed why these are the only legitimate alternatives in a previous article. See Malavet, Cultural Nation, supra note 4, at 96-102. I am currently working on a book that will develop a model for the future, postcolonial legal relationship between Puerto Rico and the United States in much greater detail. Pedro A. Malavet, Puerto Rico: Cultural Nation, American Colony (forthcoming NYU Press 2004). The basic remedial premises of the book are discussed infra notes 80-84 and accompanying text.

[FN23]. See, e.g., Trías-Monge, Oldest Colony, supra note 14, at 195-96 (an architect of the Commonwealth concludes that "statehood, independence, or enhanced Commonwealth each have the potential of" completing the "exasperating [ly] slow ... process of decolonizing Puerto Rico"); see also the publications cited supra note 14.

[FN24]. See generally Fernando Bayrón-Toro, Elecciones y Partidos Políticos de Puerto Rico (1989) (a comprehensive review of Puerto Rican political parties and general election results from 1809 to 1988).

[FN25]. See, e.g., Mari J. Matsuda, [Looking to the Bottom: Critical Legal Studies and Reparations](#), 22 Harv. C.R.-C.L. L. Rev. 323, 362 (1987) [hereinafter "Matsuda, Looking to the Bottom"].

[FN26]. This Symposium volume memorializing the proceedings of the Seventh Annual LatCrit Conference is the most recent installment in LatCrit scholarly discourse. There has been a symposium issue for each of the annual LatCrit conferences and several other important meetings. See generally LatCrit VI Symposium, Latinas/os and the Americas: Centering North-South Frameworks in LatCrit Theory, Fla. L. Rev. (forthcoming 2003); LatCrit V Symposium, [Class in LatCrit: Theory and Praxis in a World of Economic Inequality](#), 78 Denv. U. L. Rev. 467 (2001); LatCrit IV Symposium, Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections, 33 U.C. Davis L. Rev. 18 (2000); LatCrit III Symposium, Comparative Latinas/os: [Identity, Law and Policy in LatCrit Theory](#), 53 U. Miami L. Rev. 575 (1999); LatCrit II Symposium, Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory, 19 Chicano Latino L. Rev. 49 (1998); Miami Colloquium, [International Law, Human Rights and LatCrit Theory](#), 28 U. Miami Inter-Am. L. Rev. 177 (1997); LatCrit I Symposium, LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship, 2 Harv. Latino L. Rev. 1 (1997); Preliminary Puerto Rico Colloquium, Representing [Latina/o Communities: Critical Race Theory and Practice](#), 9 La Raza L.J. 1 (1996). See also Symposium, LatCrit Theory: Latinas/os and the [Law](#), 85 Cal. L. Rev. 1087 (1997), [10 La Raza L.J. 1 \(1998\)](#) (this was a "stand-alone" symposium, not directly connected to one of the LatCrit conferences or colloquia); The First Annual Latcrit Summer Colloquium: Spain, the Americas and Latino/as: International and Comparative Law in Triangular Perspective, 9 U. Miami Int'l & Comp. L. Rev. 152 (2000/2001).

[FN27]. "Normative" means the dominant societal paradigm, i.e., what is considered "normal" in a given sociological context. See Berta Esperanza Hernández-Truyol, [Borders](#)

[\(En\)gendered: Normativities, Latinas and a LatCrit Paradigm, 72 N.Y.U. L. Rev. 882 \(1997\)](#) ("knowledge is socially constructed," therefore, the "normative paradigm's dominance" defines "normal").

[FN28]. See Mari Matsuda, [Public Response to Racist Speech: Considering the Victim's Story, 87 Mich. L. Rev. 2320, 2323 \(1989\)](#) ("outsider jurisprudence" is scholarship produced by and focused on outsider perspectives, communities, and interests, i.e., going beyond the dominant group). Forms of outsider jurisprudence include Critical Race Theory, LatCrit, Asian-American Legal Theory, Critical Race Feminism, Feminist Legal Theory, and Queer Legal Theory. Francisco Valdés prefers the label "OutCrit" theory to describe a broad, but perhaps more coalitional and praxis-oriented, form of outsider legal scholarship. Francisco Valdés, [Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience--RaceCrits, QueerCrits and LatCrits, 53 Miami L. Rev. 1265, 1270 n.21 \(1999\)](#) [hereinafter "Valdés, OutCrit Theories"].

[FN29]. As Francisco Valdés explains: "LatCrit theory follows and in some ways stems from the historical experience with Critical Legal Studies, Feminist Legal theory, Critical Race theory, Critical Race Feminism and Queer legal theory." Francisco Valdés, [Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment, 2 Harv. Latino L. Rev. 1, 4-5 \(1997\)](#) [hereinafter "Valdés, Poised at the Cusp"]. Additionally, Critical Legal Studies (CLS) was the heir to American Legal Realism and the unwitting catalyst for Critical Race Theory (CRT). See generally American Legal Realism (William W. Fisher III et al. eds., 1993); Mark Kelman, [A Guide to Critical Legal Studies \(1987\)](#) (providing background of CLS); Symposium: [Critical Legal Studies, 36 Stan. L. Rev. 1 \(1984\)](#) (describing the movement and presenting examples of its scholarship); Cornel West, [Foreword, Critical Race Theory: The Key Writings that Formed the Movement xi, xxii-xxvii \(Kimberlé Crenshaw et al. eds., 1995\)](#) [hereinafter "The Key Writings"] (outlining background on initial relationship and eventual split of CLS and CRT).

[FN30]. "The 'center' idea encompasses struggles about which issue, group and idea should be the focus of attention in a given space, research project, conference, etc." Athena D. Mutua, [Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm, 53 Miami L. Rev. 1177 n.1 \(1999\)](#), citing Trina Grillo & Stephanie M. Wildman, [Obscuring the Importance of Race: The Implications of Making Comparisons Between Racism and Sexism \(and Other-Isms\), 1991 Duke L.J. 397, 402 \(1991\)](#) (Mutua explains that these authors describe "the process whereby whites, in workshops designed to discuss racial issues, re-center the discussion around themselves and issues of primary concern to them, in this context, sexism.").

[FN31]. Francisco Valdés, one of the founders of this movement, explains: LatCrit theory is [a] discourse that responds primarily to the long historical presence and general sociolegal invisibility of Latinas/os in the lands now known as the United States. As with other traditionally subordinated communities within this country, the combination of longstanding occupancy and persistent marginality fueled an increasing sense of frustration among contemporary Latina/o legal scholars, some of whom already identified with Critical Race Theory (CRT) and participated in its gatherings. Like other genres of critical legal scholarship, LatCrit literature tends to reflect the conditions of its production as well as the conditioning of its early and vocal adherents. Francisco Valdés, [Theorizing "OutCrit" Theories: Comparative Antisubordination Experience and Subordination Vision as Jurisprudential Method, in Critical Race Theory: Histories, Crossroads, Directions \(forthcoming Yale University Press\)](#) (citations omitted), available at <http://personal.law.miami.edu/~fvaldes/latcrit/overview.html> (last visited June 6, 2002).

[FN32]. While definitions are often dangerous, if not impossible--see Francisco Valdés,

[Under Construction: LatCrit Consciousness, Community, and Theory](#), 85 Cal. L. Rev. 1087 n.2 (1997), 10 La Raza L.J. 3 n.2 (1998) (noting that defining LatCrit is difficult)--I like this one:

Critical Race Theory is the most exciting development in contemporary legal studies. This comprehensive movement in thought and life--created primarily, though not exclusively, by progressive intellectuals of color--compels us to confront critically the most explosive issue in American civilization: the historical centrality and complicity of law in upholding white supremacy (and concomitant hierarchies of gender, class, and sexual orientation). West, Foreword, supra note 29, at xi. See also Angela P. Harris, [Foreword: The Jurisprudence of Reconstruction](#), 82 Cal. L. Rev. 741 (1994) [hereinafter "Harris, Reconstruction"] (introduction to symposium devoted entirely and specifically to Critical Race Theory).

[FN33]. This is necessarily an initial inquiry because I am still in the process of researching my book, and am therefore not yet in a position to suggest (all) final conclusions illuminated by my investigation. Nevertheless, the conference, my preparation therefor, and the work on this essay have helped me to focus on the important issues in the postcolonial Puerto Rico paradigm.

[FN34]. See, e.g., Tomás Almaguer, *Racial Fault Lines: The Historical Origins of White Supremacy in California* (1995) (a detailed analysis of racial construction of multiple ethnic groups--including Mexicans, Asians, and Blacks--as subordinate to whites in California); see also Feagin & Vera, *White Racism*, supra note 9.

[FN35]. Michael Omi and Howard Winant use the term "racialization to specify the extension of racial meaning to a previously racially unclassified relationship, social practice or group." These authors emphasize that "racialization is an ideological process, an historically specific one." Michael Omi & Howard Winant, *Racial Formation in the United States: From the 1960s to the 1980s*, 61-62 (1987).

[FN36]. Puerto Ricans were racialized as non-white by the United States starting early in the second colony. For example, during the congressional debate on the 1917 Organic Act for Puerto Rico, United States Representative Joseph Cannon stated that "the racial question" made the Puerto Ricans ineligible for statehood and made them suspect as "people competent for self-government." He supported his argument with the following statistical analysis: "Porto Rico is populated by a mixed race. About 30 percent pure African.... 75 to 80 percent of the population ... was pure African or had an African strain in their blood." *Race and Races*, supra note 2, at 346. See also infra note 165 and accompanying text.

[FN37]. See, e.g., Gloria Sandrino-Glasser, [Los Confundidos: De-Conflating Latinos/as' Race and Ethnicity](#), 19 *Chicano-Latino L. Rev.* 69 (1998) (arguing that "national origin" understanding of anti-latina/o discrimination is superior to one based on "race"); see also Juan Perea, *Five Axioms in Search of Equality*, 2 *Harv. Latino L. Rev.* 231 (1997) (arguing that "ethnicity" is a superior concept to "national origin" and "race" in understanding discrimination against Latinas/os in the United States).

[FN38]. This is a common image in Latin American popular culture. See, e.g., La Sonora Ponceña's song *Descendencia* (Being descended of) in the album "Birthday Party": "Somos latinos, somos la esencia de Puerto Rico, quien me discute ese honor.... Orgullosa de mi cantar, latina, yo siempre estoy, ... Mezcla de español, africano y taíno." Author's translation: "We are Latinos, we are the essence of Puerto Rico, who argues/challenges this honor? ... Proud of my singing, Latin, I always am, ... A Mixture of Spaniard, African, and Taíno."

[FN39]. "Race is social, in the sense that the groups commonly recognized as racially

distinct have their genesis in cultural practices of differentiation rather than in genetics, which plays no role in racial fabrication other than contributing the morphological differences onto which the myths of racial identity are inscribed." Ian F. Haney-López, *Retaining Race: LatCrit Theory and Mexican American Identity in Hernandez v. Texas*, 2 Harv. Latino L. Rev. 279, 281 (1997). See also L. Luca Cavalli-Sforza et al., *The History and Geography of Human Genes* (1994) (lack of biological basis for racial categories); Ian F. Haney-López, [The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice](#), 29 Harv. C.R.-C.L. L. Rev. 1 (1994).

[\[FN40\]](#). See Berta Esperanza Hernández-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 Harv. Latino L. Rev. 199, 207 (1997) (imposed social constructs are dynamic and tend to change based on the racialized, gendered frame of reference of the actor).

[\[FN41\]](#). Ethnicity includes "common geographic origin; migratory status; race; language or dialect; religious faith or faiths; ties that transcend kinship, neighborhood and community boundaries; an external perception of distinctiveness." Harvard Encyclopedia of American Ethnic Groups vi (Stephen Thernstrom ed., 1980).

[\[FN42\]](#). LatCrit scholarship has noted how the social and legal construction of Latinas/os in the United States is fundamentally a racialized process. For example, Ian F. Haney-López explains that while race and ethnicity are not essentially different; on the contrary ... race and ethnicity are largely the same. [But they] should not be conflated because these two forms of identity have been deployed in fundamentally different ways. The attribution of a distinct ethnic identity has often served to indicate cultural distance from Anglo-Saxon norms. Left unstated but implicit, however, is a claim of transcendental, biological similarity: ethnics and Anglo-Saxons are both White. The attribution of a distinct racial identity, on the other hand, has served to indicate distance not only from Anglo-Saxon norms, but also from Whiteness. Racial minorities are thus twice removed from normalcy, across a gap that is not only cultural, but supposedly innate.

Ian F. Haney-López, *Retaining Race: LatCrit Theory and Mexican American Identity in Hernandez v. Texas*, 2 Harv. Latino L. Rev. 279, 283 (1997).

[\[FN43\]](#). LatCrit scholars have paid special attention to the social construction of "foreignness," with its inherent denial of "citizenship," that is often imposed on Latinas/os and other groups--such as Asian-Americans--in the United States, despite our legal citizenship. See Neil Gotanda, *Asian-American Rights and the "Miss Saigon Syndrome,"* in *Asian-Americans and the Supreme Court 1096* (Hyung-Chan Kim ed., 1992) (In "the United States, if a person is racially identified as African-American or white, that person is presumed to be legally a U.S. citizen and socially an American.... [But] these presumptions are not present for Asian-Americans, Latinos, Arab-Americans, and other non-Black racial minorities. Rather, there is the opposite presumption that these people are foreigners; or, if they are U.S. citizens, then their racial identity includes a foreign component."); Juan Perea, [Los Olvidados: On the Making of Invisible People](#), 70 N.Y.U. L. Rev. 965, 966 ("Latino invisibility" defined as "relative lack of positive public identity and legitimacy" caused by our "foreign" ethnicity). Language has also been an important theme in LatCrit scholarship. See, e.g., Juan F. Perea, [Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English](#), 77 Minn. L. Rev. 269 (1992) (analyzing "official English" legal proposals); Steven W. Bender, *Direct Democracy and Distrust: The Relationship Between Language Law Rhetoric and the Language Vigilantism Experience*, 2 Harv. Latino L. Rev. 145, 146 (1997) (discussing "Language Vigilantism," how "individuals speaking a language other than English [mostly Latinas/os] have increasingly come under attack [from normative Anglos] in their schools, their workplaces, and even in their homes and places of leisure").

[FN44]. See generally Ian F. Haney-López, [Race and Erasure: The Saliency of Race to LatCrit Theory](#), 85 Cal. L. Rev. 1143 (1997), 10 La Raza L.J. 57 (1998) (concluding, after extensive review, that Latinas/os are racialized by the normative U.S. society and failing to treat this as racial construction and racism will only result in an enforced erasure of Latina/o issues from public discourse and in permanent marginalization of our group).

[FN45]. This article uses the phrase "United States racism" rather than "racism in the United States," and "white racism" instead of "racism," to emphasize that white racism is an institutional, constitutive element of the dominant white Anglo culture in the United States. Additionally, one can be a victim of "United States racism."

[FN46]. See, e.g., Ediberto Román, Common Ground: Perspectives on Latino/Latina Diversity, 2 Harv. Latino L. Rev. 483, 484 (1997) ("I am concerned over the amount of time and energy we spend on our differences [as Cubans, Puerto Ricans, whites, blacks, men, women, heterosexuals, homosexuals, Catholics, agnostics] as compared to the time and energy we spend acknowledging common ground.").

[FN47]. See the discussion *infra* notes 54-60 and accompanying text.

[FN48]. Substantive Program Outline, *supra* note 11.

[FN49]. See Robert Westley, Many Billions Gone: Is it Time to Reconsider the Case for Black Reparations?, 40 B.C. L. Rev. 429, 19 B.C. Third World L.J. 429, 436 (1998) [hereinafter "Westley, Many Billions Gone"].

[FN50]. Comparative victimology can be defined as "the attempt to situate a given group ... at the top of an imagined hierarchy of oppression." Westley, Many Billions Gone, *supra* note 49, at 457 n.111.

[FN51]. For example, in the Luxembourg Agreements Germany agreed to make reparations to Jewish victims of the Holocaust, by making payments to Israel and to individual survivors of the Nazi death camps. Westley, Many Billions Gone, *supra* note 49, at 453-58 (discussing Wiedergutmachung agreements). Recently, the heirs of the victims and some survivors have pursued claims against Swiss banks that illegally kept the deposits of victims. Westley, Many Billions Gone, *supra* note 49, at 433 n.16 and accompanying text. Japanese-Americans who were the victims of U.S. government-ordered internment during World War II received an apology and money from the government of the United States. See generally Eric Yamamoto, Racial Reparations: Japanese-American Redress and African-American Claims, 40 B.C. L. Rev. 487, 19 B.C. Third World L.J. 487 (1998) [hereinafter "Yamamoto, Racial Reparations"].

[FN52]. In footnote 10 of his influential reparations article, Westley cites many works favoring reparations for African-Americans . See Westley, Many Billions Gone, *supra* note 49, at 432 n.10. Westley notes, however, that Derrick Bell has "cautionary views on the struggle for Black reparations" in several works, which he cites. *Id.* But Westley explains that "[i]t is in part the lack of political enthusiasm for a critical engagement of Black reparations since this initial effort that motivates [his reparations] article." *Id.*

[FN53]. As the Substantive Program indicated: "Re/Defining the Reparations Discourse. By looking at reparations through a LatCritical lens, we seek to "center" Latinas/os qua Latinas/os in legal discourse, but to do so in a way that recognizes and accounts for the many axes of difference that help to define Latina/o heterogeneity, both domestically and internationally." Substantive Program Outline, *supra* note 11. See also *supra* note 30 (defining "to center").

[FN54]. See, e.g., Elizabeth M. Iglesias, [Identity, Democracy, Communicative Power](#),

[Inter/National Labor Rights and the Evolution of LatCrit Theory and Community](#), 53 U. Miami L. Rev. 575 (1999); Dorothy E. Roberts, [BlackCrit Theory and the Problem of Essentialism](#), 53 U. Miami L. Rev. 855 (1999); Athena D. Mutua, [Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm](#), 53 U. Miami L. Rev. 1177 (1999); Stephanie L. Phillips, [The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History](#), 53 U. Miami L. Rev. 1247 (1999); Valdés, [OutCrit Theories](#), supra note 28; Sumi Cho and Robert Westley, [Critical Race Coalitions: Key Movements that Performed the Theory](#), 33 U.C. Davis L. Rev. 1377 (2000).

[FN55]. LatCrit has and will continue to have a fundamental intellectual link to CRT, but it represents a re/orientation of Critical Race Theory to "center" outsider groups other than African-Americans. The realization of the need for a separate space for this change in focus was not an easy process. While I am not suggesting that there is a monolithic CRT experience, or that the CRT workshop (the annual meeting of race crits) either represented the entire field of Critical Race Theory, or that it lacked the capacity to grow, the dynamics of the workshop unfortunately appear to have generated a sense of exclusion(s). See Valdés, [Poised at the Cusp](#), supra note 29, at 3 n.5 ("CRT workshop in 1995 had about forty participants, only two of which were Latina/o, Trina Grillo and [Frank Valdés]"); Cho, [Essential Politics](#), supra note 21, at 449 (condemning the "ritualistic 'violence' against gay and lesbian race crits in recent years at the [CRT] summer workshop"); see also Phillips, [Convergence](#), supra note 54, at 1249 n.4 (1999) (member of the original workshop organizing committee concedes that despite best of intentions workshop "replicat[ed] troubling hierarchies ... in particular, the privileging of African-American experience and of heterosexuality"). For a brief history of the CRT workshop, see generally Phillips, supra note 54 (describing history of the CRT workshop, explaining its "invitation only" policy, and suggesting that the workshop and LatCrit Conference had similar memberships and intellectual goals, and that they could and should be coordinated). For a more complete overview of the CRT-LatCrit relationship, with the benefit of the maturity of LatCrit, see Valdés, [OutCrit Theories](#), supra note 28.

[FN56]. See, e.g., Juan F. Perea, [The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought](#), 85 Cal. L. Rev. 1213 (1997), [10 La Raza L.J. 127 \(1998\)](#) [hereinafter "Perea, The Black/White Binary Paradigm"]; Ian F. Haney López, [Race and Erasure: The Salience of Race to LatCrit Theory](#), 85 Cal. L. Rev. 1153 (1997), [10 La Raza L.J. 57 \(1998\)](#); Gloria Sandrino-Glasser, [Los Confundidos: De-Conflating Latinos/as' Race and Ethnicity](#), 19 [Chicano-Latino L. Rev.](#) 69 (1998); Rachel F. Moran, [Neither Black Nor White](#), 2 Harv. Latino L. Rev. 61 (1997) (finding that Latinas/os are not adequately represented in American civil rights debate because they do not fit within the paradigm); Ian F. Haney-López, [Retaining Race: LatCrit Theory and Mexican American Identity in Hernandez v. Texas](#), 2 Harv. Latino L. Rev. 279 (1997); Juan Perea, [Five Axioms in Search of Equality](#), 2 Harv. Latino L. Rev. 231 (1997); Juan F. Perea [Ethnicity and the Constitution: Beyond the Black and White Binary Constitution](#), 36 [Wm. & Mary L. Rev.](#) 571 (1995). This LatCrit challenge to the binary can be traced back to the very first LatCrit colloquium in Puerto Rico. See generally Colloquium, [Representing Latina/o Communities: Critical Race Theory and Practice](#), 9 [La Raza L.J.](#) 1 (1996); see also Francisco Valdés, [Latina/o Ethnicities, Critical Race Theory and Post-Identity Politics in Postmodern Legal Culture from Practices to Possibilities](#), 9 [La Raza L.J.](#) 1, 20-24 (1996) (discussing various authors' challenge to the black/white binary); Robert S. Chang, [The Nativist's Dream of Return](#), 9 [La Raza L.J.](#) 55 (1996) (Asian-Americans do not fit within the "comfortable binary" of the Black/White paradigm of race); Deborah Ramirez, [Foregoing a Latino Identity](#), 9 [La Raza L.J.](#) 61, 63 (1996) (explaining a personal experience that required her to challenge the paradigm in order properly to assist a local Latina/o community).

[FN57]. See, e.g., Mutua, supra note 54, at 1179 ("Perea's description of the Black/White paradigm as a binary relationship [in Perea, The Black/White Binary Paradigm, supra note

56] obscures the key insight of the Black/White paradigm: its relationship to power."); Devon W. Carbado, Introduction: The [Ties That Bind, 19 Chicano-Latino L. Rev. 283, 288 \(1998\)](#) ("I am sympathetic to the concerns that inform the Black/White paradigm critique That said, I have not always been pleased with the way in which the Black/White paradigm critique is framed."); Leslie Espinoza & Angela Harris, [Embracing the Tar-Baby: LatCrit Theory and the Sticky Mess of Race, 85 Cal. L. Rev. 1585, 1597 \(1997\), 10 La Raza L.J. 499, 510 \(1998\)](#) [hereinafter "Espinoza & Harris, Embracing the Tar-Baby"] (Angela Harris discusses "Black Exceptionalism," which she defines as: "The Claim ... that African-Americans play a unique and central role in American social, political, cultural, and economic life, and have done so since the nation's founding. From this perspective, the 'black-white paradigm' that Perea condemns is no accident or mistake; rather it reflects an important truth.").

[FN58]. For example, Anthony Paul Farley has written a strong critique of the Black/White paradigm theory:

There is no such thing [as the 'black/white paradigm']--except as a tool of the master. The phrase has, unfortunately, become a truism in LatCrit Theory. Rhetorical choices have political effects and the political effects of the phrase "black-white paradigm" are reactionary. First, it serves white power to allow them to divert their eyes and attention away from the people they hate the most to the other Others whom they hate less. It is akin to saying "We talk too much about your former slaves, Boss." Second, the phrase "black-white paradigm" is itself the kind of conflationary move that LatCrit Theory condemns.

Anthony Paul Farley, [All Flesh Shall See It Together, 19 Chicano-Latino L. Rev. 163, 171 \(1998\)](#).

[FN59]. However, it is important to note, as the citations in the footnotes in this Part disclose, that these strong scholarly debates have taken place in the context of the LatCrit conferences, and have been amply developed in the articles published in its symposia. See also note 63 infra.

[FN60]. See Espinoza & Harris, Embracing the Tar-Baby, supra note 57 (a joint article about the often difficult process of reaching common ground among marginalized groups); see also Elizabeth M. Iglesias & Francisco Valdés, Afterword: [Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Agendas, 19 Chicano-Latino L. Rev. 503 \(1998\)](#) [hereinafter "Iglesias & Valdés, Coalitional Theory"] (exploring how LatCrit can remain a self-conscious and self-critical coalitional enterprise, capable of handling "eruptions" [strong differences of opinion, such as that over gender at LatCrit I and that over religion and sexual orientation at LatCrit II], to continue to move forward to develop both a sense of scholarly community [in friendship and solidarity] while maintaining high standards of progressive critical legal scholarship). See also Kevin R. Johnson, [Celebrating LatCrit Theory: What Do We Do When the Music Stops?, 33 U.C. Davis L. Rev. 753, 778-79 \(2000\)](#) (LatCrit must be capable of engaging in criticism that is constructive and even respectful of the views of others; providing specific example).

[FN61]. See Mutua, Shifting Bottoms, supra note 54. This technique of "looking to the bottom" can produce important insights by "examin[ing] carefully and critically the sources, workings and effects of power by focusing on the sectors of society where power is wielded with most license and impunity. This technique of 'looking to the bottom' to inform antisubordination theory makes sense because 'the bottom' is where subordination is most harshly inflicted and most acutely felt." Iglesias & Valdés, Coalitional Theory, supra note 60, at 516, citing Matsuda, Looking to the Bottom, supra note 25 .

[FN62]. As Dorothy Roberts explains in her LatCrit III Symposium article: "Writing about

Black people is not essentialist in and of itself. It only becomes essentialist when the experiences discussed are taken to portray a uniform Black experience or a universal experience that applies to every other group." Roberts, *BlackCrit Theory*, supra note 54, at 857. And she further explains that "the problem of essentialism [in Feminist legal theory] did not derive from studying the lives of particular women; it derived from claiming that the lives of a particular groups of women represented all women." *Id.* at 856-57.

[FN63]. Iglesias and Valdés explain that LatCrit must avoid "racing to the bottom" in a counterproductive search for "comparative victimhood." LatCrit must work "despite and beyond the complex intersections of privilege and subordination that may otherwise tear it asunder along the multiple fissures that too often are produced by conclusory, abstract and uncritical assertions of comparative victimhood--whether real or apparent." Iglesias & Valdes, *Coalitional Theory*, supra note 60, at 516 (footnote omitted). See also Valdés, *OutCrit Theories*, supra note 28, at 1316-21 (warning against different forms of "regressive" nationalism(s) that would impose essentialized normativities within our communities; solution is the aggressive, self-conscious discipline--and accompanying tensions--of diversity); Mutua, *Shifting Bottoms*, supra note 54, at 1177-78 n.2 (explaining that focusing on "the people at the bottom" is not a surrender to victimization, but rather a celebration of survival. "At the same time, I do not think of survival or victimhood as all that binds, or should bind, these various groups. I believe these groups have similarities that transcend oppression."); Westley, *Many Billions Gone*, supra note 49, at 457 (warning against comparative victimology).

[FN64]. While colonized peoples will have many intersectionalities, this article does not claim that the Puerto Ricans represent a universal colonial paradigm. After all, many other diverse groups suffer from colonialism. See, e.g., George E. Bisharat, [Land, Law, and Legitimacy in Israel and the Occupied Territories](#), 43 *Am. U. L. Rev.* 467 (1994). Furthermore, LatCrit Theory has identified colonialism as a diverse and complex global challenge. See, e.g., Ediberto Román, [A Race Approach to International Law \(RAIL\): Is There a Need for Yet Another Critique of International Law?](#), 33 *U.C. Davis L. Rev.* 1519 (2000) (advocating a race-based approach is needed in International Law to repair the legacy of racist colonization and conquest); Tayyab Mahmud, [Race, Reason, and Representation](#), 33 *U.C. Davis L. Rev.* 1581 (2000) (colonialism is one of the subordinating hallmarks of Western liberalism); Sylvia R. Lazos Vargas, [Globalization or Global Subordination?: How LatCrit Links the Local to Global and the Global to the Local](#), 33 *U.C. Davis L. Rev.* 1429 (2000) (analytical overview of LatCrit's global and inter/national engagements).

[FN65]. Robert Westley explains that his exploration of reparations is partly motivated by recent setbacks against affirmative action: Affirmative action for Black Americans as a form of remediation for perpetuation of past injustice is almost dead. Due to a string of Supreme Court decisions beginning with *Bakke* and leading up to *Adarand*, the future possibility of using affirmative action to redress the perpetuation of past wrongs against Blacks is now in serious doubt. Whereas some believe that the arguments supporting affirmative action as a remedy or even a tool of social policy are still sound, affirmative action programs continue to encounter strong political headwinds and judicial disapprobation. See Westley, *Many Billions Gone*, supra note 49, at 429-30 (footnotes omitted).

[FN66]. In favoring a legislative approach, Westley points out that "historically it has been legislatures, not courts, that have in fact initiated the most comprehensive remedies to racial subordination, *Brown v. Board of Education* and its progeny notwithstanding." Westley, *Many Billions Gone*, supra note 49, at 436.

[FN67]. See Westley, *Many Billions Gone*, supra note 49, at 435-36 ("No matter how

unjustly, [in this "period of backlash"] affirmative action has been pigeonholed in popular consciousness as an 'undeserved racial preference.');" see also Berta Esperanza Hernández-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 Harv. Latino L. Rev. 199, 218-24 (1997) (a critical discussion of the conservative backlash against affirmative action in this country).

[FN68]. Westley explains: "Importantly, however, a tight fit with the individual rights paradigm may be considered a legal prerequisite to success only in the context of judicially imposed redress. A tight fit is not a moral prerequisite, nor is it a legal barrier to legislative redress. It is noteworthy that even Japanese-American claims were denied by courts and ultimately awarded by Congress." Westley, *Many Billions Gone*, supra note 49, at 452.

[FN69]. This if "success" is defined to mean the actual award of reparations. But Professor Westley notes that: "Reparations are worth fighting for even if such a campaign is unlikely to be successful, due to the intellectual benefit of racial dialogue." Westley, *Many Billions Gone*, supra note 49, at 436.

[FN70]. See generally Malavet, *Cultural Nation*, supra note 4. See also citations supra note 14.

[FN71]. [48 USC § 891 \(1994\)](#) (allowing a "Resident Commissioner" to represent Puerto Rico in the United States Congress). The Resident Commissioner's "[r]ole in Congress is determined by the House rules under which he may be a member of only three House committees and may introduce bills and speak on the House floor. He may not vote" Arnold H. Leibowitz, *Defining Status: A Comprehensive Analysis of United States Territorial Possessions* 224 (1989).

[FN72]. See [De La Rosa v. United States, 842 F.Supp. 607, 609 \(D.P.R. 1994\)](#) ("granting U.S. citizens residing in Puerto Rico the right to vote in presidential elections would require either that Puerto Rico become a state, or [the adoption of] a constitutional amendment"), aff'd, [32 F.3d 8 \(1st Cir. 1994\)](#). See also Igartúa [de la Rosa v. United States, 229 F.3d 80 \(1st Cir. 2000\)](#), rev'g [107 F.Supp.2d 140, 141, 148 \(D.P.R. 2000\)](#) (U.S. District Judge Jaime Pieras, Jr., wrote: "The present political status of Puerto Rico has enslaved the United States citizens residing in Puerto Rico by preventing them from voting in Presidential and Congressional elections and therefore is abhorrent to the most sacred of the basic safeguards contained in the Bill of Rights of the Constitution of the United States--freedom." Accordingly, in denying the government's Motion to Dismiss, the court ruled that U.S. citizens residing in Puerto Rico, either by birth or by relocation from the U.S. mainland, have a constitutional right to vote in presidential elections.).

[FN73]. See Malavet, *Cultural Nation*, supra note 4, nn.174-77 and accompanying text.

[FN74]. This conclusion is based on three factors: (1) the Puerto Ricans are not the constituents of any of these elected voting legislators; (2) the Puerto Ricans are not an economically powerful group; and (3) history has shown that the Puerto Ricans have an extremely small influence in the U.S. Congress.

[FN75]. "The United States [is] ... the largest overseas territorial power in the world. [It] now governs five areas (Puerto Rico, [the] Virgin Islands, Guam, the Northern Marianas, and American Samoa) with over four million people and has special responsibilities for three additional areas (Federated States of Micronesia, the Marshall Islands and Palau)." Leibowitz, *Defining Status*, supra note 71, at 3.

[FN76]. For example, on March 20, 1953, the United States Ambassador to the United Nations, Henry Cabot Lodge, Jr., wrote to the U.N. Secretary General that Puerto Rico's

new form of government (the current status) was consistent with self-determination and thus not subject to the reporting requirements of Article 73 of the U.N. Charter. See Memorandum by the Government of the United States of America Concerning the Cessation of Transmission of Information under Article 73(e) of the Charter with Regard to the Commonwealth of Puerto Rico, March 23, 1953, Dep't St. Bull., at 584-85 [hereinafter "Puerto Rico Memorandum"]; see also Antonio Fernós Isern, *Estado Libre Asociado de Puerto Rico: Antecedentes, Creación y Desarrollo Hasta la Epoca Presente* 213 (1988). The memorandum sent to the U.N. in support of the Ambassador's statements described the process as follows: "At the request of the people of Puerto Rico and with the approval of the Government of the United States, Puerto Rico has voluntarily entered into the relationship with the United States that it has chosen to describe as a 'commonwealth' relationship." The letter from Mr. Ambassador Lodge and the memorandum were jointly assigned Number A/AC-35/L. 121 by the U.N. See United Nations Resolutions: Series I: Resolutions Adopted by the General Assembly Vol. IV, 1952-53, at 198 n.7 (Dusan J. Djonovich ed., 1973). In the memorandum, the United States Delegation quotes from the Resolutions of the Puerto Rico Constitutional Convention, indicating that it "expresses the views of the people of Puerto Rico as to the status they have now achieved." Puerto Rico Memorandum at 587.

[FN77]. I would not favor an armed struggle for independence.

[FN78]. See generally Malavet, *Cultural Nation*, supra note 4, at 28 n.17 and accompanying text, nn.174-77 and accompanying text, and 103-06.

[FN79]. See Malavet, *Cultural Nation*, supra note 4, at 32-41 (explaining how the current legal regime, as interpreted by the U.S. Supreme Court, deprives the Puerto Rican U.S. citizens of equal rights under the U.S. Constitution, and allocates to the federal government almost total authority to legislate in matters applicable to the island).

[FN80]. [U.S. Const. art. IV, § 3, cl. 2.](#)

[FN81]. The "Insular Cases" largely defined the legal rights of Puerto Ricans. Some scholars would limit the label "Insular Cases" to include only nine cases resolved by the U.S. Supreme Court during its 1901 term. Applying specifically to Puerto Rico, see [Downes v. Bidwell, 182 U.S. 244, 287 \(1901\)](#) ("We are therefore of the opinion that the island of Porto Rico [sic] is a territory appurtenant and belonging to the United States, but not part of the United States within the revenue clauses of the constitution."); [Armstrong v. United States, 182 U.S. 243, 244 \(1901\)](#) (duties imposed after signing of Treaty of Paris not properly executed); [Dooley v. United States, 182 U.S. 222, 235 \(1901\)](#) (after the Treaty of Paris Puerto Rico was no longer subject to U.S. tariffs); [Goete v. United States, 182 U.S. 221, 222 \(1901\)](#) (Puerto Rico is not a foreign country under U.S. tariff laws); [DeLima v. Bidwell, 182 U.S. 1 \(1901\)](#) (Puerto Rico is an island territory, not a foreign country within meaning of U.S. tariff laws). However, cases resolved between 1901 and 1922 provided needed interpretation and clarification of the legal regime applicable to America's overseas territories. [Balzac v. People of Puerto Rico, 258 U.S. 298 \(1922\)](#), appears to be the last case that could fall in this category. For a general discussion of this debate, see Efrén Rivera Ramos, [The Legal Construction of American Colonialism: The Insular Cases \(1901-1922\)](#), 65 *Rev. Jur. U.P.R.* 225 (1996).

[FN82]. This argument had been articulated prior to the resolution of the Insular Cases. See, e.g., *Constitutional Aspects of Annexation*, 12 *Harv. L. Rev.* 291, 292 (1898) ("[A]ccording to the spirit of the Constitution, the subjection of annexed territory to exclusive federal control is an abnormal and temporary stage necessarily preceding the normal and permanent condition of statehood.").

[FN83]. See [Johnson v. McIntosh, 21 U.S. 543, 8 Wheat. 543 \(1822\)](#) (Supreme Court

ruled that the "right of discovery" and the "right of conquest" gave Europeans legal title over the American Continents). See also *infra* notes 166-167.

[FN84]. [Downes, 182 U.S. at 343-44](#) (White, J. concurring). The context of Justice White's statement is illuminating:

[T]he presumption necessarily must be that [the Congress], which within its lawful sphere is but the expression of the political conscience of the people of the United States, will be faithful to its duty under the Constitution, and, therefore, when the unfitness of particular territory for incorporation is demonstrated the occupation will terminate. I cannot conceive how it can be held that pledges made to an alien people can be treated as more sacred than is that great pledge given by every member of every department of the government of the United States to support and defend the Constitution.

[Downes, 182 U.S. at 343-44](#) (emphasis added).

[FN85]. "The Northwest Ordinance [of 1787] not only set forth the pattern of territorial development which exists even today but also stated the underlying principle of territorial evolution in U.S. law and tradition: that the goal of all territorial acquisition eventually was to be Statehood." Arnold H. Leibowitz, *Defining Status: A Comprehensive Analysis of United States Territorial Relations* 6 (1989).

[FN86]. The shameful opinion by Chief Justice Taney in *Scott v. Sanford* included some important anti-colonial language favoring the presumption of statehood for acquired territories. See [Scott v. Sanford, 60 U.S. 393 \(19 How.\) 393, 446-47 \(1857\)](#) ("[N]o power is given [to the Federal Government by the U.S. Constitution] to acquire Territory to be held and governed permanently in that character.... [Territory] is acquired to become a State, and not to be held as a colony and governed by Congress with absolute authority."). However, much of this language was rejected as dicta by the majority in the first Insular Cases, at least to the extent that *Scott* could be read to limit the power of Congress to pass legislation to govern the territories while they remain as such. See, e.g., [Downes, 182 U.S. at 250](#) ("[As] we observed in *De Lima v. Bidwell*, the power to establish territorial governments has been too long exercised by Congress and acquiesced in by this court to be deemed an unsettled question. Indeed, in the *Dred Scott* case it was admitted to be the inevitable consequence of the right to acquire territory.").

[FN87]. Spain renounced any claim over Cuba in the Treaty of Paris. Treaty of Paris, art. I ("Spain relinquishes all claims of sovereignty over and title to Cuba."). Cuba was officially turned over to the United States in January of 1899. Carlos Márquez Sterling & Manuel Márquez Sterling, *Historia de la Isla de Cuba* 160 (1975). Cuba became an independent republic with a constitution that was promulgated in 1901 and its first elected president took office in 1902. However, the United States imposed the so-called Platt Amendment on June 21, 1901. This U.S. law gave the United States the right to intervene in Cuba at its discretion. The law was finally abrogated by a treaty between the two nations in 1934. The Philippines were ceded to the United States by Spain through the Treaty of Paris. Treaty of Paris, art. III ("Spain cedes to the United States the archipelago known as the Philippine Islands"). The archipelago became independent in 1946.

[FN88]. A bilateral free associated state is one whose legal regime is equally binding on both related states (in this case the United States and Puerto Rico). The current legal regime for Puerto Rico is called Free Associated State in Spanish, but it is not bilateral because it is subject to unilateral legislative action by the United States. See Malavet, *Cultural Nation*, *supra* note 4, at 32-45. I have argued that, on the basis of U.S. domestic law, the only way to accomplish bilateral free association that is mutually binding on the United States and on the so-called free associated state, and thus a legitimate postcolonial status, is an amendment to the Constitution of the United States. See

Malavet, *Cultural Nation*, supra note 4, at 96-98, 99-102. However, perhaps reflecting a different regime under international law, there are currently three states that are members of the United Nations and have different forms of so-called "Free Association" with the United States. See U.N. Press Release ORG/1317 (26 September 2000), available at <http://www.un.org/Overview/unmember.html> (last visited November 4, 2002) (Federated States of Micronesia, admitted 17 Sep. 1991; Marshall Islands, admitted 17 Sep. 1991; Palau, admitted 15 Dec. 1994); see also Leibowitz, *Defining Status*, supra note 75, at 639-703 (discussing "Compacts of Free Association" between the United States and the Federated States of Micronesia, the Marshall Islands, and Palau).

[FN89]. See supra note 4. The protection of cultural citizenship within a single multicultural polity is discussed in Part IIC infra, after first defining the meaning of reparations in Part IIB.

[FN90]. Although the reference here is to the dominant one, the term "culture" is generally used herein in a broader sense:
[C]ulture is a whole way of life (ideas, attitudes, languages, practices, institutions, structures of power) and a whole range of cultural practices: artistic forms, texts, canons, architecture, mass-produced commodities, and so on. Culture means the actual grounded terrain of practices, representations, languages, and customs of any specific historical society. Culture, in other words, means not only 'high culture,' what we usually call art and literature, but also the everyday practices, representations, and cultural productions of people and of postindustrial societies.
Carla Freccero, *Popular Culture: An Introduction* 13 (1999).

[FN91]. Westley, *Many Billions Gone*, supra note 49, at 473.

[FN92]. See supra note 6 and accompanying text.

[FN93]. On the social construction of the Puerto Ricans by the United States, see generally Malavet, *Cultural Nation*, supra note 4, at 41-45; Malavet, *Accidental Crit II*, supra note 13.

[FN94]. Yamamoto, *Racial Reparations*, supra note 51, at 483.

[FN95]. Westley, *Many Billions Gone*, supra note 49, at 436.

[FN96]. Westley, *Many Billions Gone*, supra note 49, at 436. Yamamoto explains further that the "repair paradigm of reparations" focuses on (1) historical wrongs committed by one group, (2) which harmed, and continue to harm, both the material living conditions and psychological outlook of another group, (3) which, in turn, has damaged present-day relations between the groups, and (4) which ultimately has damaged the larger community, resulting in divisiveness, distrust, social disease--a breach in the polity. Within this framework, reparations by the polity and for the polity are justified on moral and political grounds--healing social wounds by bringing back into the community those wrongly excluded.
Yamamoto, *Racial Reparations*, supra note 51, at 524.

[FN97]. See infra Part IIB.

[FN98]. For example, the grant of sovereignty is a political/legal act which, in and of itself, does not involve direct expenditures. See infra Part IIIA. The provision of full disclosure regarding acts of political repression also might not in and of itself involve money. See infra Part IIIA. But the fact of the matter is that almost any governmental

action, with the possible exception of an apology, will likely require some reallocation of resources and produce at least some opportunity cost, if not direct expenditure.

[FN99]. I very much agree with Bob Westley when he opposes individual payments. Westley, *Many Billions Gone*, supra note 49, at 468. My project is about putting the Puerto Ricans in a position to earn money by controlling their own sovereignty and economy, not about feeding them for day or two.

[FN100]. Westley, *Many Billions Gone*, supra note 49, at 437. Cf. Yamamoto, *Racial Reparations*, supra note 51, n.5 and accompanying text (discussing "symbolic" nature of reparations for Japanese-American World War II internees).

[FN101]. The distinction and disjunction between cultural and political citizenship has been a strong theme in critical theory generally and LatCrit theory in particular. See, e.g., Malavet, *Cultural Nation*, supra note 4 (describing how the Puerto Ricans are an identifiable culture that lacks a legal citizenship, and how they are deprived of real political power because of their legally second-class U.S. citizenship); Westley, *Many Billions Gone*, supra note 49 (advocating reparations to bring African-Americans to full political citizenship in the United States); Yamamoto, *Racial Reparations*, supra note 51 (a critical review of reparations for the internment of U.S. citizens of Japanese descent during World War II); Guadalupe T. Luna, [Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a "Naked Knife," 4 Mich. J. Race & L. 39 \(1998\)](#) [hereinafter "Luna, Naked Knife"] (detailing how Mexican-Americans in the Southwest had their land taken away in spite of their legal citizenship--and their property rights); Kevin R. Johnson, [The Social and Legal Construction of Nonpersons, 28 U. Miami Inter-Am. L. Rev. 263, 268 \(1997\)](#) ("The alien represents a body of rules passed by Congress and reinforced by popular culture. It is society, often through the law, which defines who is an alien, an institutionalized "other," and who is not. It is society through Congress and the courts that determines which rights to afford aliens."). See generally Symposium: [Citizenship and its Discontents: Centering the Immigrant in the Inter/National Imagination, 76 Or. L. Rev. 207- 774 \(1997\)](#); Ibrahim J. Gassama et al., [Foreword, 76 Or. L. Rev. 207, 209 \(1997\)](#) ("The papers in this Symposium investigate the aporetic relations among the nation-state, liberal understandings of citizenship, and problematic constructions of race and ethnicity as they are applied to immigrants.").

[FN102]. The communitarian concept of citizenship views the "citizen as a member of a community." Herman Van Gunsteren, *Four Conceptions of Citizenship*, in *The Condition of Citizenship* 36, 41 (Bart van Steenberg ed., 1994). "This conception strongly emphasizes that being a citizen means belonging to a historically developed community. Individuality is derived from it and determined in terms of it." *Id.* Moreover, "identity and stability of character cannot be realized without the support of a community of friends and like-minded kindred." *Id.*

[FN103]. "The theme of citizenship and the kinds of questions raised herewith have reemerged into the center of public debate in the past few years (together with the concept of civil society) as the focus of policies and studies regarding a number of major contemporary purposes...." Gershon Shafir, Introduction: *The Evolving Tradition of Citizenship*, in *The Citizenship Debates: A Reader 1* (Gershon Shafir ed., 1998). "[The] essays [included in the reader] are a fitting summary of the debates in which the character of our future society is contested." *Id.* at 27. The book includes a discussion of the "Liberal Position," followed by critiques thereof labeled as: "Communitarian," "Social Democratic," "Nationalist," "Immigrant and Multiculturalist," and "Feminist." *Id.* at v-vi.

[FN104]. For example, in his works, Will Kymlicka self-maps as a modern liberal scholar, a la Ronald Dworkin. Kymlicka, *Liberalism, Community and Culture* 10 (1991) ("modern liberals from J.S. Mill through to Rawls and Dworkin"). See also Ronald Dworkin, *Laws*

Empire (1997); Ronald Dworkin, *Taking Rights Seriously* (1999).

[FN105]. Kymlicka presents important objections to the multicultural/communitarian critiques of liberal theory that challenge the critics to prove the shortcomings of liberalism or to admit that they are using liberal theory to construct a new paradigm for a more complicated world. Kymlicka for example would argue that recognition of community and culture is a process of the evolution of liberalism, rather than a competing paradigm that requires the rejection of liberalism. "Considering the nature and value of cultural membership not only takes us down into the deepest reaches of a liberal theory of the self, but also outward to some of the most pressing questions of justice and injustice in the modern world." Kymlicka, *Liberalism, Community and Culture*, supra note 104, at 258. See also Michael Walzer, *On Toleration* 111-12 (1997) ("The centrifugal forces of culture and selfhood will correct one another only if the correction is planned.... [T]he political creed that defends the framework, supports the necessary forms of state action, and so sustains the modern regimes of toleration--is social democracy. If multiculturalism today brings more trouble than hope, it does so in part because of the weakness of social democracy (in this country, left liberalism). But that is another, longer story.").

[FN106]. "[Liberalism] is not always a progressive doctrine, for many classical liberals are skeptical about the average human being's ability to make useful advances in morality and culture, for instance." Alan Ryan, *Liberalism*, in *A Companion to Contemporary Political Philosophy* 293 (Robert E. Goodin & Phillip Pettit eds., 1993).

[FN107]. See generally Malavet, *Cultural Nation*, supra note 4, at 75-96 (describing the failure of liberal citizenship as a model that truly empowers minorities within the multicultural state, and articulating a reformed liberalism with a multicultural sensibility).

[FN108]. See Jürgen Habermas, *Citizenship and National Identity*, in *Theorizing Citizenship* 264 (Ronald Beiner ed., 1995) [hereinafter "Theorizing Citizenship"] ("One's own national tradition will ... have to be appropriated in such a manner that it is related to and relativized by the vantage points of the other national cultures. It must be connected with the overlapping consensus of a common, supranationally shared political culture.... Particularist anchoring of this sort would in no way impair the universalist meaning of popular sovereignty and human rights.").

[FN109]. "Culture" as used by Habermas does not mean the stereotypes that are often used by the normative society to discriminate against certain groups discussed above. Rather, Habermas refers to positive cultural self-constructs. See infra note 110 and accompanying text.

[FN110]. See Jürgen Habermas, *Citizenship and National Identity*, in *Theorizing Citizenship*, supra note 108, at 264.

[E]xamples of multicultural societies like ... the United States demonstrate that a political culture in the seedbed of which constitutional principles are rooted by no means has to be based on all citizens sharing the same language or the same ethnic and cultural origins. Rather, the political culture must serve as the common denominator for a constitutional patriotism which simultaneously sharpens an awareness of the multiplicity and integrity of the different forms of life which coexist in a multicultural society.

Id.

[FN111]. See, e.g., Malavet, *Cultural Nation*, supra note 4 (explaining that the Puerto Ricans are culturally distinct from the normative U.S. society).

[FN112]. Hence, "othering" can be used as a subversive force that empowers marginalized colonial peoples. See Adeno Addis, *On Human Diversity and the Limits of Toleration*, in *Ethnicity and Group Rights* 127 (Will Kymlicka and Ian Shapiro eds., 1997)

("By 'shared identity' I mean to refer to an identity that bonds together, partially and contingently, minorities and majorities, such that different cultural and ethnic groups are seen, and see themselves, as networks of communication where each group comes to understand its distinctiveness as well as the fact that distinctiveness is to a large degree defined in terms of its relationship with the Other.").

[FN113]. In speaking of the dangers of nationalism, Ronald Beiner ponders: "Either fascism is a uniquely evil expression of an otherwise benign human need for belonging; or there is a kind of latent fascism implicit in any impulse towards group belonging." Ronald Beiner, Introduction, in *Theorizing Citizenship*, supra note 108, at 19.

[FN114]. Freccero explains:
Imperialism can occur on different levels and usually involves territorial annexation, economic and political annexation, juridical (legal) annexation, and ultimately ideological and cultural annexation; these latter are often referred to as cultural imperialism
[C]ultural or mental decolonization [is] a "literature/criticism that is participatory in the historical processes of hegemony and resistance to domination rather than (only) formal and analytic." Collective and concerted resistance to programmatic cultural imperialism thus comes to be called "cultural" or "mental" decolonization.
Freccero, supra note 90, at 68 (citations omitted).

[FN115]. Westley, *Many Billions Gone*, supra note 49, at 437.

[FN116]. Westley, *Many Billions Gone*, supra note 49, at 475, citing [Civil Rights Cases, 109 U.S. 3, 25 \(1883\)](#).

[FN117]. This is just one of the many paradoxes of the Territorial Clause and of the alien/citizen paradox of the Puerto Ricans. The U.S Congress, pursuant to the Territorial Clause, see supra note 80, has authority legally to define the privileges and legal rights of the Puerto Ricans, unfettered by traditional constitutional constraints that apply to any other U.S. citizens. It is a system of state-defined subordination, that has been given seemingly oxymoronic constitutional status. (The brilliant term "alien/citizen paradox" was coined by Ediberto Román. See Román, *Alien/Citizen Paradox*, supra note 14).

[FN118]. Westley, *Many Billions Gone*, supra note 49, at 475-76, citing [Civil Rights Cases, 109 U.S. 3, at 62](#) (Harlan, J., dissenting).

[FN119]. Yamamoto, for example, explains how traditionalists resist reparations claims arguing for strict requirements of individual liability and individual entitlement.
Yamamoto, *Racial Reparations*, supra note 51, at 489.

[FN120]. See supra note 6. Robert Westley notes that "[t]he irony posed by the very question of Black national group status is that in ordinary social and political discourse, Blacks are treated as a group for every purpose other than rights-recognition." Westley, *Many Billions Gone*, supra note 49, at 469.

[FN121]. See Malavet, *Cultural Nation*, supra note 4, at 37-40. This part of the article discusses two Supreme Court cases that allowed the U.S. Congress to discriminate against Puerto Ricans on the island by allocating to them dramatically lower levels of federal funding, or no funding at all; the cases are [Harris v. Santiago-Rosario, 446 U.S. 651 \(1980\)](#), and [Califano v. Gautier-Torres, 435 U.S. 1 \(1978\)](#).

Even the reporting of the cases reflects cultural imperialism. As the case itself indicates, the name of the plaintiff in the Califano case was César Gautier-Torres. In Puerto Rico we commonly use both our parents' last names, with the paternal last name first. Most estadounidense choose to take the paternal last name as a middle name and thus incorrectly identify the case and the person. The name of the plaintiff in the Harris case

was Awilda Santiago-Rosario; once again, the last names are incorrectly used in the reporter. Just a few pages before the Harris case in the same reporter, you can find the case officially identified as [Gomez v. Toledo, 446 U.S. 635 \(1980\)](#) (about qualified immunity for local officials). The names of the litigants in that case were Carlos Rivera-Gómez and the former Puerto Rico Chief of Police, Astol Calero-Toledo.

[\[FN122\]](#). Puerto Rico has almost 4 million residents, and there are over 2.7 million Puerto Ricans in the United States mainland. Francisco R. Rivera Bátiz & Carlos E. Santiago, *Island Paradox: Puerto Rico in the 1990s* 23, 127 (1996) (the 1990 census recorded 3.5 million residents of Puerto Rico, and 2.7 million Puerto Ricans in the mainland). On the cultural links between mainland and island Puerto Rican communities, see generally Ruth Glasser, *My Music is My Flag: Puerto Rican Musicians and their New York Communities 1917- 1940* (1995); Angel G. Quintero Rivera, *Salsa Sabor y Control: Sociología de la Música Tropical* (1998).

[\[FN123\]](#). This is not to suggest an acceptance of a single American homogenized culture, since that would be the result of an essentialist process that imposes a homogenized normativity. However, there is at least an attempt at a normative Angla/o-American culture that does not include the Latinas/os within the U.S. borderlands.

[\[FN124\]](#). See Malavet, *Accidental Crit II*, *supra* note 13, at 767-71 (explaining how gringo is a descriptive term, as properly defined in Spanish dictionaries, not an epithet, as it is often characterized in English dictionaries).

[\[FN125\]](#). See *id.*

[\[FN126\]](#). I would require at least five years of legal residence after any change in status to become a resident of the island.

[\[FN127\]](#). On the negative social construction of Puerto Ricans, and accompanying deprivation of rights, in the "U.S. proper," see *supra* note 93 and accompanying text. In that regard, the Puerto Rican colonial experience has many parallels to that of Chicanas/os. One prominent example is land dispossession. Guadalupe Luna has studied the Chicana/o experience and summarized it as follows:
Neither sovereignty nor property rights could forestall American geopolitical expansion in the first half of the nineteenth century. [T]he study of Mexican land dispossession suggests both the need to expand the traditional approach to teaching property law as well as the importance of deploying the Treaty of Guadalupe Hidalgo and international law in the struggle for racial equity.
Luna, *Naked Knife*, *supra* note 101.

[\[FN128\]](#). See *supra* note 100 and accompanying text.

[\[FN129\]](#). I have often been exposed to this narrative in my city of residence, Gainesville, Florida. Colleagues at the law school, law professors nonetheless, have made statements to this effect. More recently, when I pointed out to my hairdresser that I was Puerto Rican and that I favored independence, she inquired almost like a mantra, "But don't you have the best of both worlds?", and articulated the incorrect view of Puerto Rico's economic relationship to the United States. I wonder how such apparent misspending of taxpayers' money might be justified by their congressional delegations if it was in fact true.

[\[FN130\]](#). *Hundreds Gather to Welcome Pardoned Militants in Puerto Rico*, N.Y. Times, Sept. 13, 1999, at A27.

[\[FN131\]](#). See Lisa Napoli, *The [Legal Recognition of the National Identity of a Colonized](#)*

[People: The Case of Puerto Rico, 18 B.C. Third World L.J. 159, 176-77 nn.68-69](#) and accompanying text (1998) ("The people of Puerto Rico also pay other federal taxes and user fees such as Social Security, unemployment and Medicare taxes, and customs duties. According to Barcelo [the Resident Commissioner], the U.S. Treasury collected \$2.5 billion from the island in 1993.").

[\[FN132\]](#). Id.

[\[FN133\]](#). See Francisco L. Rivera-Batiz & Carlos E. Santiago, *Island Paradox: Puerto Rico in the 1990s* 65, Table 4.2 and accompanying text (1996) (mean per capita household income in 1989 was \$4,099 in Puerto Rico, and the U.S. average was \$14,052). And Puerto Ricans living in the largest metropolitan areas in the United States earn only between 35% and 79.5% of the mean household income for that particular area. Id. at 135-39, Table 7.7 and accompanying text.

[\[FN134\]](#). See *supra* note 121.

[\[FN135\]](#). For example, a recent book that details the negotiations between the United States and Puerto Rican governments regarding military training on the islands of Vieques and Culebra includes extensive lists of land owned by the U.S. military that was valued in millions of dollars in 1961. Evelyn Vélez Rodríguez, *Proyecto V-C, Negociaciones Secretas Entre Luis Muñoz Marín y la Marina: Plan Drácula* 151-58 (2002). The book explains that local officials code-named their negotiations with the U.S. military the "Dracula Plan," after the literary vampire, because of the military's demand that all corpses be removed from the cemeteries on the islands of Vieques and Culebra if they were transferred to the U.S. Id. at 15-16 n.1.

[\[FN136\]](#). I hope to develop this theme in my upcoming book. See *supra* note 22. But let me point out that I find it absurd that the United States would continue to maintain Puerto Rico as a territory if it were a substantial net drain on the treasury. It seems inconceivable that U.S. legislators and executive officials would engage in this 100-year history without having a substantial federal purpose (or purposes) that produced net benefits for their constituents.

[\[FN137\]](#). *El Nuevo Día*, Oct. 6, 2002.

[\[FN138\]](#). See *infra* note 156 and accompanying text.

[\[FN139\]](#). See *infra* notes 199, 200, and 201 and accompanying text. Lt. General William P. Tangney, USA, Deputy Commander In Chief, United States Special Operations Command (SOCOM), recently described the value of the training site, in response to congressional inquiries about its possible closure. He stated that "with the non-availability of Vieques, which, of course, was a combined live fire range which is traditionally used by the carrier battle groups and the fleet as part of their work-ups, I am not aware of any facilities on the East Coast where you could do comprehensive, live fire that involved all of the formations in a joint task force. You can do that to a certain extent at Camp LeJeune, North Carolina. You can do a little bit at Fort Bragg, North Carolina. But you really don't have the full access and terrain to pull it all together with the airspace to make it happen." FDCH Political Transcripts, May 16, 2002, Thursday, Transcript of House Government Committee Hearing.

[\[FN140\]](#). On the Puerto Rico political parties and elections, see generally Bayrón-Toro, *Elecciones y Partidos Políticos de Puerto Rico*, *supra* note 24 (providing information about the parties and their basic platforms, as well as election results in Puerto Rico from 1809 until 1988). On the Independence Party position in particular, see Manuel Rodríguez-Orellana, [Vieques: The Past, Present, and Future of the U.S.-Puerto Rico Colonial](#)

[Relationship, 13 Berkeley La Raza L.J. 425 \(2002\)](#) (the LatCrit VII symposium essay penned by the Puerto Rico Independence party vice president and LatCrit VII keynote speaker).

[FN141]. Efrén Rivera-Ramos discusses some of the debate about Puerto Rican statutory citizenship. The Congressional Research Service, for example, has argued that because Puerto Rican citizenship is statutory, it is therefore not covered by the first sentence of the Fourteenth Amendment. Accordingly, it is subject to Congressional change. Rivera-Ramos, *The Legal Construction*, supra note 14, at 177-81.

[FN142]. There is some internal diversity among commonwealth supporters about exactly what the commonwealth is or ought to be. Compare Antonio Fernós-Isern, *Filosofía y Doctrina del Estadolibrismo Puertorriqueño* (1996) (a collection of essays written between 1946 and 1973 explaining and defending the current commonwealth status, by one of its principal architects) with Trías-Monge, *Oldest Colony*, supra note 14, at 195-96 (an architect of the commonwealth refers to "enhanced commonwealth" as postcolonial alternative).

[FN143]. See generally Malavet, *Cultural Nation*, supra note 4, at 98-102.

[FN144]. See *id.*, at 75-106 (setting forth requirements for legitimate postcolonial alternatives).

[FN145]. Yamamoto, *Racial Reparations*, supra note 51, at 518.

[FN146]. Adeno Addis explains:

By "shared identity" I mean to refer to an identity that bonds together, partially and contingently, minorities and majorities, such that different cultural and ethnic groups are seen, and see themselves, as networks of communication where each group comes to understand its distinctiveness as well as the fact that distinctiveness is to a large degree defined in terms of its relationship with the Other. Viewed in this way, the notion of shared identity is not a final state of harmony, as communitarians would claim. It is rather a process that would allow diverse groups to link each other in a continuous dialogue with the possibility that the life of each group will illuminate the conditions of others such that in the process the groups might develop, however provisionally and contingently, "common vocabularies of emancipation," and of justice. I think Seyla Benhabib is right when she observed that "[T]he feelings of friendship and solidarity result ... through the extension of our moral and political imagination ... through the actual confrontation in public life with the point of view of those who are otherwise strangers to us but who become known to us through their public presence as voices and perspectives we have to take into account."

Addis, supra note 112, at 127 (footnotes omitted) (the notion of shared identity is not a final state of harmony, as communitarians would claim).

[FN147]. See Malavet, *Cultural Nation*, supra note 4, at 75-106.

[FN148]. Martha Nussbaum advocates cosmopolitan citizenship thusly:

The accident of where one is born is just that, an accident; any human being might have been born in any nation. Recognizing this, [Diogenes'] Stoic successors held we should not allow differences of nationality or class or ethnic membership or even gender to erect barriers between us and our fellow human beings. We should recognize humanity wherever it occurs, and give its fundamental ingredients, reason and moral capacity, our first allegiance and respect.

Martha C. Nussbaum, *Patriotism and Cosmopolitanism*, in *For Love of Country: Debating the Limits of Patriotism*, Martha C. Nussbaum with Respondents 7 (Joshua Cohen ed., 1996) [hereinafter "For Love of Country"].

[\[FN149\]](#). Walzer describes this type of nationalism:

The quality of nationalism is also determined within civil society where national groups coexist and overlap with families and religious communities (two social formations largely neglected in modernist answers to the question about the good life) and where nationalism is expressed in schools and movements, organizations for mutual aid, cultural and historical societies. It is because groups like these are entangled with other groups, similar in kind but different in aim, that civil society holds out the hope of a domesticated nationalism. In states dominated by a single nation, the multiplicity of the groups pluralizes nationalist politics and culture; in states with more than one nation, the density of the networks prevents radical polarization.

Michael Walzer, *The Civil Society Argument*, in *Theorizing Citizenship*, supra note 108, at 166.

[\[FN150\]](#). In other words, nationalism does not have to be inherently fascist. See discussion supra note 113.

[\[FN151\]](#). Problematizing "patriotism" is one of the basic issues in the citizenship debates. For example, Martha Nussbaum notes that:

[Richard] Rorty urges Americans, especially the American left, not to disdain patriotism as a value, and indeed to give central importance to "the emotion of national pride" and "a sense of shared national identity." Rorty argues that we cannot even criticize ourselves well unless we also "rejoice" in our American identity and define ourselves fundamentally in terms of that identity. Rorty seems to hold that the primary alternative to a politics based on patriotism and national identity is what he calls a "politics of difference," one based on internal divisions among America's ethnic, racial, religious, and other subgroups. He nowhere considers the possibility of a more international basis for political emotion and concern.

Nussbaum, supra note 148, at 4.

[\[FN152\]](#). This is what I label as the "non-assimilationist" alternatives. Malavet, *Cultural Nation*, supra note 4, at 99-102.

[\[FN153\]](#). As I explain in the *Cultural Nation* article, the legal requirements for independence and statehood are relatively well known, but the legal requirements for a truly free associated state are more complex. In my view, FAS status can only be accomplished through a U.S. constitutional amendment. See Malavet, *Cultural Nation*, supra note 4, at 96-98, 99-102.

[\[FN154\]](#). This was true from the very conception of the Second Colony, as exemplified by the following correspondence:

Assistant Secretary of the Navy Theodore Roosevelt, in a personal letter to Senator Henry Cabot Lodge, wrote: "... do not make peace until we get Porto Rico [sic]." Lodge replied: "Porto Rico [sic] is not forgotten and we mean to have it. Unless I am utterly ... mistaken, the administration is now fully committed to the large policy that we both desire."

The Puerto Ricans: A Documentary History 89 (Kal Wagenheim & Olga Jiménez de Wagenheim eds., 1994) (emphasis added).

[\[FN155\]](#). Instructions of the President to the United States Peace Commissioners, September 16, 1898, in *Papers Related to the Treaty with Spain* [submitted to the U.S. Senate when seeking its advice and consent] 3, at 4 (1901). These papers were initially secret, but on February 5, 1901, the Senate lifted the "injunction of secrecy" and ordered the publication of three thousand volumes. *Id.* at 1. I state "full" cession because the United States did demand the cession of individual islands in the Ladrões and Philippine archipelagos. *Id.* at 4, 7 (Guam in the Ladrões, and Luzón in the Philippines).

[FN156]. For example, Roosevelt Roads officially includes the Vieques training area and has three bays that can accommodate the Navy's largest capital ships, nuclear aircraft carriers. The base covers 37,000 acres on the main island of Puerto Rico and 22,000 acres in Vieques. It has 100 miles of roads and is occupied by 6000 people, including 2575 Active Military Personnel. It has 200,000 military visitors a year, and receives 45,000 flights, 1200 ships and 5400 small vessels a year. It houses a communications complex with five underground levels. The base serves as a staging area for operations in Guantánamo and the Panama Canal. It coordinates operations in South American coasts. It hosts joint exercises with NATO and with the air and naval forces of Central and Latin America. M. Meyin And J. Rodriguez, *El Aparato Militar Norteamericano En Puerto Rico* 38-41 (1982).

Other U.S. bases in Puerto Rico include Ft. Buchanan; Sabana Seca (Sabana Seca Communications Center, intelligence and espionage); Camp Tortuguero (training center); Salinas Training Area (training center mainly used by the National Guard). The National Guard, however, uses additional bases throughout the island; bases are located in Bayamón, Puerto Nuevo, San Juan, Isla Verde, Punta Salinas (Toa Baja), Aguadilla, Yauco, Ponce, Salinas, and Caguas. *Id.* Active-duty U.S. personnel in Puerto Rico total 3699 (1985 figures). Robert E. Harkavy, *Bases Abroad: The Global Foreign Presence* 124 (1989). The Aguada Navy Communications base provides a long-range transmitter to communicate with submerged submarines. *Id.* at 162. Aguada, Isabella, and Sabana Seca also provide for communications with surface combatants. *Id.* at 163. Puerto Rican bases also provide tracking and telemetry data for missiles tested from Cape Canaveral. *Id.* at 263. The Point Borinquen station helps to monitor solar emissions and their effect on military communications. *Id.* at 244.

[FN157]. In 1982 the U.S. Department of State put it clearly: "[The Caribbean area's] shipping lanes are vital to U.S. defense and prosperity." One-half of U.S. trade, two-thirds of imported oil, and many strategic minerals pass through the Panama Canal or the Gulf of Mexico. James N. Cortada & James W. Cortada, *U.S. Foreign Policy in the Caribbean, Cuba, and Central America* 1 (1985). See also *supra* note 139 (the more recent statement by a U.S. general).

[FN158]. *Despite Protests, Navy Resumes Shelling of Puerto Rican Island*, N.Y. Times, June 26, 2000, at. A10.

[FN159]. The World Factbook, available at <http://www.shopthenet.net/publiclibrary/factbook96/factbook/us-1.htm> (last visited June 24, 2000).

[FN160]. [Executive Order No. 13158](#), May 26, 2000.

[FN161]. The World Factbook, available at <http://www.odci.gov/cia/publications/factbook/rq.html> (last visited June 24, 2000).

[FN162]. Section 2(c) of the Executive Order specifically includes Puerto Rico among the areas in which "natural and cultural resources within the marine environment" are to be protected. *Id.* sec. 1.

[FN163]. See, e.g., *The Pentagon and Vieques*, The Washington Post, Oct. 22, 1999, at A32 ("Chairing a Vieques hearing Tuesday, Sen. John Warner said that, doing their patriotic duty, his own constituents in Quantico sit closer to an active live-fire range than do residents of Vieques."); Senator Warner's statement should be compared to that of Lt. General Tangney, quoted *supra* in note 139, where the general indicates that training on Vieques is much more intense than that taking place at any other training site. Putting the two statements together, we can understand that there are geographic locations in

the United States where such training might take place, but the political viability of it is open to question. As I personally observed, congressmen in Florida and Texas publicly requested that the Navy move their training from Vieques to their districts, only to be very quickly and publicly rebuked by their own constituents and local political leaders.

[FN164]. The government has sponsored numerous studies to investigate the use of contraception medication and sterilization of indigent persons. Federico Ribes Tovar, *The Puerto Rican Woman* 202-03 (1972).

[FN165]. Teddy Roosevelt Jr., who had been appointed governor of the island by President Herbert Hoover, called the Puerto Ricans "shameless by birth" and added that they did not "know anything more comic and irritating than Puerto Rico." Morales Carrión, *supra* note 14, at 212. Another appointed governor, Rexford G. Tugwell, later President of the University of Chicago, referred to Puerto Ricans as "mulatto, Indian, Spanish people" who therefore made "poor material for social organization." *Id.* at 232. See also Truman Clark, *Puerto Rico and the United States 1917-1933*, 152-53 (1975) (detailing disturbing and offensive letter written by now-famous late cancer researcher Dr. Cornelius Rhoads regarding the Puerto Ricans).

[FN166]. As to the right of conquest, see generally [Johnson v. M'Intosh, 21 U.S. 543, 8 Wheat. 543 \(1822\)](#).

[FN167]. Treaty of Paris, art. IX. See generally Malavet, *Cultural Nation*, *supra* note 4, at 24-25 (studying art. IX of the Treaty of Paris), and 79-83 (comparing art. IX of the Treaty of Paris to art. IX of the Treaty of Guadalupe Hidalgo). This is not to say that they were not interested at all in the people. The United States wanted consumers, not citizens. See Román, *Empire Forgotten*, *supra* note 14. This situation is somewhat analogous to the treatment of the Native Americans and other peoples whose lands were conquered by the United States. In *Johnson v. M'Intosh*, the Supreme Court explained that Native Americans could not be assimilated, i.e., they could not "be incorporated with the victorious nation, and become subjects or citizens of the government with which they are connected." *Id.* at 589. Incorporation was not "practicable," thus requiring the Europeans to choose between "abandoning the country, and relinquishing their pompous claims to it, or of enforcing those claims by the sword." The Supreme Court justified genocide as follows:

When the conquest is complete, ... the conquered inhabitants can be blended with the conquerors, or safely governed as a distinct people, ...

But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness; to govern them as a distinct people, was impossible, because they were as brave and as high spirited as they were fierce, and were ready to repel by arms every attempt on their independence.

Id. at 589-90.

[FN168]. The U.S. military tested Agent Orange in El Yunque National Rain Forest before using it in Vietnam. Caribbean News Brief, United Press Int'l, June 10, 1983, BC cycle. The Navy's training in Vieques, reportedly, "included the use of napalm and Environmentalists say Vieques' delicate coral reefs have been largely obliterated. Long stretches of its once-pristine beaches now stand littered with tons of shrapnel, unexploded shells, discarded military hardware and even the radioactive debris of bombs that the United States Defense Department now admits were tipped with depleted uranium. Using uranium-tipped weapons is a direct violation of Pentagon rules." James E. Garcia, *The Fate of Vieques*, New Am. News Service, May 19, 2000.

[FN169]. See *supra* note 133 and accompanying text.

[\[FN170\]](#). See supra note 121.

[\[FN171\]](#). The internalization of oppression occurs when a group that is oppressed by the normative society replicates some forms of oppression to marginalize members of its own community along lines of discrimination that parallel those of the normative group. For example, women might be subordinated by the men within the group, and among African-Americans, lighter skin hues are considered more desirable. Oliva Espín explains the paradox of a group that is the object of discrimination marginalizing members of its own community:

The prejudices and racism of the dominant society make the retrenchment into tradition appear justifiable. Conversely, the rigidities of tradition appear to justify the racist or prejudicial treatment of the dominant society. These "two mountains" reinforce and encourage each other. Moreover, the effects of racism and sexism are not only felt as pressure from the outside; like all forms of oppression, they become internalized....
Oliva W. Espín, *Women Crossing Boundaries: A Psychology of Immigration and Transformation of Sexuality* 8 (1999).

[\[FN172\]](#). See supra note 165 and accompanying text.

[\[FN173\]](#). Morales Carrión describes how the Roosevelt Administration approved the filing of "a bill to offer Puerto Rico its independence in a referendum," but not as an initiative of the administration. Morales Carrión, supra note 14, at 235. The expectation among United States officials was that the dire economic situation prevailing on the island would scare Puerto Ricans away from Independence. This was accompanied by the trial and conviction of Nationalist Party leader Pedro Albizu Campos, in a second trial, with a carefully chosen jury. To the surprise of the American officials, even pro-statehood leaders said that they would vote for independence even if that meant starvation. *Id.* at 235-36.

[\[FN174\]](#). See Malavet, *Cultural Nation*, supra note 4, at 67-71 (discussing the failure of the "Americanization" process of educating Puerto Ricans in English about "American" institutions and alleged "way of life").

[\[FN175\]](#). See Malavet, *Cultural Nation*, supra note 4, at 71-74 (discussing the anti-Independence repression).

[\[FN176\]](#). See supra note 43 and accompanying text.

[\[FN177\]](#). Hence, Puerto Rico remains an organized but unincorporated territory of the United States. Malavet, *Cultural Nation*, supra note 4.

[\[FN178\]](#). See supra notes 130-134 and accompanying text.

[\[FN179\]](#). See, e.g., Statement by Senator Warner, supra note 163.

[\[FN180\]](#). On Palm Sunday, March 31, 1937, the pro-independence Puerto Rico Nationalist Party marched through the streets of Ponce. The mayor had initially granted a permit for the march, but had tried to rescind it at the last minute after Governor Blanton "Winship ordered the chief of police, Colonel Orbeta, to tell the mayor" to do so. After a shot of "undetermined origin," the police fired into the crowd. Nineteen were killed, including two policemen. "A later inquiry by the American Civil Liberties Union concluded that there had been a 'gross violation of civil rights and incredible police brutality.'" Morales Carrión, at 238. My grandmother, Otilia Vega Ruiz, then pregnant, was shopping in downtown Ponce on that date. She had to run for her life. Luckily for me, she survived, since the child of this pregnancy was my father.

[\[FN181\]](#). Santiago Mari-Pesquera was the young son of Puerto Rico Socialist Party leader Juan Mari-Bras. He was murdered by a person who is known to have been a paid FBI informant. When Don Juan went to collect his subversive carpeta, several boxes worth, he found that all the documents accumulated during the period of his son's murder had been removed, apparently by the FBI. The murder is mentioned in passim in *El Asesinato Político en Puerto Rico ii* (Yvonne Acosta Lespier ed., 1998). Mari-Bras was the plaintiff who renounced his U.S. citizenship and claimed Puerto Rican citizenship in the case described in note 7 supra.

[\[FN182\]](#). On July 25, 1978, at the Cerro Maravilla, Carlos Soto Arriví and Rubén Darío Rosado were murdered by the Puerto Rico Police, reportedly while FBI agents waited some distance away. (In hearings before the Puerto Rico Senate, witnesses testified that FBI agents were in the vicinity of the Cerro Maravilla on the date of the murders.) A few minutes after the ill-fated independentistas were taken by the police, a reportedly elated Governor Carlos Romero Barceló announced during a Commonwealth Day celebration that a "terrorist attack" on the Cerro Maravilla had been beaten back by police. Manuel Suarez, *Requiem on Cerro Maravilla: The Police Murders in Puerto Rico and the U.S. Government Coverup* 74 (1987).

[\[FN183\]](#). The administration of Nobel-Laureate James P. Carter, former President of the United States, who is now known as a champion of civil and human rights, is alleged to have participated in the cover-up, in exchange for primary votes. The basic allegation is that Carter, then embroiled in a tight contest for the Democratic presidential nomination with Edward Kennedy, wanted Puerto Rico's 41 Democratic convention delegates. "In December 1979, it is known, Romero [Carlos Romero Barceló, then governor of Puerto Rico] met with then President Jimmy Carter and Attorney General Benjamin Civiletti. Shortly thereafter, Romero, who had previously backed Republicans, endorsed Carter in his primary election race against Sen. Edward Kennedy." Diana Maychick, *On Film: Film as Expose, The Record*, May 6, 1990, at E1 (reviewing the movie "A Show of Force"). See also Anne Nelson, *Murder Under Two Flags: The U.S., Puerto Rico, and the Cerro Maravilla Cover Up* (1986). Mr. Carter received the votes of 21 of the 41 delegates during the March 1980 primary. See generally Suarez, *Requiem on Cerro Maravilla*, supra note 182, at 127-53.

[\[FN184\]](#). To be fair, nationalists did engage in violence of their own, particularly the 1950 nationalist revolt in Puerto Rico. On "March 1, 1954: Four Puerto Rican nationalists fire 30 shots from the U.S. House visitors' gallery, wounding five congressmen. Nov. 1, 1950: Two Puerto Ricans, Griselio Torresola and Oscar Collazo, attempt to assassinate President Harry S. Truman at Blair House in Washington. Torresola is killed and his partner and three police officers are wounded." *Blast Rips World Trade Center in N.Y.: 5 Dead, Hundreds Hurt*, L.A. Times, Feb. 27, 1993, at A1 (includes a timeline of attacks tied to Puerto Rican nationalists). Nevertheless, for anyone keeping score, the record of violence and persecution clearly puts independence supporters as the victims of United States imperialism. See generally *El Asesinato Político en Puerto Rico* (Yvonne Acosta Lespier ed., 1998).

[\[FN185\]](#). Law 53 of June 10, 1948, was known in Puerto Rico as La Ley de La Mordaza. See [People v. Burgos, 75 DPR 535 \(1953\)](#) (the Ley de La Mordaza was constitutional under both the Puerto Rico and United States Constitutions and it had not been preempted by the Smith Act.) On the Smith Act, see [Pennsylvania v. Nelson, 350 U.S. 497 \(1956\)](#). (Federal Smith Act, [18 USC § 2385 \[1999\]](#), imposing criminal liability on anyone who "advocates, abets, advises, or teaches ... overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof" preempts state laws.).

[\[FN186\]](#). [122 P.R. Dec. 650 \(1988\)](#).

[FN187]. The court appointed a special master to take control of the files and instructed him to turn them over to their objects. [122 P.R. Dec. 650 \(1988\)](#). See also [Noriega-Rodriguez v. Hernandez-Colón, 130 P.R. Dec. 919, 92 JTS 85 \(1992\)](#) (the files could not be edited to remove the names of undercover agents or other informants before being turned over). Puerto Rico Governor Pedro Rossello issued an executive order authorizing the payment of a small damage award to persons whose files exceeded 30 pages. I have had the opportunity to examine several carpetas. My father's was file number 31336; it had 60 pages. (Carpeta No. 31336, copy on file with the author). My godfather's carpeta consists of 543 pages. (Carpeta No. 9296, copy on file with the author). My friend Mario Edmundo Vélez's was No. 24844 (247 pages, copy on file with the author).

[FN188]. See [Communist Party v. Subversive Activities Control Board, 351 U.S. 115 \(1956\)](#) (Smith Act activities against the communist party not held unconstitutional); [Laird v. Tatum, 408 U.S. 1: 92 S. Ct. 2318: 33 L. Ed. 2d 154 \(1972\)](#) (existence of "data gathering system" in which the Pentagon created files on persons it deemed dangerous--mostly anti-Vietnam War protesters--did not unduly chill the files' objects First Amendment rights). McCarthyism a la Puerto Rico, however, was a search for independentistas.

[FN189]. One clear example is the FBI's COINTELPRO operation. In addition, documentary evidence indicates that the United States Secret Service, the Department of State, the Central Intelligence Agency (which is not chartered for "domestic" espionage), the Office of Naval Intelligence, and the ACSI have likewise engaged in covert domestic espionage activities. See Carmen Gautier Mayoral & Teresa Blanco Stahl, COINTELPRO en Puerto Rico: Documentos Secretos del FBI (1960-1971), in *Las Carpetas: Persecución Política y Derechos Civiles en Puerto Rico* 255-97 (Ramón Bosque Pérez & José Javier Colón Morera eds., 1997).

[FN190]. See, e.g., Suárez, at 348-50. Suárez details operations around the 1968 elections in Puerto Rico, for example. He indicates that FBI agents spent a great deal of their time keeping tabs on the Pro-independence movement. They even faked political messages, attributed to different segments of the movement, in order to cause discord. One example was the attempt to argue that Juan Mari Bras, a socialist party leader, was having an affair with the wife of an independence leader. *Id.* The history of intelligence-gathering on Puerto Rico's dissenters is long. During the First World War, the War Department created the Military Intelligence Division (MID). MID was divided into two divisions: The first, called the "Positive Branch, ... collected information on military, political, economic, and social condition; and [the second] the Negative Branch, which investigated and suppressed sabotage and espionage." In Puerto Rico, MID shifted its focus from alien enemies to political dissenters and the "intelligence officer for the district simply took over the insular police force of eight hundred men." Joan M. Jenses, *Army Surveillance in America, 1775-1980*, 172 (1991).

[FN191]. Keith Aoki describes this type of symbolic (semiotic) RE-presentation as "a series of acts involving[] re-creation, interpretation and meaning-making" . Keith Aoki, (Re)Presenting Representation, 2 *Harv. Latino L. Rev.* 247, 261 (1997). While in this case it is being used against the Puerto Ricans, Aoki argues that political semiotic Re-presentation can be used to subvert existing power hegemonies. *Id.* at 262 n.34 and accompanying text (while political Representation, like artistic representation, can have both mimetic and semiotic aspects to it, Aoki argues that a progressive, postmodern LatCrit scholar should favor Symbolic, semiotic Political RE/presentation as a way of challenging the status quo, entrenched power normativities.).

[FN192]. I am personally not very interested in an apology, just in the undoing of the effects of imperialism. Nevertheless, apology can be an important type of reparation.

See, e.g., Yamamoto, Racial Reparations, *supra* note 51, at 518 n.173 and accompanying text (a recipient of reparations to Japanese-Americans noting the importance of symbolic payment and government apology).

[FN193]. See generally Malavet, *Accidental Crit II*, *supra* note 13; Steven W. Bender, [Will The Wolf Survive?: Latino/a Pop Music in the Cultural Mainstream](#), 78 *Denv. U. L. Rev.* 719 (2001); Nancy Ehrenreich, Confessions of a White Salsa Dancer: Issues of Appropriation, [Appreciation, and Identity in the "Latin Music Craze,"](#) 78 *Denv. U. L. Rev.* 795 (2001).

[FN194]. The debate over the use of Vieques is about citizenship and patriotism, but not in the manner in which it is constructed by the normative powers within the United States. Rather, Puerto Rican patriots who believe in their own nation are protecting their right to control their own land. Additionally, the many Puerto Ricans who believe in a permanent relationship with the United States, who embrace their U.S. citizenship and who also oppose the bombing, are being American patriots as well. They are challenging "bombing without representation" and demanding that their rights as U.S. citizens and as human beings be respected by the colonizer. In fact, they are demanding that the United States live up to the rhetoric of democracy in its treatment of its own citizens.

[FN195]. See Statement by Senator Warner, *supra* note 163.

[FN196]. I was therefore looking forward to the application of Derrick Bell's interest-convergence thesis: "Bell's thesis suggests that dominant groups only recognize 'rights' of minorities when the recognition of those rights benefits the dominant group's larger interests. That is, a government will rarely simply do the right thing; rather, it is likely to confer reparations only at a time and in a manner that furthers the interest of those in political power." Yamamoto, Racial Reparations, *supra* note 51, at 497.

[FN197]. See, e.g., José A. Delgado, *Vieques No Tuvo Nada Que Ver [Vieques Had Nothing to Do with It]*, *El Nuevo Día*, Sept. 29, 2002, (copy on file with author) (reporting that the move of Southern Army Command from Puerto Rico to Texas, announced some months ago, will be completed by July of 2003).

[FN198]. See Ivan Roman and Tamara Lytle, *Lawmakers Kill Vieques Deal: The Pentagon, Not Islanders, Won the Right to Decide if the Navy Stops Target Practice*, *Orlando Sentinel*, Dec. 13, 2001, at A10 (reporting that President Bush had committed to leaving the island by May of 2003, thus complying with deals reached by the Clinton Administration with the Pro-statehood governor of Puerto Rico, Pedro Rossello; but Congress passed legislation forbidding the Navy from leaving until "an adequate replacement" for the training site could be found). See also Esther Schrader & Paul Richter, *Political Pressure Helped Vieques Avert Cross Hairs*, *L.A. Times*, June 15, 2001, at A1.

[FN199]. See National Defense Authorization Act for FY2002, Sec. 1049(a), 107 P.L. 107; 115 Stat. 1012 (Dec. 28 2001) ("The Secretary of the Navy may close the Vieques Naval Training Range on the island of Vieques, Puerto Rico, and discontinue training at that range only if the Secretary certifies to the President and Congress that both of the following conditions are satisfied: (1) One or more alternative training facilities exist ... [and] (2) The alternative facility or facilities are available and fully capable of supporting such Navy and Marine Corps training immediately upon cessation of training on Vieques.").

[FN200]. During a news briefing on September 16, 2002, Defense Secretary Donald Rumsfeld stated, in partial answer to a question, that: "Vieques is an important location for us, and we intend to continue to operate on a basis that's consistent with our

obligations, and we hope others will continue to cooperate in a manner that's consistent with their obligations." Available at http://www.defenselink.mil/news/Sep2002/t09162002_t0916sd.html (last visited October 1, 2002; copy on file with author). But see *infra* note 201.

[FN201]. This would be true even if the Vieques training center is closed. However, the most recent developments reported in Puerto Rico have reiterated that the president wishes to close the training center. Following the disclosure that the military had conducted chemical training on Vieques, published reports in Puerto Rico stated that the U.S. military would leave the Vieques training center in May of 2003. See Matthew Hay Brown, *Navy to Leave Vieques*, *Calderón Says*, *Orlando Sentinel*, Oct. 19, 2002, at A23; *La Marina confirma el anuncio hecho por Calderón*, *El Nuevo Día*, Oct. 19, 2002 (reporting that a White House spokesperson had confirmed that the Navy would close the training area as announced by Puerto Rico governor Sila María Calderón) (copy of the story as published in the newspaper's website on file with author); see also Nancy San Martín, *Chemical Testing a Smoking Gun for Vieques Protests*, *Miami Herald*, Oct. 18, 2002, *Domestic News*. Given that this supposed closure has been heard of before, I will take the attitude of "Santo Tomás" (St. Thomas): I will believe it when I see it.

[FN202]. Francisco Valdés has written about Praxis in the LatCrit enterprise: Following from the recognition that all legal scholarship is political is that LatCrit scholars must conceive of ourselves as activists both within and outside our institutions and professions. Time and again, the authors urge that praxis must be integral to LatCrit projects because it ensures both the grounding and potency of the theory. Praxis provides a framework for organizing our professional time, energy and activities in holistic ways. Praxis, in short, can help cohere our roles as teachers, scholars and activists. The proactive embrace of praxis as organic in all areas of our professional lives thus emerges as elemental to the initial conception of LatCrit theory. Praxis therefore serves as the second LatCrit guidepost. Valdés, *Poised at the Cusp*, *supra* note 29, at 1.